

Timely service of sec. 143(2) notice is mandatory and not only a mere procedural requirement

Summary – The High Court of Madras in a recent case of Gitsons Engineering Co., (the Assessee) held that Service of notice under section 143(2) within time-limit prescribed is mandatory and it is not a mere procedural requirement

Facts

- The assessee filed return of income for relevant assessment year admitting *nil* income on 31-10-2007 and the same was processed under section 143(1). The case was selected for scrutiny on the basis of Computer Assisted Scrutiny System and notice under section 143(2) was issued to the assessee.
- On scrutiny, the Assessing Officer made certain disallowances/additions, which were confirmed by the Commissioner (Appeals).
- On second appeal, the assessee took a legal plea that pursuant to scrutiny through Computer Assisted Scrutiny System, the notice under section 143(2) was served on the assessee only on 27-8-2009, beyond the prescribed time-limit and, therefore, the assessment was liable to be annulled. The Tribunal, considering the fact that notice under section 143(2) was issued beyond the time prescribed under section 143(2), held that such notice was invalid and the consequential assessment was bad.
- On revenue's appeal to High Court:

Held

- The word "shall" employed in section 143(2) contemplates that the Assessing Officer should issue notice to the assessee so as to ensure that the assessee has not understated income or has not computed excessive loss or has not underpaid the tax in any manner. It is, therefore, clear that when the Assessing Officer considers it necessary and expedient to ensure that the tax is paid in accordance with law, he should call upon the assessee to produce evidence before him to ensure that the tax is paid in accordance with law. A reading of the said provision makes it clear that service of notice under section 143(2) within the time-limit prescribed is mandatory and it is not a mere procedural requirement.
- In the instant case, even though a plea is taken by the revenue that the objection in relation to non-service of notice contemplated under section 143(2) was not an issue before the Assessing Officer and the Commissioner (Appeals) and the same was raised for the first time before the Tribunal, it is found that it is a legal plea which goes to the root of the matter and, therefore, the assessee is entitled to raise such a plea before the Tribunal, which is the ultimate fact finding body.
- In the case on hand, it is beyond any cavil that the assessee filed return of income on 31-10-2007. Even though the department claims to have sent a notice under section 143(2) on 17-9-2008, the

revenue failed to produce any records to show that the said notice was despatched and served on the assessee. However, it is stated that the department subsequently issued another notice under section 143(2) on 27-8-2009, which, on the face of it, is beyond the period of limitation prescribed under section 143(2).

- The basic requirement of section 143(2) having not been satisfied, the department's further proceedings becomes non est in law.
- The above-said view of this Court is fortified by a decision of the Supreme Court in *Asstt. CIT v. Hotel Blue Moon* [\[2010\] 321 ITR 362/188 Taxman 113](#).
- In such view of the matter, there is no substantial question of law in this appeal and accordingly, this appeal is dismissed.