

In Asstt. Comm. Of Income-tax & Anr. Vs M/s Hotel Blue Moon

The only question that arises for our consideration in this batch of appeals is, whether service of notice on the assessee under Section 143(2) within the prescribed period of time is a pre-requisite for framing the block assessment under Chapter XIV-B of the Income Tax Act, 1961:

HELD:

Search is the sine qua non for the Block assessment...The special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. It is not intended to be substitute for regular assessment.

The assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of accounts or documents and such other materials or information as are available with the assessing officer. Therefore, the income assessable in Block assessment under Chapter XIV-B is the income not disclosed but found and determined as the result of search under Section 132 or requisition under Section 132A of the Act.

By making the notice issued under this 158BC/Section mandatory, it makes such notice the very foundation for jurisdiction

Omission on the part of the assessing authority to issue notice under Section 143(2) cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with. The other important feature that requires to be noticed is that the Section 158 BC(b) specifically refers to some of the provisions of the Act which requires to be followed by the assessing officer while completing the block assessments under Chapter XIV-B of the Act. This legislation is by incorporation. This Section even speaks of sub-sections which are to be followed by the assessing officer.

Accordingly, we conclude even for the purpose of Chapter XIV-B of the Act, for the determination of undisclosed income for a block period under the provisions of Section 158 BC, the provisions of Section 142 and sub-sections (2) and (3) of Section 143 are applicable and no assessment could be made without issuing notice under Section 143(2) of the Act