

Failure to serve notice can be cured by Sec. 292BB but not failure to issue notice

Summary – The High Court of Delhi in a recent case of Shri Jai Shiv Shankar Traders (P.) Ltd., (the Assessee) held that Failure of Assessing Officer issue notice under section 143(2) is fatal to order of reassessment; such failure cannot be condoned by referring to section 292BB

Facts

- For the assessment year 2008-09, the assessee filed the return of income on 16-9-2008.
- The Assessing Officer processed under section 143(1) the return of income filed by the assessee and issued the intimation.
- Subsequently the Assessing Officer picked up the above return for scrutiny assessment and issued on the assessee a notice under section 148.
- Thereupon the assessee appeared before the Assessing Officer and informed him that the return originally filed should be treated as the return filed pursuant to the notice under section 148.
- Thereafter the Assessing Officer passed reassessment order on the assessee and made a certain addition to its income.
- On appeal, the assessee contended that in the absence of a notice under section 143(2), the order of reassessment was invalid.
- The Commissioner (Appeals) held that no specific notice was required to be issued under section 143(2). Non issue of notice under section 143(2) did not render the reassessment invalid.
- On second appeal, the Tribunal held that for completing the assessment under section 148 compliance with the procedure under section 143(2) was mandatory. If notice was not issued to the assessee before completion of the reassessment, then such reassessment was not sustainable in law.
- On appeal to High Court, the revenue relying on the provisions of section 292BB urged that the assessee having not raised any objection about non service of the notice under section 143(2) either at any time before the Assessing Officer or prior to or during the reassessment proceedings, the assessee was precluded from raising such an objection in the subsequent stages of the proceedings.

Held

- In the instant case, no notice under section 143(2) was issued to the assessee after the date on which the assessee informed the Assessing Officer that the return originally filed should be treated as the return filed pursuant to the notice under section 148.
- The legal position regarding section 292BB has already been made explicit by the Allahabad High Court in the cases of *CIT v. Rajeev Sharma* [\[2011\] 336 ITR 678/\[2010\] 192 Taxman 197](#) and *CIT v. Salarpur Cold Storage (P.) Ltd.* [\[2014\] 50 taxmann.com 105/\[2015\] 228 Taxman 48 \(All.\) \(Mag.\)](#). That provision would apply insofar as failure of service of notice was concerned and not with regard to

failure to issue notice. In other words, the failure of the Assessing Officer in reassessment proceedings to issue notice under section 143(2) prior to finalising the reassessment order cannot be condoned by referring to section 292BB.

- The resultant position is that the failure by the Assessing Officer to issue a notice to the assessee under section 143(2) is fatal to the order of reassessment.
- Therefore, the order of the Tribunal deserved to be upheld.