

## **Sec. 143(2) notice wasn't required in case no return was filed in response to sec. 148 notice**

**Summary – The High Court of Jammu & Kashmir in a recent case of Broadway Shoe Co., (the Assessee) held that where no return was filed in compliance of notice issued under section 148, issuing of notice under section 143(2) was not required for making assessment**

### **Facts**

- The assessee filed its return declaring the net loss of certain amount. The return was filed by the assessee belatedly, therefore, the same could not be processed. Thereafter, proceedings under section 147 were initiated and a notice under section 148 was issued by which assessee was asked to file return of income tax within 30 days from the date of service of the notice.
- In response to the said notice, the assessee did not file return. In the absence of any explanation, an order of assessment was passed making additions on account of disallowance of interest paid on capital to the partners of the firm. Sum on account of unexplained opening capital balance of partners of the firm as per balance sheet drawn as on 31-3-2005 was also added. Sum on account of unexplained loan extended to Mr. and Mrs. 'S', was also added to the income of the assessee.
- On appeal, the Commissioner (Appeals) upheld all the additions made by the Assessing Officer.
- On further appeal, the Tribunal quashed the order of assessment passed by the Commissioner (Appeals), on the ground that no notice under section 143(2) was issued by the Assessing Officer before concluding the assessment.
- On appeal:

### **Held**

- Section 148 permits issuance of notice in certain circumstances when it is discovered that income has escaped assessment and sub-section (1) thereof mandates a return to be filed upon assessee being served a notice under such provisions, whereupon the provisions of this Act shall, so far as it may be, apply accordingly as if such return were a return required to be furnished under section 139. Section 143 pertains to an assessment and its opening words referred to a return being made under section 139 or in response to a notice under section 142(1). Thus plain reading of section 143(2) which talks about issuance of notice where return has been furnished and section 148(1) which talks about return filed in response to notice being treated as return under section 139, makes it clear that the procedure prescribed in section 143(2) becomes applicable only when a return has been furnished.
- Notice under section 143(2) is mandatory, if the return as filed is not accepted and an assessment order is to be made at variance with the return filed by the assessee. Same would not apply to a case where no return is filed by the assessee as would be axiomatic from plain reading of section 143(2) also.

- Admittedly in the instant case, the return was filed by the assessee after the time prescribed for filing return under section 139(1) and 139(4) had expired. Therefore, the return filed by the assessee has to be treated as non est. The proceedings under section 147 were initiated on the ground that the return for the assessment year 2005-06 was the first ever return filed by the assessee. The Assessing Officer asked to explain the opening capital and source of advances through notices on various dates from december 2012 to february 2013. However, no response was made by the assessee. Subsequently, the Assessing Officer *vide* draft letter asked to comply and give response to the draft assessment order. The assessee did not respond to the draft assessment order where certain additions were proposed on account of unexplained opening capital balances of partner, unexplained loan extended to Mr. and Mrs. 'S' and disallowance of interest. In absence of any explanation, the Assessing Officer made the additions. The notice under section 143(2) is required to be given only when return is furnished. Furnishing of the return is a *sine qua non* for issuance of notice under section 143(2). If no return is furnished by the assessee, there can be no reason for issuance of notice under section 143(2).
- In view of the preceding analysis, the substantial question of law framed by this court is answered in the negative and in favour of the revenue.