

during assessment proceedings and appellate proceedings. The addition so confirmed by the Ld CIT (A) is bad in law and may please be deleted.

3. That the Ld CIT (A) has erred in law while confirming the addition of Rs. 42348S/-, being the proceeds on account of sale of jewellery, in view of non compliance u/s 113(6) by the banker and jeweler involved i.e. the parties out of control of assessee. As such the addition of Rs. 4234S5/- is bad in law and may please be deleted.

4. That we crave to add, alter, delete, modify or withdraw any of the above grounds at the time of hearing.

2. The Ld. AI submits that he's challenging the jurisdiction of the assessing officer in passing the impugned assessment order as the assessee was not provided with the reasons recorded by the Ld. AO for reopening of the assessment even after requesting wide letter dated 21/05/2008 during the assessment proceedings. He submitted that the appeal filed by the assessee is on the merits of the addition made by the authorities below however the present legal issue raised arises from the order of the Ld. CIT (A) as it has been adjudicated against the assessee by the 1st appellate authority.

3. The brief facts of the case that emanates from the assessment order are as under:

4. The assessee had filed her original return of income on 6/07/2003. Subsequently notice under section 148 of the act was issued on 28/03/2008 on the basis of intimation received regarding receipt of some alleged

amount by the assessee. In pursuance to the notice under section 148 of the act the assessee submitted that the return originally filed on 06/07/2003 may be treated to have been filed in response to notice under section 148 of the act. The assessing officer subsequently issued notices under section 143 (2) 1 and 142 (1) along with the questionnaire on 06/05/2008. Assessing officer on various grounds made an addition of Rs. 14, 53, 755/-in the hands of the assessee.

5. Aggrieved by the order passed by the Ld. AO the assessee preferred an appeal before the Ld. CIT (A).

6. The assessee raised additional grounds in respect of legal issue regarding non receipt of the reasons recorded the notice under section 143 (2) after filing of the returns under section 148 of the act and that the assessing officer has exceeded beyond its jurisdiction in passing the assessment order. The Ld.CIT (A) the Ld. CIT a dealt with these issues in paragraph 10 to 14 of his order which has been reproduced hereunder:

“10. Relying on the Judgment of Hon'bte Supreme Court in the case of NTPC Vs. CIT, the appellant raised two grounds which have already been reproduced above. The A.O in his remand report has not offered any comments on the additional grounds. As additional grounds raised are legal in nature and keeping in view the judgment of the Hon'ble Supreme Court, the additional ground raised by the appellant are admitted and arc decided are as under-

(i) Reasons recorded for reopening not provided to the appellant - It has been submitted that the

appellant was not provided a copy of the reasons recorded for reopening her case and therefore, assessment order passed u/s 143(3) r.w.s. 148 was liable to be quashed. The appellant in his regard relied on the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs, I.T.O. [2003] 259 ITR 19 (SC). It was further submitted that the notice u/s 148 had been issued on the basis of information that the appellant had received an entry of Rs, 3 Lacs from Kamlesh Malik. This was an information received by the A.O. internally and the A.O. was not in possession of any documentary evidence in the form of either a third party statement Of any other document arising out of any investigation to prove that the income had escaped assessment. The copies of the bank account of the appellant and Karnelsh Malik referred to in the assessment order had been collect d by the A.O. after issue of notice u/s 148. The existence of reasons to believe was must for reopening an assessment as held in the decision of Delhi High Court in the case of CIT Vs Atul Jain [2008] 299 ITR 383 (Del).

11. I have carefully considered the submissions of the appellant and the observations made by the A.O in the Assessment Order. As far as providing the reasons to the appellant is concerned. The appellant has not brought on record any letter or request written by her to the A. O. asking for a copy of the reasons recorded for reopening the assessment. In the absence of the same it cannot be said that the reasons for reopening the assessment were not provided to the appellant as same were never asked for by the appellant.

12. As far as existence of reasons to believe that the income had escaped assessment, the A. O. has reproduced in the assessment order itself all the information that had been received in the appellant's case from the office of CIT-XII, New Delhi. As held in a number of judicial pronouncement, at the stage of reopening what is required is prima facie

belief/opinion that income chargeable tax had escaped assessment. This belief/opinion has to be on the basis of some information/material in possession of the A.O. The information received in the appellant's case was very specific giving necessary details to show that appellant had received bogus accommodation entry amount to Rs. 3,00,000/-. It is this documentary evidence in possession of the A. O., on the basis of which notice u/s 148 was issued to the appellant. Therefore, the additional ground no. 1 of the appellant is dismissed.

13. It has further been submitted that the appellant had filed her return of income vide letter dated 21.05.2008 in response to notice u/s 143(2) was not issued after this date i.e. notice u/s 143(2) was not issued after filing the return of income in response to the notice u/s 148 which was mandatory requirement. Therefore, the assessment order passed u/s 143(3) r.w.s 148 was null and void. The appellant in this regard relied on the decisions of the ITAT, Delhi in the case of Income Tax Officer vs R. K. Gupta [2009]308 ITR (A.T) 49 ITAT, Del.

14. I have carefully considered the submissions of the appellant in the light of facts of the case. In her letter dated 21.05.2008, the appellant had simply stated that return already filed on 06.07.2003 may be treated as the return filed in response to notice u/s 148. Notice u/s 143(2)/142(1) alongwith questionnaire was issued to the appellant on 06.05.2008 whereas notice u/s 148 was issued on 20.03.2008. Therefore, the contention of the appellant that notice u/s 143(2) was not issued to her after she had filed return of income in response to notice u/s 148 vide her letter dated 21.05.2008 is without any basis. As the notice u/s 143(2) had duly been issued on 06.05.2008 after the issue of notice u/s 148, this ground of appeal is without any basis and is dismissed.

7. The Ld. CIT (A) dismissed the appeal on merits as well as on the legal grounds raised by the assessee.

Aggrieved by the decision of the Ld. CIT(A) assessee is in appeal before us.

8. It has been submitted by the Ld. AI that as the legal issues raised by the assessee before the Ld. CIT (A) has been dismissed; such issue arises from the order of the Ld. CIT (A). He submitted that in any event these being purely legal issues, can be raised at any stage of the hearing. He submitted that before going into the merits of the case the legal issues may be considered.

9. On the contrary the Ld. DR objected to the issues as they do not form the part of grounds of appeal filed by the assessee before us.

10. We have perused the orders passed by the authorities below particularly the order passed by the 1st appellate authority. It is observed that the Ld. CIT (A) has decided the issue against the assessee for the reasons mentioned therein. As the issues raised by the assessee goes into the root cause of the appeal before us we hereby 1st take up these issues before going into the merits of the case.

11. The Ld. A. R brought to our notice letter dated 21/05/2008 filed before the Ld. AO which is placed at page 13 of the paper book which reads as under:

To,

Date 21/05/2008

*The Income Tax Officer,
Ward 34(2), Vikas Bhawan,
New Delhi,*

*Re: In case of Manju Chowdhry, Assessment Year -
2003-2004, Pan no. ADVPC5959Q.*

Sub: In response to Notice u/s 148 dated 20/03/2008.

Sir,

This is in response to notice issued u/s 148 of Income Tax Act, 1961 requiring assessee to submit return for A.Y. 2003-2004, in this regard you are requested to kindly consider the original return filed by assessee on 06/07/2003 as return in response to notice u/s 148 (copy of Acknowledgement along with computation of income is enclosed). You are also requested to please provide \ assessee with the copy of reasons recorded for issuance of Notice u/s 148 of Income Tax Act, 1961.

Please do the needful and oblige.

Thanking you.

Yours faithfully,

*Manju Chowdhary
(Assessee)*

12. He also brought to our notice that reference of the said letter by the Ld. CIT (A) while adjudicating upon the legal issues in para 14 of the order. As this paragraph has been reproduced herein above at the cost of repetition we do not intend to reproduce it again. The Ld.AR submitted that Ld. CIT (A) has noted in his order at Para 14 that the

assessee in this letter had simply stated that the return already filed on 06/07/2003 May be treated as a return filed in response to notice under section 148. He submitted that the Ld. CIT (A) failed to notice the 2nd part of the letter wherein the assessee has requested to provide a copy of the reasons recorded for issuance of notice under section 148 of the act.

13. The Ld. AR thus submitted that as the primary requirements as laid down by various high courts in respect of reopening of assessment has not been fulfilled, the impugned assessment order passed by the assessing officer requires to be quashed. Reliance is been placed upon the decision of Hon'ble Supreme High Court in the case of GKN Driveshaft's India Ltd vs. ITO reported in (2003) 259 ITR 19.

14. On the contrary the Ld.DR submitted that there is no acknowledgement on the letter relied upon by the Ld. AI dated 21/05/2008 placed at page 13 of the paper book and the as it cannot be assumed that the said letter has been filed before the assessing officer. He thus submitted that the reassessment has been rightly made by the Ld. AO.

15. We have perused the orders passed by the authorities below and the contentions advanced by both the parties in the light of the records placed before us.

16. From the assessment order itself it can be discerned that the assessing officer has not given the reasons recorded for reopening of the assessments to the assessee. Under such circumstances we are of the opinion that the assessing officer has not given proper opportunity to the assessee. It is also observed that the Ld. CIT (A) has referred to the letter dated 21/05/2008 wherein on one breath he has observed the statement made by the assessee regarding the returns filed by the assessee in response to notice under section 148 of the act and on the other breath he records that the assessee has not brought on record any letter or request written by her to the AO asking for the copy of the reasons recorded for reopening of the assessment. There is a total contradiction in the findings of the Ld. CIT (A) with reference to the letter dated 21/05/2008. There is a clear omission on behalf of the Ld. CIT (A) in considering the totality of the letter dated 21/05/2008 filed by the assessee before the Ld. AO.

17. The mandate of section 148 requires the assessee to file return on receipt of notice under this section followed by asking for the reasons recorded for reopening of the assessment. Once the assessing officer issues the reasons recorded the assessee is to file objections if any in respect of the same which has to be disposed off by the assessing officer by way of a speaking order as laid down by Hon'ble Supreme Court in the case of GKN driveshaft India Ltd (supra), before proceeding with the assessment in respect

of the assessment year for which such notice has been issued.

17. In view of above settled legal position, as the directions/procedure laid down by the Hon'ble Supreme Court has not been followed for no fault of the assessee, we quash the assessment order and vacate the findings of the Ld. CIT (A).

18. As a corollary, the issue relating to non-receipt of notice under section 143 (2) and grounds raised in the appeal do not survive for adjudication at this stage and are, therefore, treated as infructuous.

In the result, appeal is allowed but for statistical purposes.

Order pronounced in the open court on 30th November, 2016.

(J.S.REDDY)
ACCOUNTANT MEMBER
Date: 30.11.2016

(BEENA A. PILLAI)
JUDICIAL MEMBER

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