

Validity of notice issued before limitation period couldn't be upheld merely on ground that it was a SCN

Summary – The High Court of Madras in a recent case of Indira Industries., (the Assessee) held that When a notice is hit by section 263(2), being beyond period of limitation prescribed therein, its validity cannot be upheld merely on ground that it is in nature of a show-cause notice

Facts

- For relevant year, assessee filed return of income on 29-9-2011. The assessment was processed under section 143(1).
- Subsequently, the assessment was reopened on ground that interest paid to by the assessee on bank loan deserved to be disallowed as the assessee firm had diverted the funds taken as loan from the bank to its partners.
- Thereafter, on 30-12-2016, a reassessment order was passed by under section 143(3) read with section 147 *inter alia* disallowing the interest so deducted from the income of the assessee showing the same as expenditure.
- The revenue thereupon issued notice under section 263 on 10-8-2017. The assessee filed writ petition assailing the impugned notice primarily on the ground that it had been issued beyond the period of limitation prescribed by sub-section (2) of section 263.
- The Single Judge dismissed the petition filed by assessee.
- On appeal:

Held

- The assessment order in the instant case pertains to 2011-12 *i.e.*, said assessment year and the assessee filed return of income on 29-9-2011 itself. Therefore, issuing the impugned notice on 10-8-2017 is clearly beyond two years stipulated under section 263(2) of the Act. The assessee has admittedly paid the entire tax on 4-1-2017. If the impugned notice is hit by section 263(2), it is clearly a jurisdictional error.
- The single judge has dismissed the writ petition of the assessee at the admission stage, mainly on two grounds.
- One ground is that it is within two years from the reckoning date, *i.e.*, it is within two years from 30-12-2016. The other ground on which the Single Judge has dismissed the writ petition is that it is merely in the nature of a show-cause notice.
- Owing to all that have been stated supra, it is held that impugned notice is hit by section 263(2), being beyond the period of limitation prescribed therein. The moment the notice is hit by limitation, it makes little difference as to whether it is a show-cause notice or a substantial notice. It is beyond any pale of doubt that even a show-cause notice if issued beyond the period of limitation, suffers

from the vice of jurisdictional error and is therefore, liable to be set aside. Therefore both the grounds on which the Single judge dismissed the writ petition are liable to be set aside.