

Assessment completed by issuing notice u/s 142(1) to be quashed: ITAT

Summary – The Pune ITAT in a recent case of Gulab Badgujar (HUF), (the Assessee) held that an assessment completed by issuing notice u/s 142(1) to be quashed

Facts

- The Assessing Officer recorded reasons for reopening the assessment and issued notice under section 148. Thereafter, the Assessing Officer issued notice under section 142(1).
- The assessee did not file any return in response to the notice and the assessing officer passed order under section 143(3), read with section 147. The assessee thus filed instant appeal wherein question came up for consideration was whether where no notice under section 143(2) was issued, assessment could be framed under section 143(3), read with section 147.
- On appeal:

Held

- The ITAT stated that the requirement of section 143 is that after issuing notice under sub-section (2) and after hearing such evidences and after taking into account such particulars of income, the assessment needs to be completed determining the total income or loss in the hands of assessee. Once no notice under section 143(2) has been issued, then no assessment can be completed under section 143(3).
- In the present case the assessee had failed to file any return of income under any of the provisions of section 139 and had failed even in terms of notice issued under section 142(1), then the provisions of section 144 are attracted and the Assessing Officer has the power to pass an order to the best of his judgment. Thus, it was held that the order passed under section 143(3), read with section 147 suffers from infirmity and the Act itself provides an alternate for completing the assessment under section 144.