

## Assessment completed without issue of scrutiny notice was void though assessee had participated in proceedings

**Summary – The Kolkata ITAT in a recent case of Alok Mittal, (the Assessee) held that where notice was not issued by Assessing Officer under section 143(2) before passing order under section 143(3) read with section 147, assessment made by him was bad in law**

### Facts

- The assessee was carrying on the business as share sub-broker. He filed return declaring certain taxable income. The Assessing Officer completed assessment under section 143(3) making certain addition to assessee's income. Subsequently, Assessing Officer issued a notice under section 148 to reopen assessment. In pursuance of said notice, assessment under section 143(3)/147 was completed making further additions to assessee's income.
- The Commissioner (Appeals) confirmed said addition.
- The assessee filed instant appeal raising a preliminary objection that since no notice had been issued by the Assessing Officer under section 143(2) before passing the order under section 143(3)/147, the assessment made by the Assessing Officer was bad in law. The revenue on the other hand relied on the provisions of section 292BB introduced in the Statute with effect from 1-4-2008 to contend that the assessee having participated in the assessment proceedings without raising the issue of non-issuance of notice under section 143(2), he was precluded from taking any objection before the Tribunal about the non-issuance of notice under section 143(2).

### Held

- The provisions of section 292BB are applicable where there is a failure to serve the notice and not where there is a failure to issue the notice under section 143(2).
- In support of this contention, assessee has relied on the decision of the Allahabad High Court in the case of *Asstt. CIT v. Greater Noida Industrial Development Authority* [IT Appeal No. 142 (All.) of 2015, dated 4-8-2015], wherein it was held that the deeming fiction under section 292BB is with regard to 'service of notice' and since the initial requirement of 'issuance of notice' was not met by the Assessing Officer, the deeming fiction under section 292BB is not applicable. It was held that there was a defect on the part of the Assessing Officer in failing to issue notice under section 143(2) within the specified period and since the said defect was not curable under section 292BB, the order of assessment passed by the Assessing Officer was bad in law.
- Keeping in view the legal position and having regard to the facts of the present case, it is held that the assessment made by the Assessing Officer under section 143(3)/147 without issuance of the statutory notice under section 143(2) is bad in law and the same is liable to be cancelled.