

IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH : SURAT

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. MEENA, ACCOUNTANT MEMBER

ITA.No.605/Ahd/2017
Assessment Year 2011-2012

Shri Jayeshbhai J Amin Gujarat Tyres, C/1/3, Ambica Complex, Below Dena Bank, Station Road, Ankleshwar – 393 002. Gujarat. PAN AGDPA1947M (Appellant)	vs.	The Income Tax Officer, Ward-4, Bharuch (Respondent)
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For Assessee :	Shri Amar K. Shah, C.A.
For Revenue :	Shri J.K. Chandnani, Sr. DR

Date of Hearing :	22.07.2019
Date of Pronouncement :	22.07.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-3, Vadodara, Dated 16.12.2016, for the A.Y. 2011-2012, challenging the reopening of the assessment under section 147/148 to be bad in law and addition of Rs.9,86,746/- on account of unexplained agricultural income.

2. Briefly the facts of the case are that assessee is a partner in firm M/s. Gujarati Tyres and derives income by way of remuneration, interest and share of profit. Return of income was filed on 31.03.2013 declaring total income of Rs.1,57,470/- (PB-102). The return of income filed was processed under section 143(1) of the I.T. Act on 05.09.2013 (PB-102). The A.O. during the course of preceding A.Y. 2010-2011 noted that there are cash deposits in the Bank Account of the assessee which assessee failed to explain. The assessee in their return of income filed for assessment year under appeal had only shown income from PF and interest from SB Account, but, no details of cash have been mentioned. The A.O. therefore, reopened the assessment on account of unexplained cash deposited in the bank account and issued notice under section 148 of the I.T. Act on 10.05.2013. The A.O. passed the ex-parte assessment order under section 144/147 of the I.T. Act on 27.03.2014 assessing the total income at Rs.78,03,490/- by making additions on account of unexplained agricultural income, unexplained cash deposit,

unexplained investment and undisclosed S.B. interest. The Ld. CIT(A) partly allowed the appeal of assessee.

3. Learned Counsel for the Assessee submitted that return could have been filed under section 139(4) of the I.T. Act up to 31.03.2013, which, assessee has filed on 31.03.2013 which is also processed under section 143(1) on 05.09.2013, therefore, notice under section 143(2) could have been issued for framing regular assessment upto 30.09.2013. However, the A.O. before expiry of the said period itself issued notice under section 148 of the I.T. Act on 10.05.2013, therefore, re-assessment proceedings are bad in law and liable to be quashed.

4. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

5. We have considered the rival submissions. According to Section 139(4) of the I.T. Act admittedly the assessee could have filed the return of income for assessment year under appeal up to 31.03.2013. The assessee in this case has filed original return of income on 31.03.2013 which

is also processed under section 143(1) on 05.09.2013 (PB102). According to proviso to Section 143(2) no notice under section 143(2) shall be served on assessee after the expiry of six months from the end of the financial year in which the return is furnished. Therefore, the A.O. could have issued notice under section 143(2) for scrutiny assessment of return filed on 31.03.2013 up-to 30.09.2013. The A.O. however issued notice under section 148 of the I.T. Act prior to 30.09.2013 on 10.05.2013. It is well settled law that when period for issue of notice under section 143(2) had not expire, re-assessment order is invalid and relied upon Judgment of Hon'ble Madras High Court in the case of CIT vs. Qatalys Software Technologies Ltd., [2009] 308 ITR 2490 (Mad) in which it was held as under :

"The assessee-company filed its return for the assessment year 2003-04 on November 13, 2003, admitting a total income of Rs.2,34,810 after claiming deduction under section 10A of the Income-tax Act, 1961, in a sum of Rs.3,09,382. The return was processed under section 143(1) of the Act on December 20, 2003. Subsequently, the

assessment for the year 2003-04 was reopened by notice dated October 5, 2004, on the ground that the assessee had included interest received from the bank under profits of business. The Assessing Officer issued notice under section 143(2) of the Act and completed the assessment on December 23, 2005, including interest received from the bank under "Income from other sources". This was confirmed by the Commissioner (Appeals). The Tribunal held that the reassessment proceedings were invalid as the time for issuance of notice under section 143(2) had not expired. On appeals :

Held, dismissing the appeals, that the Tribunal was right in coming to the conclusion that the Assessing Officer was barred from initiating reassessment proceedings under section 147 when the time for issuance of notice under section 143(2) had not expired."

6. Considering the above discussion, it is an admitted fact that at the time of issuing notice under section 148 of the I.T. Act time for issuing of notice under section 143(2) had

not expired, therefore, re-assessment proceedings are invalid, bad in law and liable to be quashed. Following the decision of the Hon'ble Madras High Court in the case of CIT vs. Qatalys Software Technologies Ltd., (supra), we set aside the Orders of the authorities below and quash the reopening of the assessment in the matter. Since the re-assessment proceedings is invalid, therefore, no addition could be made against the assessee. The issue on merit is left with academic discussion. There is no need to give separate finding. Appeal of assessee is allowed.

7. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Surat, Dated 22nd July, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT, Surat Bench, Surat
6.	Guard File.

//By Order//

Asst. Registrar, ITAT, Surat Bench
Bench.