

## HC quashed reassessment as it was made without issuing notice under section 143(2)

**Summary – The High Court of Delhi in a recent case of Indus Towers Ltd., (the Assessee) held that Where Assessing Officer picked up assessee's return for scrutiny and without issuing notice under section 143(2) passed reassessment order under section 148, and thereafter, a notice under section 143(2) was issued but after expiry of limitation period for issuance of such notice, reassessment order was to be quashed**

### Facts

- A company, ICTIL filed a revised return of income for the assessment year 2009-10. In terms of section 144 the last date for issuance of notice by the Assessing Officer to ICTIL for carrying a scrutiny assessment under section 143(3) was 30-9-2010.
- Thereafter, ICTIL, VIL, BIVL filed a scheme of arrangement (merger) for transfer of all the lower companies to the assessee herein *i.e.* ITL with effect from 1-4-2009.
- Later, the Assessing Officer issued a notice under section 148 to ICTIL for re-opening the assessment requiring ICTIL to file its return of income within 30 days of the receipt of the notice. Among the reasons for re-opening was the receipt of capital assets by ICTIL on '*nil*' consideration from one ICL.
- Meanwhile, by an order in Company Petition High Court approved the scheme of merger of ICTIL, VIL and BIVL to form the present assessee *i.e.* ITL.
- In instant writ petition, the assessee contended that the original return was filed by ICTIL on 25-9-2009 while the revised return was filed on 31-3-2010. Therefore, the AO had time till 30-9-2010 to issue notices under Section 143(2). After the merger scheme was approved by this Court and ICTIL ceased to exist, notice in the meanwhile was issued on 22-2-2013 under Section 148. The last date for issuance of the notice under Section 143(2) was 30-9-2013. However, the notice under Section 143(2) was issued only on 18-9-2014. Therefore, the reopening notice as well as reassessment order passed by the Assessing Officer was to set aside.

### Held

- The law on this point is fairly well settled in the decisions in *Pr. CIT v. Jai Shiv Shankar Traders (P.) Ltd.* [\[2016\] 383 ITR 448/\[2015\] 64 taxmann.com 220 \(Delhi\)](#) in which this Court held that the delay in issuing a notice under section 143(2) would be fatal to the reassessment proceedings.
- Thus, the impugned notice issued to the petitioner under section 148 as well as the consequential order disposing of its objections as well as the reassessment proceedings pursuant thereto are hereby quashed.