

HC sets aside second reassessment notice as full & true disclosure was made during 1st reassessment

Summary – The High Court of Gujarat in a recent case of Jalil Abdulbhai Shaikh, (the Assessee) held that where in return filed in response to reassessment notice, assessee declared undisclosed income found during search and Assessing Officer passed assessment order accepting same, another reassessment notice issued beyond a period of four years was unjustified in absence of any new information or material

Facts

- During the course of survey conducted upon premises of the assessee, a professional architect, one diary and certain loose papers were found and impounded. The documents contained receipt of unaccounted cash and unaccounted professional receipts. The statement of assessee recorded on oath and *vide* answer to question No. 32, the assessee had accepted that he had received unaccounted professional income. Thus, the Assessing Officer issued notice under section 148 to reopen the assessment. In response to same, the assessee filed its return of income. The Assessing Officer thereupon passed an order of assessment under section 143(3) read with section 147, in which, he made a disallowance of certain amount of the assessee's claim of expenditure of 30 per cent of the receipts. Subject to this modification, the assessee's returned income was accepted.
- Later, the Assessing Officer issued another reassessment notice on grounds that on verification of impounded material and statement of the assessee, it was noticed that the assessee was using codes by removing one zero while writing the cash figures in the diary impounded. *Prima facie* the figures of amounts, admittedly received in cash out of books were in coded form as the figures were upto first place of decimal; which would otherwise mean that the assessee was receiving cash amount upto 30 paisa etc.; which indicated that code was being used. One decimal place was removed while writing the figures in the diary. The payment of Rs. 2,21,000 which was pending and the assessee had accepted had already been received on the date of search was noted received in the diary as 22100. In compliance of notice under section 148 the assessee had filed his return of income in which he had disclosed unaccounted receipt without adding zero and claimed 30 per cent deduction as expenses on unaccounted receipts. Therefore, the assessee had not disclosed his true particulars of his unaccounted income, even in the return of income filed in compliance to notice under section 148. According to the Assessing Officer, there was material on record to suggest that the figures mentioned in the personal diary maintained by the assessee represented the cash transactions reduced by one zero. Thus, the Assessing Officer desired to project against the assessee's unaccounted receipt of certain amount made in the diary.

Held

- During the survey operations, the assessee was confronted with such entry in the diary and the assessee admitted that the said figure of certain amount represented his unaccounted cash and

professional receipts, which he had not offered to tax. While filing a return in response to the notice under section 148, the assessee included such income in the declared income. The Assessing Officer accepted such return and, as noted earlier, barring minor adjustment of claim of expenditure, confirmed the assessee's declaration of income. To reopen such assessment, the impugned notice came to be issued which clearly is beyond the period of four years from the end of relevant assessment year. The reasons proceeded concededly only on the material available on record. Such relevant material included the notings in the assessee's diary which recorded a figure of certain amount as outstanding fees to be collected and other entries referring to certain outstanding payments. The Assessing Officer then contends that insofar as other entries were concerned, there was material to believe that the figures in the diary were recorded after dropping one zero. Therefore the Assessing Officer now contended that even the another figures of certain amount found in the diary seized should be considered as the assessee's undisclosed income by adding one zero.

- One is not called upon to decide the validity of Assessing Officer's such contention. The fact remains that whatever legal conclusions on the basis of the factual analysis the Assessing Officer desirous to arrive at, is based on the material already on record all throughout during previously reopened assessment proceedings. In absence of any new information or material which do not form part of the original assessment proceedings, it would not be open for the Assessing Officer to frame fresh assessment, that too, in a case where the notice of reopening was issued beyond a period of four years. Even otherwise, permitting the Assessing Officer to re-examine the entire issue once again, looking at materials on record from a different angle would destroy the very concept of finality of an assessment order which can be permitted only on legally recognized grounds.
- In the result, petitions are allowed. Respective impugned notices are set aside.