

When you receive order u/s 147/143(3) without receiving notice u/s 148/143(2). You may refer these cases laws in favour of assessee before CIT(A) to settle your case:

- 1) The Jurisdictional High Court in the case of "Harsingar Gutkha Pvt. Ltd. Vs. Commissioner of Income Tax, Central Kanpur" (2012) 20 Taxmann.com 713 Allahabad has held as under:

" A perusal of the provisions of section 143(2) of the Act shows that the service of the notice on the assessee within the period provided under the provision is mandatory. In the absence of the notice being served within the stipulated period under section 143(2) of the act, the assessment proceeding comes to an end and is deemed to have become final. Reliance is being placed on the decisions in the case of CIT v. M. Chellappan (2006) 281 ITR 444(Mad), Vipin Khanna v.CIT(2002) 255 ITR220 (P&H), CIT v. C. Palaniappan (2006) 284 ITR 257 (Mad), CIT v. Bhan Textiles P. Ltd. (2006) 287 ITR 370 (Delhi), CIT v. Lunar Diamonds Ltd. (2006) 281 ITR 1 (Delhi) and Deputy CIT v. Mahi valley Hotels & Resorts (2006) 287 ITR 360 (Guj)."

- 2) This proposition of law has been reiterated by the Hon'ble jurisdictional High Court in the case of Lalit Mohan Gupta v. CIT Allahabad ITA No. 212 of 2007, Judgment dated 24.02.2015 and also in the case of CIT Central Kanpur v. Minakshi Devi, ITA No. 451 of 2005, Judgment dated 08.12.2014 and therefore, from a plain reading of the above proposition of law, it is clear that where the notice u/s 143(2) is not issued by Ld. A.O. the assessment proceedings would come to an end & would be deemed to have become final.
- 3) The Hon'ble Gujarat High Court in the case of "DC/T v. Mahi Valley Hotels & Resorts" (2006) 287 ITR 360 Guj gas however taken a different stand and has held that the requirement to issue notice u/s 143(2) would be mandatory only in the case where the return of the income has been filed by the assessee and not in the case where the return of income has not been filed by the assessee and the assessing officer has proceeded to frame the assessment order without having the return of income on its record. This proposition of law has been subsequently reiterated by the Hon'ble Gujarat High Court in the case of "Commissioner of Income Tax, Ahmedabad V Sukhini P. Modi", ITA No. 3153 of 2007, Judgment dated 10.03.2013 and also in the case of "C/T v. Maxima Systems Ltd.", ITA No. 386 of 1999, date of Judgment 13.04.2010.

- 4) Apparently the Hon'ble Gujarat High Court has taken a different stand regarding the necessity of issuance of notice u/s (2) of IT Act, 1961 for framing an assessment than the stand of the Hon'ble Jurisdictional High Court. This office being a subordinate authority of the Jurisdictional High Court being the Hon'ble Allahabad High Court is bound to follow the law laid down by the Hon'ble Allahabad High Court and therefore, the requirement of law that to frame an assessment the assessing officer is bound in law to issue notice 143(2) to the assessee is the binding precedence for this office.
- 5) The Hon'ble supreme Court in the case of "*C/T v. Jai Prakash Singh*" (1996) 3 SCC 525" has held that non-issuance of notice u/s 143(2) of IT Act, 1961 before framing of an assessment order was merely an irregularity and not an incurable defect rendering the assessment order to be nullity and the same is capable of getting set right by remitting the matter to the assessing officer for making the assessment afresh after following the due procedure of the law. In that case, the Hon'ble Gauhati High Court at Gawahati has held that non-issuance of notice u/s 143(2) of IT Act, 1961 renders the assessment to be nullity which cannot be rectified and the same is not an irregularity. The Hon'ble Apex Court set aside the law propounded by the Hon'ble Gauhati High Court at Guwahati and has held that non-issuance of notice u/s 143(2) of IT Act, 1961 renders the assessment to be merely defective and not null and void and the same is capable of getting rectified by the assessing officer on a remission of the matter to its file by the appellate authorities.
- 6) Considering the law laid down by the Hon'ble Jurisdictional High Court and the Hon'ble Apex Court as referred to the above (supra) the impugned assessment order is held to be defective in law and is therefore deleted. However, the revenue is protected under the provision of section 150 of IT Act, 1961 and the assessing officer is directed to reframe the assessment order after following the due process of law and after issuing all the necessary notices to the appellant as per law.

Thanks and Regards

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