

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
श्री सी.एम.गर्ग,न्यायिक सदस्य तथा श्री ओ.पी.मीना,लेखा सदस्य के समक्ष  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
INDORE BENCH, INDORE  
BEFORE SHRI C.M. GARG, JUDICIAL MEMBER, AND  
SHRI O.P.MEENA, ACCOUTANT MEMBER**  
आ.अ.सं./ I.T. A. No.377 & 378/Ind/2014

निर्धारण वर्ष/ **Assessment Year: 2007-08 & 2008-09**

<b>Shri Gurucharan Singh Marwah, Prp. M/s Janta Goods Transport, House No.11 P.N.B. Colony, Idgah Hills, Bhopal स्था.ले.सं./PAN:BUZPS8087D</b>	<b>V.</b>	<b>ITO 3(1) Indore</b>
<b>अपीलार्थी /Appellant</b>		<b>प्रत्यर्थी /Respondent</b>

<b>अपीलार्थी की ओर से/Appellant by</b>	<b>None (written submissions)</b>
<b>प्रत्यर्थी की ओर से/Respondent by</b>	<b>Shri R.P. Mourya (DR)</b>
<b>सुनवाई की तारीख/Date of hearing</b>	<b>08-08-2017</b>
<b>उद्घोषणा की तारीख/Pronounced on</b>	<b>11-08-2017</b>

**आदेश /O R D E R**

**PER O.P. MEENA, AM.**

1. Though these two appeals, the assessee has taken as many as 7 grounds of appeal however, ground 1 relates validity of assessment framed under section 147 for A.Ys. 2007-08 and 2008-09 which read as under:

“That the Ld. CIT(A) had erred in facts and in law in upholding the validity of assessment framed under section 147. The reassessment completed on the basis of notice u/s 143(2) of the Income Tax Act prior to expiry of time u/s 143(2) issued is illegal.”

**2.** Since facts for both years ie. A.Ys. 2007-08 and 2008-09 are identical, hence, we are discussing facts of A.Y. 2007-08 in I.T.A No. 377/In/2014 which would also apply for A.Y. 2008-09 in ITA No.378/In/2014 also. During the course of hearing no one has appeared on behalf of the assessee however written submissions were filed on 24.10.2016 with a request that same may be considered while deciding the appeal, therefore, we considered the same while adjudicating this appeal.

**3.** Brief facts are that the assessee has filed a return of income on 21.08.2009 and notice u/s 148 of the Act was issued to assessee on 01.09.2010 as per written submissions it was submitted that a notice u/s 143(2) has to be served before the expiry of 6 months from the end of the F.Y. and which the return is furnished. Whereas in case of appellant the proceedings u/s 148 were initiated on

01.09.2010 i.e. before 30.09.2010 meaning by time of issue of notice u/s 143(2) of the Act has not expired. The AO should first exhaust the remedy available u/s 143(2) of the Act. The act of issuing a notice u/s 148 prior to expiry of time frame within which notice u/s 143(2) can be issued is illegal as held by Madras High court in the case of CIT vs. Qatalys Software Technologies (2009) 308 ITR 249 because the return filed by assessee is only processed u/s 143(1) but the proceedings cannot be said to have terminated, action u/s 147 could not be initiated. The same view has been expressed by Calcutta High Court in the case of CESC Ltd. vs. DCIT (2003) 263 ITR 402 and also in case of CIT vs. Rajendraji Shah 247 ITR 772 and Vipin Khanna vs. CIT 255 ITR 220. In view of above, the notice issued and served by the Ld. AO was abinitio void, invalid and bad in law as the time of regular assessment was not elapsed and the proceedings consequent to such invalid notice was bad in law and, therefore, deserves to be quashed. The assessee has also placed reliance on the decision of jurisdictional I.T.A.T., Indore in the case of ITO vs. Vijay Boreelles (2008-10 ITJ-473-I.T.A.T. Indore) and also in the case of

Nizam's Supplemental Family Trust vs. CIT (2000) 242 ITR 381 (Hon'ble Supreme Court).

**4.** On the other hand, ld. DR relied on the orders of the lower authorities.

**5.** We have considered the facts and perused the material on record. Ongoing, through written submissions of the assessee, it is seen that the assessee has filed a return of income on 28.08.2009 whereas the notice u/s 148 of the Act was issued on 01.09.2010. We also noted that according to provisions of section 143(2) as stood at the relevant time for assessment year under consideration, the notice u/s 143(2) can be served before the expiry of 6 months from the end of the F.Y. in which return was furnished, therefore, in the instant case the return was furnished during the F.Y. 2009-10. Accordingly, the notice u/s 143(2) could be issued in this case on or before 30.09.2010. However, we find that before the issue of notice u/s 143(2). The AO has issued a notice u/s 148 on 01.09.2010. When the time limit for normal assessment u/s 143(3) was already available, therefore, assessment u/s 147 which is extraordinary mechanism get when time

limit for regular assessment u/s 143(3) was pending. The assessee while filing written submission relied in the case of Madras High Court in the case of CIT vs. Qatalys Software Technologies (supra) and Hon'ble Calcutta High Court in the case of CESC Ltd. vs. DCIT (supra), and further reliance is placed in the case of CIT vs. TCP Ltd. (2010) 235 CTR 414 (Mad) wherein it was held that notice u/s 148 cannot be issued for making an assessment u/s 147 when time limit is available for issue of notice u/s 143(2) for making an assessment under section 143(3). Similar ratio was also laid down in the case of Vipin Khanna vs. CIT (Supra) and others relied by the assessee. In the light of forgoing discussions, we are of the considered opinion that proceedings u/s 147 initiated when the time limit for issue of notice u/s 143(2) for making regular assessment u/s 143(3) were available hence the proceedings initiated u/s 147 by issue of notice u/s 148 is void ab initio. Accordingly, assessment proceedings are quashed for the A.Y. 2007-08 and 2008-09. Accordingly, this ground of appeal is allowed.

**6.** Since, we have quashed the assessment proceedings on the basis of legal ground of issue of notice u/s 148 of the Act, therefore, we are not deciding the other grounds on merits. As same becomes infructuous does not required any adjudication. Accordingly, the other grounds are treated as dismissed.

**7.** In the result, the appeal of the assessee is partly allowed for A.Y. 2007-08 (ITA No.377/In/2014) and A.Y. 2008-09(ITA NO.378/In/2014).

**8.** The order pronounced in the open Court on 11.08.2017

Sd/-

Sd/-

**( C.M. GARG)**  
**JUDICIAL MEMBER**

**(O.P. MEENA)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : 11<sup>th</sup> August, 2017

**Patel/PS**

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Assistant Registrar, Indore**