

HC slams AO for initiation of reassessment proceedings before expiry of time to issue scrutiny notice

Summary – The High Court of Bombay in a recent case of Smt. Suman, (the Assessee) held that Assessing Officer cannot proceed with extraordinary power under section 147 when normal procedure of assessment of income under section 143(3) is available

Facts

- The assessee filed her return of income on 14-12-1999 for the subject assessment year 1999-2000 declaring *nil* income. On 7-1-2000 the revenue processed the return of income under section 143(1) by intimation.
- On 25-1-2000, the Assessing Officer issued a notice under section 148 seeking to reopen the proceeding for the subject assessment year 1999-2000. However, the assessee did not file any return of income, nor did she attend the hearing before Assessing Officer. This led to the Assessing Officer to passing an assessment order under section 144, read with section 147.
- The Commissioner (Appeals) dismissed the assessee's appeal.
- The Tribunal held that since regular assessment had not been completed under section 143(3), the Assessing Officer was not divested of his powers to reopen the issue under section 148 even if the time to issue notice under section 143(2) had not expired. Further reliance was placed upon the *Explanation 2(b)* to section 147 which empowered the Assessing Officer to issue a reopening notice where no assessment under section 143(3) had been made. Accordingly, the Tribunal also dismissed the assessee's appeal.
- On appeal:

Held

- It is clear from section 143(1) of the Act as in force at the relevant time that the intimation thereunder is without prejudice to the right of the revenue to proceed under section 143(2) of the Act. Thus, issue of intimation by itself does not bring to an end an assessment proceeding. It comes to an end only when the time to issue a notice under section 143(2) expires/come to an end.
- On the other hand, section 147/148 empowers an Assessing Officer to reopen an assessment wherever he has reason to believe that income chargeable to tax has escaped assessment. This power under section 147/148 of the Act is subject to various limitation provided therein. The power of reopening of assessment can be exercised where assessment has not been completed under section 143(3) or even where intimation under section 143(1)(i) has been issued provided the time to take further proceeding by issuing notice under section 143(2) of the Act to complete assessment under section 143(3) has already expired.
- So long the time is available to complete an assessment under section 143(3) of the Act after having issued intimation under section 143(1) of the Act, there can be no occasion for the Assessing Officer

to have reason to believe the income chargeable had escaped assessment, for the reason that the Assessing Officer can issue notice under section 143(2) of the Act, to complete assessment under section 143(3) of the Act. Thus, it is a power vested in the Assessing Officer to disturb a concluded issue within a specified period by reopening an assessment. Therefore, it cannot be exercised till the period for completion of assessment has expired. Section 147/148 is not a power to be exercised to abort the regular assessment proceeding by issuing notice for reopening an assessment. The proceedings under section 147/148 are not parallel to regular assessment proceedings under section 143(2) & (3) of the Act.

- The impugned order relies upon *Explanation 2(b)* to section 147 of the Act to sustain the reopening notice. The aforesaid explanation deals with case where income chargeable to tax escapes assessment including a case where a return of income has been filed, but no assessment has been made. The aforesaid explanation seeks to clarify that merely because no assessment has been made even after filing a return, it will not be open to suggest that no income chargeable to tax has escaped assessment. This covers issue where there is no possibility of making an assessment on the date when the notice under section 147/148 of the Act is issued. So long as the time to issue notice under section 143(2) of the Act is available, it cannot be said that no assessment has been made as the possibility of making an assessment is always available. The Assessing Officer is obliged to complete assessment under section 143(3) of the Act by issuing a notice under section 143(2) of the Act, if he is of the view that the assessee has understated his income or computed excessive loss or understated his tax to the prejudice of the revenue. Therefore, in view of the provisions of section 143(1)(i) as in force at the relevant time, no notice under section 148 of the Act can be issued, till the period to issue notice under section 143(2) of the Act has expired.
- It is clear that no reassessment proceedings can be initiated so long assessment proceedings on the basis of return of income filed by the assessee is pending. The assessment proceedings would cease to be pending either by passing of an order under section 143(3) of the Act or by expiry of time to issue a notice under section 143(2) of the Act, to complete an assessment under section 143(3) of the Act. So long as the above event has not passed, the Assessing Officer cannot render the provision of section 143(2) of the Act redundant/otiose by issuing a notice for reopening an assessment under section 147/148 of the Act.
- In view of above, it is held that Assessing Officer cannot proceed with extraordinary power under section 147, particularly when normal procedure of assessment of income under section 143(3) is available which is otherwise within time. In the result, impugned assessment order deserved to be quashed.