

Reassessment order couldn't be held invalid merely because AO had failed to mention sec. 143(2) in notice: HC

Summary – The High Court of Kerala in a recent case of Padinjarekara Agencies (P.) Ltd., (the Assessee) held that where in course of reassessment proceedings, various notices were issued to assessee and it was granted a proper opportunity of hearing, mere omission to mention section 143(2) literally in any one of notices so issued would not invalidate assessment order

Facts

- The assessee-company was engaged in the business of manufacture and sale of centrifuged latex. For relevant year, assessment was completed under section 143(1).
- Thereafter, the assessment was sought to be reopened on ground that the agricultural income reduced from the net profit was Rs.81.47 lakhs and that in normal computation as per section 115 JB the amount of income to which the provisions of section 10 applied could be reduced from the net profit only if such amount was credited to the profit and loss account. It was also stated that no agricultural income was credited to the profit and loss account other than Rs.5,228/- included in the other income.
- The reasons recorded by the Assessing Officer to reopen the assessment and to complete it under section 147 were communicated to the assessee and the assessee filed its objections justifying reduction in the net profit.
- Subsequently, the Assessing Officer again issued notice explaining the irregularity of deduction of Rs.81.47 lakh to which the assessee once again justified deduction from the total income. While matters stood thus, the assessee filed an application under section 144A to the Additional Commissioner seeking directions for the guidance of the Assessing Officer to complete the assessment. Accordingly, the Additional Commissioner issued directions upholding the view of the Assessing Officer and directing that Minimum Alternative Tax under section 115JB may be recomputed and assessed accordingly.
- The assessee neither before the Assessing Officer nor before the Commissioner raised a complaint that the assessment proceedings were invalid for non-issuance of notice under section 143(2).
- During the course of hearing before Tribunal, argument to that effect was raised and the Tribunal rejected the same taking note of the notices that were issued to the assessee, the opportunities afforded to them and holding that non-adherence to the prescribed rule or mode of proceedings, would not make the assessment order null and void.
- On appeal:

Held

- Section 147 provides for assessment of income escaping assessment. Such assessment has to be in terms of section 148, which provides for recording of reasons and issue of notice where income has

escaped assessment. This section, *inter alia*, provides that before making an assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish a return of his income which is assessable under the Act during the previous year corresponding to the relevant assessment year and that the provisions of the Act shall so far as may be applied accordingly as if such a return were such a return required to be furnished under section 139. In the context of the assessment under section 147 courts have taken the view that notice under section 147(2) is required to be issued to the assessee.

- Section 143(2) shows that the purpose of issuing a notice thereunder is to require the assessee to produce, or cause to be produced, any evidence on which the assessee may rely, in support of the return filed by him. That a notice under section 143(2) is a mandatory requirement and is not an empty formality.
- However, insofar as this case is concerned, question to be considered is whether the omission to mention section 143(2) literally in any one of the notices issued to the assessee would invalidate the assessment order.
- From the above, it is obvious that the procedure under section 143(2) is intended to ensure that an adverse order is passed against the assessee only after affording the assessee a proper opportunity. Therefore, the question to be considered is whether the assessee in this case had such an opportunity. It is in this context, the notices that were issued to the assessee assumes importance. Reading of the reasons recorded and communicated to the assessee, shows that the assessee was put on notice the inadmissibility of the reduction from the total income made by it and the assessee filed its objections. Further before assessment order was passed, the assessee was afforded an opportunity of hearing also.
- Evidently, therefore, the assessee had ample notice of the case it had to answer and the assessee availed of those opportunities by answering the case against it. In such a situation, it can not be concluded that there was absence of notice under section 143(2) or that any prejudice was caused to the assessee in defending the case against it. Therefore, the assessment order is not invalid on the ground contended by the assessee.
- In the result, assessee's appeal is dismissed.