

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 1993/Kol/2014
Assessment Year: 2008-09

Hardware Trading Corporation (PAN: AABFH8363C)	Vs.	Assistant Commissioner of Income-tax Circle-34, Kolkata.
Appellant		Respondent

Date of Hearing	05.09.2017
Date of Pronouncement	.11.2017
For the Appellant	Shri Girish Sharma FCA
For the Respondent	Shri Saurabh Kumar, Addl. CIT, DR

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the assessee against the order of Ld. CIT(A)-XX, Kolkata dated 09.09.2014 for AY 2008-09.

2. At the outset, Ld. Counsel for the assessee drew our attention to the additional ground of appeal wherein the assessee has raised the ground that the assessee had objected to the reopening proposed by the AO u/s. 147/148 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”). However, the AO has not disposed of the objection as per the binding decision of the Hon’ble Supreme Court in the case of GKN Driveshaft (India) Ltd. Vs. ITO & Ors. (2003) 259 ITR 19 (SC). The Ld. DR objects to the admission of additional ground. However, since it is purely a legal issue, we relying on the decision of Hon’ble Supreme Court in the case of NTPC Ltd. 229 ITR 383 (SC) admit the additional ground which, if found valid, goes to the root of the matter so, needs to be adjudicated first.

3. The Ld. AR drew our attention to page No. 68 of the paper book which is the letter dated 23.04.2013 written by the Ld. AR of the assessee objecting to the reopening on the reasons recorded u/s. 148(2) of the Act. In the said letter subject itself is “*Furnishing of objection to the reasons recorded u/s. 148(2) for the Asst. Year 2008-09*”. In the first para

itself the assessee has placed on record their objection to the reassessment proceeding initiated by the AO u/s. 147 of the Act. We note that the objection against reopening runs to six pages and in the last para, the Ld. AR prays to the AO to deal with the objection raised before proceeding in the matter of reassessment proposed by him. Thereafter, the Ld. AR drew our attention to page nos. 89 to 93 which is the copy of the order sheet in the case of the assessee maintained by the AO, wherein we note that based on the internal audit observation the AO initiated the proposal to reopen which is dated 15.01.2013. Thereafter, we note that the reasons have been recorded on 15.01.2013 which is found recorded in pages 90 to 91. In page no. 92, the AO notes that on 23.04.2013, Mr. Girish Shiv Sharma the Ld. AR of the assessee appeared and filed details through his letter dated 23.04.2013 (which is the letter we mentioned earlier, by which the assessee has objected to the reopening/reassessment). Thereafter, we note that there is no other entry made wherein AO has recorded that he has disposed off the objection raised by the assessee vide letter dated 23.04.2013. On the other hand, we note that the AO notes thereafter that he has passed the assessment order u/s. 147/143(3) of the Act. From the aforesaid facts we note that the assessee's objection after going through the reasons recorded for reopening, was not done at all by the AO before passing the reassessment order which is per se against the binding direction of the Hon'ble Supreme Court in GKN Driveshaft (India) Ltd.(supra) wherein their Lordships held that on receipt of reasons, the noticee is entitled to file objection to issuance of the notice and the AO is bound to dispose of the same by passing a speaking order. In the instant case, a perusal of the order sheet of AO does not disclose that AO had disposed of the objection raised by the assessee by passing a speaking order. We note that the assessee vide letter dated 23.04.2013 had in fact objected to the reopening of filing six pages letter and this fact is corroborated by the AO himself in the order sheet maintained by him and we note that the AO has not passed any speaking order to dispose of the objection raised by the assessee. As per Article 141 of the Constitution of India, the Hon'ble Supreme Court's direction is bound to be acted upon by the courts and other authorities. The AO has not cared to dispose of the objections raised by the assessee as directed by the Hon'ble Supreme Court. As stated above, from the order sheet entries it is very clear that the AO did not dispose of the objection of the assessee as directed by the Hon'ble Supreme Court in

GKN Driveshaft (India) Ltd.(supra) which makes the reassessment order bad in the eyes of law and is non-est in the eyes of law for flouting the order of the Hon'ble Supreme Court.

3. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court on 3rd November, 2017

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 3rd 2November, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Hardware Trading Corporation, Marshall House, R. No. 601, 6th floor, 25, Strand Road, Kolkata-700 001.
2. Respondent – ACIT, Circle-34, Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary