IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH
BEFORE SHRI DR. A. L. SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.622/SRT/2023

Assessment Year: (2012-13)

(Physical Hearing)

Pramodbhai Balubhai Patel, D-204, Capital Status, Karan Park Road, Adajan, Surat – 395005.	**Vs.**	The ITO, Ward- 3(1)(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ADPPP8613C**		
(Assessee)		**(Respondent)**

Assessee by	Shri Rajesh Upadhyay, AR
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	17/10/2023
Date of Pronouncement	30/10/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short "the ld. CIT(A)"], National Faceless Appeal Centre (in short 'the NFAC'), Delhi, dated 12.06.2023, which in turn arises out of an assessment order passed by Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 18.12.2018.

2. The grounds of appeal raised by the assessee are as follows:

"1. Ld. CIT(A), NFAC has erred in law and on fact to confirm AO's addition of Rs.16,68,295/- for LTCG and Rs.16,68,295/- as STCG for sale of immovable property which is agriculture land situated at Moje Gam-Kanad, Tal- Olpad, Dist-Surat through a registered sale deed dated 19.11.2011 as against LTCG of Rs. NIL shown by the assessee in his ROI for the year under appeal.

2. Ld. CIT(A), NFAC has erred in law and on fact to upheld AO's addition of Rs.33,36,590/- u/s 50C of the Act by ignoring the fact and law that the said section was not applicable in the case of assessee as the agreement to sale was executed on 19.01.2010 as per Jantri Rates prevailing in FY.2009-10. Further, section 50C of the Act cannot involve for transaction of agriculture land.

3. Ld. CIT(A), NFAC has erred in law and on fact to agree with the views of the AO that deduction u/s 54EC at Rs.29,60,000/- w.r.t. investment in NHAI Bonds was not allowable as it was allotted on 31.05.2012 i.e. beyond 6 months period from the date of transfer.

4. Ld. CIT(A), NFAC and the AO have erred in law and on fact to interpret and held Release Deed as Purchase Deed of property and accordingly assessed 25% LTCG as STCG on sale of agriculture land situated at Moje Gam-Kanad, Tal-Olpad, Dist-Surat.

5. Additional Ground:: Ld. CIT(A), NFAC has erred in law and on fact to upheld AO's reopening of assessment u/s 147 and issue of notice u/s 148 of the act."

3. In this appeal, the assessee has raised five grounds of appeals. Ground Nos.1 to 4 relate to merits of the addition and ground no.5 is legal ground, wherein the assessee has challenged the correctness of the reopening of assessment under section 147/148 of the Act.

4. The appeal filed by the assessee for assessment year 2012-13 is barred by limitation by thirty-one days. The assessee has moved a petition for condonation of delay. The contents of the petition for condonation of delay are reproduced below:

"1- That appeal order of NFAC, Delhi is dated 12.06.2023 has been communicated through portal under the tab 'For Your Information.' It is deemed to be served on 12.06.2023. Appeal is file with the registry, ITAT, Surat on 11.09.2023. Thus it is filed after -90- days from the date of order of 1st appellate authority. Limitation period provided under the Act, for filing of 2nd appeal is -60- days. Therefore, the appeal is late by -30- days.

2- Ld. NFAC has served appeal order on portal electronically. I am an old man and retired pensioner do not have any computer system, internet facility etc. Shri Kishorbhai Patel is providing services as my consultant. He has filed my ITR for A.Y.2012-13 and was looking after my income tax matters. It was also not in his knowledge that CIT(A) order was served on portal in my case on 12.06.2023.

3- The Jurisdictional ITO has insisted for payment of outstanding assessed for A.Y. 2012-13 as my 1st appeal was decided ex-part and the Ld. CIT(A), NFAC has dismissed my appeal.

4- At that time, he has discussed my matter pertaining to filing of appeal before of Honorable ITAT Surat with Shri Rajesh M. Upadhyay. He directed me to make payment of appeal fees of Rs. 10,000/-. He has prepared, appeal memo, grounds, condonation petition, affidavit etc. in connection with filing of 2nd appeal.

5- That the delay in filing the appeal for-30-days is neither willful nor deliberate but due to the newly introduced system of service of orders electronically through portal. I am not well equipped and up-dated with the new system. I have fully co-operated in assessment proceedings. Assessment order was passed u/s 143(3) of the I.T. Act on 18.12.2023. I was totally unaware about electronically service of appeal order. Otherwise appeal can be filed in time. I have not been benefited in any way by filling of late appeals. On the contrary, I am carrying out huge burden of tax, interest, Penalty etc. on my shoulders. I humbly submit that the impugned order is high pitched order and is also arbitrary.

This affidavit is prepared to file in the office of the Hon'ble ITAT, Surat Bench, Surat in the matter of condonation of delay in filing of my appeal for A.Y. 2012-13. All contents of affidavit are true and correct and binding upon me. I have been explained that execution of false affidavit amount to an offence under the law."

5. The ld Counsel for the assessee also submitted that due to mistake of the tax consultant of the assessee, the delay of thirty-one days has occurred in filing the appeal before this Tribunal, therefore this minor delay may be condoned.

6. On the other hand, Learned Senior Departmental Representative (ld. Sr. DR) for the Revenue opposed the prayer for condonation of delay and stated that assessee has failed to prove sufficient reasons for the delay, hence delay may not be condoned.

7. I have heard both the parties on this preliminary issue and noted that assessee is a senior citizen and retired pensioner, does not have computer system, internet facility in his village. The person who filed the income tax return of the assessee, used to look after the income tax

matters of the assessee, did not take care, hence delay has arisen. I note that just because the advocate or the tax consultant has committed the mistake, the assessee should not be penalized. I have gone through the condonation petition. I find that there is good and sufficient cause for filing the appeal belatedly. Accordingly, I condone the delay of thirty-one days and admit the appeal for adjudication.

8. Shri Rajesh Upadhyay, Learned Counsel for the assessee, at the outset, argued that ground no.5 raised by the assessee, in appeal memo, along with Form No.36, relates to legal issue, challenging the validity u/s 147/148 of the Act. Apart from this, the assessee has also raised additional ground, which is similar to ground no.5 raised by the assessee, along with Form No.36. The additional ground raised by the assessee is reproduced below:

> *"Ld.CIT(A), NFAC has erred in law and on fact to upheld AO's reopening of assessment u/s 147 and issue of notice U/s 148 of the Act."*

9. The ld Counsel for the assessee argued that assessee has raised before the Hon'ble Tribunal for the first time, through appeal memo in Form no-36 at Ground no-5. The above said additional ground is purely technical and legal in nature, and all relevant facts are on the record of the authorities below and such additional ground goes to the root of the matter therefore it should be admitted and adjudicated first.

10. On the other hand, ld DR for the Revenue argued that assessee has never raised this issue before ld CIT(A), hence assessee cannot take such legal ground first time before the Tribunal.

11. I have heard both the parties. I note that assessee has raised the additional ground on the legal issue challenging the validity of

reassessment proceedings under section 147/148 of the Act.I note that it is purely a legal issue and all facts are already on record which goes to the root of the matter and no further inquiry is required for deciding the same as all facts are already on record. Therefore, in the light of ratio laid down by the Hon'ble Supreme Court in the case of *National Thermal Power Company Ltd., vs. CIT* (1998) 229 ITR 382 (SC), I admit the additional ground raised by the assessee and it should be adjudicated first.

12. The facts, necessary for disposal of the appeal, are stated in brief. The assessee has filed his return of income for the assessment year (A.Y.) 2012-13, declaring total income of Rs.2,34,370/- on 18.06.2012. As per information available with Assessing Officer, the assessee has sold immovable property situated at Moje Gam Kanad, Dist. Olpad with other co-owners through a sale deed executed on 19.11.2011 for Rs.1,47,20,250/-. The sale deed was registered with Sub- Registrar Olpad, Surat vide Reg. No. OPD/8722/2011. The Stamp Duty Valuation Officer has determined the fair market value of the property at Rs.2,80,66,610/-. As such there is a difference of Rs.1,33,46,360/- (*Rs.2,80,66,610 - Rs.1,47,20,250*) between the sale value as per sale deed and the fair market value hence, the provisions of section 50C of the Income Tax Act attracted in the hands of sellers. Therefore, after recording reasons for reopening of the case and obtaining necessary approval from the Pr. Commissioner of Income-Tax-1, Surat, the case was reopened u/s 147 of the Act. The notice u/s 148 of the Act was issued on 19.03.2018 and served upon the assessee. In response to the same, the assessee e-filed return of income for A.Y.2012-13 on 09.05.2018, declaring total income at Rs.2,34,370/-. During the reopened assessment proceedings, the

reasons for reopening were supplied to the assessee. Subsequently, notice u/s 143(2) and notice u/s.142(1) of the Act were issued and duly served upon the assessee.

13. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee has sold the above said jointly held land and received Rs.36,80,063/- as his 25% share and worked out Long Term Capital Gain on it. However, on perusal of records it was noticed that assessee was holding 12.5% of land as inherited property and balance 12.5% was purchased by him, vide registered document No.4537 dated 27.06.2011. Thus, 12.5% of total land *i.e.* 50% of land of assessee's share came under his ownership on 27.06.2011 and therefore half of the land sold of assessee's share is a Short Term Capital Asset and gain arising on it is required to be taxed as Short Term Capital gain. Further, during the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee has sold jointly held land and received Rs.36,80,063/- as his 25% share. However, stamp valuation authority has valued the land higher than the consideration shown and accordingly, share of the assessee as per stamp valuation of the property is Rs.70,16,652/- as per section 50C of the I.T. Act. Thus, a difference of Rs.33,36,589/- (*Rs.70,16,652 - Rs.36,80,063*) in case of the assessee. Further, on perusal of the records, it was found that assessee in the working of capital gain has claimed deduction of Rs.29,60,000/- u/s 54EC of the Act for purchase of specified bonds. In view of the above, show cause notice was issued to the assessee on 05.12.2018, which is reproduced by the assessee on page No.3 and 4 of the assessment order.

14. In response to the show cause notice, the assessee submitted its written submission before the Assessing Officer, which is reproduced below:

> *"4. In response to the above mentioned show cause notice, assessee has filed his submission on 12.12.2018. The relevant portion of the reply of the assessee is re-produced as under:*
>
> *"In response to your show cause notice, we would like to submit the following details to you:*
>
> *1. As you mentioned in show cause notice*
> *"In this connection, you have submitted that the agreement for sale was made on 19.01.2010 and therefore jantri value of FY 2009-10 is applicable and not the jantri value of FY 2011-12 in which document is registered. Your claim has been verified but not found acceptable as there are many discrepancy in agreement for sale dated 19.01.2010 and sale document registered on 19.11.2011. The purchasers, sellers and their share in the property are not same in both documents."*
>
> *As per page no 6 point no 10 of the satakhat, clearly mentioned that sale deed can be executed with seller by first party (purchaser) or any other party which purchaser will decide. So, claim by us are verified and acceptable as per our opinion and the same satakhat details mentioned in the sale deed page no 67 para 2.*
>
> *As per section 50C of Income Tax Act, 1961, jantri value of the property will be taken as on the date of agreement of sale if any consideration will be received by the assessee before agreement of sale.*
>
> *In this case, we have received cash Rs.20,250/- and cheque Rs. 7,00,000/- before agreement of sale and the same detail was mentioned in satakhat page no 4 point no 2. So, the jantri value will be taken as on date of agreement of sale i.e. 19/01/2010 for F.Y. 2009-10. So there is no question of violation of provision of section 50C will arise. Copy of the bank statement, released document, agreement of sale and sale deed are already submitted to you as on 15.10.2018.*
>
> *2. As you mentioned in show cause notice*
> *"In Para 2 of page 67 of the registered document no. 4537 dated 27.06.2011, it is clearly mentioned that the peaceful possession of the seller's part has been handed over to the purchasers on that day i.e. 27.06.2011. Therefore, 12.5% of total land i.e. 50% of land of your share came under your ownership on 27.06.2011 and therefore half of the land sold of your share is a Short Term Capital Asset."*
>
> *As per section 49(1) of the Income Tax Act, 1961, if any asset is acquired by inheritance/gift then cost of acquisition will be cost of previous owner and date of acquisition will be taken as date of acquisition to previous*

owner. So the contention made by you to treat asset as a short term capital asset is not viable in law as the asset was hold by previous owner by way of inheritance.

3. As you mentioned in show cause notice
"During the course of assessment proceedings, on perusal of the computation of capital gain, it is found that you have claimed deduction of Rs.29,60,000/- u/s 54EC of the I.T. Act for purchase of specified bonds. You were requested to furnish all details/explanations/supporting documentary evidences in respect of the deduction claimed. However, you have not furnished any details or supporting documentary evidences to substantiate your claim of deduction u/s 54EC."

We have already submitted the NHAI bond to you as on 17/10/2018. We are reproducing the same, so copy of NHAI bond is attached herewith."

15. However, the Assessing Officer rejected the contention of the assessee and observed that during the course of assessment proceedings, on perusal of the records it was found that assessee has sold jointly held immovable property admeasuring area 19627 sq. mtr. during F.Y.2011-12, relevant to A.Y.2012-13. The property was sold for Rs.1,47,20,500/- and assessee has received Rs.36,80,013/- as his 25% share. In computation of capital gain, assessee has shown cost as on 01.04.1981, at Rs.49,067.50/- *i.e.* Rs. 10 per sq. mtr. for his 25% share of 4906.75 sq. mtr and has claimed indexed cost of acquisition of Rs.3,85,176/- on it. However, on perusal of records it was noticed by Assessing Officer that assessee was holding 12.5% of land as inherited property and balance 12.5% was purchased by him, vide registered document No.4537 dated 27.06.2011 for the total investment of Rs.7,12,510/- (Rs. 5,00,000 + Rs.2,12,510 stamp duty & other exp). In Para 2 of page 67 of the registered document No.4537 dated 27.06.2011, it is clearly mentioned that the peaceful possession of the seller's part has been handed over to the purchasers on that day *i.e.* 27.06.2011. Therefore, 12.5% of total land *i.e.* 50% of land of assessee's share ownership was on 27.06.2011 and therefore half of the land sold of his share is a Short Term Capital Asset. In this

connection, assessee contended that as per Section 49(1) of the Act, if any asset is acquired by way of inheritance/gift then the cost of acquisition will be cost of previous owner and date of acquisition will be taken as date of acquisition to previous owner. The contention raised by the assessee was not found acceptable as per law by the Assessing Officer. The assessee has not acquired half of his share in land by inheritance or gift as claimed by him but has purchased vide registered document no.4537 dated 27.06.2011 for the consideration paid of Rs.5,00,000/- of his share. Further, in Para 2 of page 67 of the registered document No.4537 dated 27.06.2011, it is clearly mentioned that the peaceful possession of the seller's part has been handed over to the purchasers on that day i.e. 27.06.2011. Therefore, 12.5% of total land i.e. 50% of land of assessee's share came under his ownership on 27.06.2011. The said land was sold on 19.11.2011. Therefore half of the land sold is held by assessee for less than 36 months and hence it is Short Term Capital Asset and the gain arising from the transaction is required to be taxed as Short Term Capital Gain. In view of the above, capital gain arising out of half of the land is treated as Long Term Capital gain and remaining half is treated as Short Term Capital Gain.

16. Therefore, based on the above facts, the assessing officer worked out the long term capital gain and short term capital gain stating that the cost of acquisition for long term capital gain is Rs.24,534/- (Rs.19,627/8 X 10) and indexed cost of acquisition is Rs.1,92,592/- (Rs.24,534 X 785/100). Therefore, long term capital gain before deduction, if any, is worked out at Rs.16,47,440/- (*Rs.18,40,032 - Rs.1,92,592*). Similarly, Short Term Capital gain is worked out at Rs.11,27,522/- (Rs.18,40,032 - Rs.7,12,510).

17. In respect of other jointly held property, the Assessing Officer, on perusal of the records, noticed that during the year under consideration, the assessee has sold jointly held property and received Rs.36,80,063/- as his share. However, share of assessee in the above properties as per Stamp Valuation comes to Rs.70,16,653/-. As per provisions of Section 50C of the I.T. Act, 1961 the assessee is required to show the consideration received of Rs.70,16,653/- in the computation of capital gain. However, the assessee was failed to do so. Hence, this is clear violation of provisions of section 50C of the Act. In this connection, assessee contended that agreement for sale was made on 19.01.2010 and sale deed was registered on 19.11.2011. Assessee further contended that cash of Rs.20,250/- and cheque of Rs.7,00,000/- was received before agreement dated 19.01.2010 and therefore jantri value as on date of agreement i.e. 19.01.2010 is to be taken and there is no violation of provisions of Section 50C of the Act. However, the Assessing Officer did not accept the contention of the assessee. The Assessing Officer noted that There are many discrepancies in agreement for "Kabjavagar no. satakhat" dated 19.01.2010 and sale document registered on 19.11.2011. The purchasers, sellers and their share in the property are not same in both documents. Therefore, claim of the assessee cannot be accepted. Further, the assessee has not challenged the valuation of the Stamp Duty Valuation Authorities or filed any appeal against the valuation of the property made by the Stamp Duty Authorities. As per provisions of Section 50C of the I.T. Act, 1961 assessee was required to show sales consideration received of Rs.70,16,653/- in computation of capital gain. However, assessee has shown consideration received of Rs.36,80,063/- in computation of capital gain. This is clear violation of provisions of section 50C of the I.T. Act. Therefore, differential

amount of Rs.33,36,590/- (*Rs.70,16,653 -Rs.36,80,063*) is added to the total of the assessee under the head "Capital Gains" (Rs.16,68,295/- as Long Term Capital gain and Rs.16,68,295/- as Short Term Capital Gain for the year under consideration u/s 50C of the I.T. Act, 1961.

18. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the NFAC/ld. CIT(A) who has confirmed the action of the Assessing Officer. The assessee did not attend the proceedings before the NFAC/ld. CIT(A), therefore NFAC/ld. CIT(A) after considering the findings of the assessment order, adjudicated the issue on merit and dismissed the appeal of the assessee.

19. Aggrieved by the order of ld. CIT(A), the assessee is in appeal before this Tribunal.

20. In respect of ground no.5/additional legal ground, Shri Rajesh Upadhyay, argued that reassessment proceedings u/s 147/148 of the Act is bad in law. The ld Counsel pointed out that assessee has filed return of income for the assessment year under consideration, however, no scrutiny assessment u/s 143(3) of the Act, was made and the assessee`s return of income was only processed u/s 143(1) of the Act. Since, the Income Tax Department has failed to issue the notice u/s 143(2) of the Act to conduct scrutiny assessment u/s 143(3) of the Act, therefore, Income Tax Department has issued notice u/s 147/148 of the Act, which is not acceptable. The ld Counsel pointed out that when the Income Tax Department has right to conduct the scrutiny assessment u/s 143(3) of the Act, by issuing notice u/s 143(2) of the Act, it cannot reopen the assessee`s assessment under section 147/148

of the Act for the same material which was fully disclosed by the assessee in his return of income and said return of income of the assessee was processed by the Income Tax Department u/s 143(1) of the Act.

21. Shri Upadhyay, took me through paper book page no.92, wherein reason recorded by the Assessing Officer is placed. The Ld. Counsel submitted that assessee filed return of income wherein he has shown every kind of information regarding sale of assets and the impugned transaction which were the subject matter of reassessment proceedings. While filing the return of income under section 139 of the Act, the assessee has disclosed all facts which are narrated in the reasons recorded by the Assessing Officer. The Assessing Officer should have selected the return of income filed by the assessee for scrutiny assessment u/s 143(3) of the Act and for that Assessing Officer should have issued notice u/s 143(2) of the Act, however, Assessing Officer has failed to do so. In other words, when the assessee had filed return of income and every information, which are narrated in the reasons recorded by the Assessing Officer, have been disclosed by the assessee, in the return of income, then in that circumstances there is no reason to initiate the reassessment proceedings u/s 147/148 of the Act, in that situation, the Assessing Officer may conduct scrutiny assessment u/s 143(3), by issuing notice u/s 143(2) of the Act. Therefore, ld Counsel argued that the Assessing Officer should have issued a scrutiny notice u/s 143(2) of the Act and perform the full scrutiny instead of reopening the case of the assessee, on same set of facts, which are there in the return of income filed by assessee u/s 139 of the Act, therefore section 147/148 is not a substitute for section 143(2) and 143(3) of scrutiny assessment,

wherein the Department has right to conduct the scrutiny u/s 143(3) of the Act, on the basis of the return of income filed by the assessee u/s 139 of the Act. Therefore, Ld. Counsel contended that provision of section 143(2)/143(3) of the Act, cannot be substituted with the provision of section 147/148 of the Act, hence reasons recorded by the Assessing Officer on same set of facts, which were disclosed by the assessee in the return of income, are not a valid reason to reopen the assessment.

22. The ld Counsel also pointed out that it is not a case that assessee has concealed any details and particulars of the transaction in his return of income filed u/s 139 of the Act. The Ld. Counsel also contended that in the reasons so recorded, it is mentioned that assessee has not disclosed the correct material facts of its case for the year under consideration. In this connection, ld Counsel stated that assessee has disclosed each and every facts in the return of income filed by him u/s 139 of the Act, therefore, the facts and material which were disclosed by the assessee *suo-motu* in the return of income, cannot be considered by the Assessing Officer, as if, income has escaped assessment. The Ld. Counsel also submitted that in the reasons so recorded by the Assessing Officer, the Assessing Officer presumed that the sale of land is a capital asset, *whereas* in the reassessment proceedings, the Assessing Officer himself stated that sale of asset is an agricultural land, therefore Ld. Counsel contended that agricultural land does not come in the purview of capital gain tax, hence no income has escaped. The Ld. Counsel also submitted that at the time of sale of land, the land was agricultural land and the person who sold the land was the agriculturist and the buyers of the land were also agriculturists, therefore all the sellers and buyers were

agriculturists, hence the capital gain issue does not arise on the subject land. The disputed land has been using by the assessee for agriculture purposes for the period 1998 to 2015 and had grown/ produced the agricultural items. The Ld. Counsel also stated that the village in which the land is situated, is having population less than 10,000 therefore subject land cannot be capital asset. Therefore, ld Counsel contended that reassessment proceedings initiated by the Assessing Officer may be quashed.

23. On the other hand, ld. Sr. DR for the Revenue submitted that reasons were recorded based on the information available with the Assessing Officer, therefore the reasons so recorded by the Assessing Officer cannot be a defective reasons. The ld. Sr. DR also submitted that the argument whether the disputed land was capital asset or not, has not been taken by the lower authorities. The ld. Sr. DR therefore stated that it is a question of fact and the question of fact cannot be raised at the first time before the Tribunal, only a question of law can be raised first time before the Tribunal and not the question of facts. Therefore, ld. Sr. DR for the Revenue contended that whether it is a capital or not capital asset, has not been discussed by the lower authorities, therefore matter may be remitted back to the file of the assessing officer for fresh adjudication. Hence, ld DR stated that the reasons recorded by the Assessing Officer are valid and these are sustainable in the eye of law.

24. I have gone through the facts of the case, the reasons recorded for reopening u/s 147 of the Act, the submission and the various decisions of the Courts including those relied upon by the assessee. The assessee has challenged the reopening on basically on the following grounds that provision of section 143(2)/143(3) of the Act,

cannot be substituted with the provision of section 147/148 of the Act, hence reasons recorded by the Assessing Officer on same set of facts, which were disclosed by the assessee in the return of income, are not a valid reason to reopen the assessment. Let us examine, the reasons recorded by the Assessing Officer, which are reproduced below:

> *"**6. Basis of forming reason to believe and details of escapement of income.***
> *The assessee has not declared the sale consideration as per the provisions of section 50C of the I.T. Act. As discussed above, as per the provisions of section 50C of the I.T. Act, the share of the assessee as sale consideration of the property is Rs.70,16,652/- as against the assessee has declared sale consideration of Rs.36,80,063/- only.*
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> *7. In view of the above facts, it is established that the assessee has not disclosed the correct and material facts of its case for the year under consideration and hence, in view of the above fats and materials, I have reason to believe that the income of Rs.33,36,590/- has escaped assessment within the meaning of section 147 of the Act for AY.2012-13. I am therefore, satisfied that this is a fit case for invoking the provisions of section 147 of the Income Tax Act. Therefore, it is requested to grant statutory approval to issue notice u/s 148 of the Income Tax Act.*
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> *In this case return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the IT. Act was made. Accordingly, in this case, the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded above (refer Paragraphs 1 to 7 above).*
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> *It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the I.T. Act. In view of the above, provisions of clause (b) to explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.*
>
> *In this case more than four years have lapsed from the end of the A.Y. under consideration. Hence necessary sanction to issue the notice u/s 148 has been obtained separately from Principal Commissions' of Income Tax as per the provisions of section 151 of the I.T. Act.*
>
> *(3) It is requested that objections to the above, if any, may be filed in this office within 60 days of this letter."*

25. Having gone through the above reasons recorded by the assessing officer, I observed that provisions of section 143(2)/143(3) of the Act, have been substituted by the Income Tax Department with the provisions of section 147/148 of the Act, which is not acceptable in the eye of the law, hence reasons recorded by the Assessing Officer on same set of facts, which were disclosed by the assessee in the return of income filed u/s 139 of the Act, are not a valid reason to reopen the assessment. I also note that in the return of income, the assessee has disclosed the correct and full material facts about the disputed land, therefore on the same set of facts, the reopening of assessment is not allowed.

26. I also note that assessee filed return of income for the assessment year under consideration and it is within the power of the Income Department to issue the scrutiny notice u/s 143(2) of the Act and conduct the scrutiny assessment on the assessee instead of reopening of the assessee`s case u/s 147/148 of the Act. Therefore, reopening of assessment is not valid as the Income Tax Department has power to conduct the scrutiny assessment by issuing notice u/s 143(2) of the Act. After filing the return of income u/s 139 of the Act, if the Department does not conduct the scrutiny assessment, by issuing notice u/s 143(2) of the Act then in that situation, on same set of facts, which are narrated in the return of income filed by the assessee, the Department cannot reopen the assessment u/s 147/148 of the Act. The assesse has disclosed in the return of income filed by him, all material facts relating to disputed land, therefore the Department should have conducted the scrutiny assessment by issuing notice u/s 143(2) of the Act rather than reopening the assessment u/s 147/148 of the Act, which is not acceptable. For that, I rely on the

judgment of Co-ordinate Bench of ITAT, Delhi in the case of ***Shri Dheer Singh vs ACIT, ITA Nos.3861 to 3865/Del/2013***, order dated 30.05.2014 wherein it was held as follows:

> *"5. From the above, it is evident that clause (ii) of sub-section (2) of Section 143 is applicable when the Assessing Officer wants to examine the correctness of the income disclosed in the return of income. Proviso to above sub-section provides the time limit within which the notice can be issued under Section 143(2)(ii). If we read the reasons recorded for reopening of assessment, it would be evident that the Assessing Officer used Section 148 just to verify the correctness of the income returned by the assessee. In our opinion, if it is approved, then the limitation provided under proviso to Section 143(2)(ii) would be redundant. Section 148 is not a substitute for examining the correctness of the income returned. We also find that in assessee's own case in the earlier as well as preceding years, the agricultural income shown by the assessee has been accepted by the Revenue in some years in 143(1) and in some years in 143(3). We find that in the immediately preceding two years, i.e., in AY 1996-97 and 1997-98, the agricultural income of `1,60,000/- in each year has been accepted by the Revenue in the order passed under Section 143(3) for AY 1996-97 and in the intimation under Section 143(1) in AY 1997-98. In the years under appeal, the income disclosed by the assessee is `2,50,000/- in AY 1998-99, `3,00,000/- in AY 1999-2000 and `4,50,000/- in AY 2000- 01. Of course, the income disclosed is higher than the income accepted in the preceding two years. But, if the Assessing Officer had any doubt about the correctness of the agricultural income disclosed and he wanted to verify the same, he ought to have issued notice under Section 143(2)(ii) within the time limit permissible under the proviso to above sub-section. Having failed to issue the notice under Section 143(2)(ii) with the period of limitation, Section 148 cannot be invoked to get the extended time limit for verification of the correctness of the income returned. In view of the above, we are of the opinion that issue of notice under Section 148 was not valid. The same is quashed. Consequentially, the assessment order passed in pursuance to notice under Section 148 is also quashed restoring the original assessment order.*
>
> *5.1 The assessee has raised various grounds challenging the addition made in the order of reassessment. Since we have already quashed the order of reassessment, these grounds do not survive for adjudication."*

27. On the same set of facts, the reliance can be placed on the judgment of the Hon'ble Madras High Court in the case of CIT vs C. Palaniappan (2006) 284 ITR 257 (Mad) while considering the reopening of assessment u/s 147 r.w.s. 148 of the Act qua the issuance of notice u/s 143(2) the Act has held as under:

"We heard learned counsel for the parties. Learned counsel appearing for the Revenue submitted that the Appellate Tribunal failed to appreciate the fact that the assessment was completed only under section 143(1) of the Act and hence the reopening of assessment under section 147 of the Act to consider the correct quantum of interest allowable as deduction in computing the income from house property was correct as the assessee had nor furnished relevant facts and evidence along with the return. Learned counsel further submitted that the Appellate Tribunal erred in its conclusion that in the case of reopened assessment, issue of notice under section 143 (2) of the Act within 12 months is statutory and the Tribunal was also wrong in deleting the issue on technical grounds without going into the merits of the case.

In respect of question No. 1, we find that on a similar issue which came up for consideration in CIT v. M Chellappan [2006] 281 ITR 444, a Division Bench of this court, in which one of us was a party (P. D. Dinakaran J.) applying the ratio laid down by the Punjab and Haryana High Court in Vipan Khanna v. CIT [2002] 255 ITR 220 (P & H), held as follows (page 445):

"... admittedly, no notices under section 143(2) of the Act were served on the assessees within the stipulated period of twelve months and, therefore, the proceedings under section 143 of the Act come to an end and the matter becomes final"

In view of the above, the first question now raised, therefore, stands concluded in favour of the assessee."

28. Thus, it is abundantly clear that if the Assessing Officer had any doubt about the correctness of the items disclosed in the return of income filed by him u/s 139 of the Act, and he wanted to verify the same, he ought to have issued notice u/s 143(2) of the Act within the time limit permissible under the proviso to above sub-section. Having failed to issue the notice u/s 143(2) of the Act, within the period of limitation, the provisions of section 147/ 148 cannot be invoked to get the extended time limit for verification of the correctness of the income returned. Based on these facts and circumstances, I quash the reassessment proceedings.

29. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are

rendered academic and infructuous therefore, I do not adjudicate them.

30. In the result, appeal filed by the assessee is allowed in above terms.

Order is pronounced on 30/10/2023 in the open court.

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat
दिनांक/ Date: 30/10/2023
SAMANTA
Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// **TRUE COPY** //

Assistant Registrar/Sr. PS/PS
ITAT, Surat