

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, KOLKATA**

Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member

I.T.A. No. 2084/KOL/2014
Assessment Year: 2006-07

Bhanu Vyapaar Pvt. Ltd.....Appellant
[PAN : AABCB 1334 Q]

I.T.O, Ward - 6(4), Kolkata.....Respondent

Appearances by:

Shri S.K. Agarwal, FCA, appeared on behalf of the Appellant.

Shri Kalyan Nath, Addl. CIT(DR), appeared on behalf of the Respondent..

Date of concluding the hearing : October 23, 2017

Date of pronouncing the order : November 10, 2017

ORDER

Per J. Sudhakar Reddy, Accountant Member :-

This appeal by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-Central-I, Kolkata [hereinafter the 'Id. CIT(A)'], dated 17.09.2014 passed u/s 143(3)/147 of the Income Tax Act, 1961 (the 'Act') for the assessment year 2006-07 on the following grounds:

“1. That the learned CIT(A) erred in confirming that the reopening of assessment proceedings u/s 147 of the IT Act is valid and that there was no change of opinion of the AO.

2. That the learned CIT(A) erred in confirming the disallowance of the provision for loss on derivative transactions amounting to Rs.76,62,632/-.

3. That the appellant craves leave to add fresh ground and/or modify or substitute any grounds before or at the time of hearing.”

2. When the matter had come before the Bench on earlier occasions, the Id. Departmental Representative (DR) was directed to verify the assessment records and confirmed whether the allegations of the assessee that the reasons recorded for reopening of the assessment u/s 147 of the Act was not furnished to the assessee was correct or not.

3. Today when the matter came up for hearing, the ld. DR produced the assessment records. He could not produce any record or document to show that a copy of the reasons recorded for reopening of the assessment has been served on the assessee before the completion of the assessment on 22.12.2010, despite repeated requests by the assessee to the A.O for furnishing the same. Under these circumstances, as the ld. A.O has failed to give a copy of the reasons recorded for reopening to the assessee despite application for the same, the assessment is to be held as bad in law in view of the following judgments:

"1. GKN Driveshafts (India) Ltd vs. ITO & Others (259 ITR 19) SC

.....when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the notice is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order before proceeding with the assessment in respect of the five assessment years.....

3. CIT vs Videsh Sanchar Nigam Ltd. (340 ITR 66) Bombay HC

It was held that failure to furnish the recorded reasons for issue of reopening notices to the assessee before completion of the assessment proceedings would make the reassessment order passed in pursuance of such a notice bad in law."

4. Applying the propositions laid down in this case laws and considering the facts of the case, we hold that the reassessment order is bad in law.

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

Kolkata, the 10th November, 2017.

Sd/-
[S.S. Viswanethra Ravi]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 10.11.2017
RS, SPS

Bhanu Vyapaar Pvt. Ltd
I.T.A. No. 2084/KOL/2014
Assessment Year: 2006-07

Copy of the order forwarded to:

- 1. Bhanu Vyapaar Pvt. Ltd., 687 Anandapur, E M Bypass, Kolkata – 700107.**
- 2. ITO-W-6(4), Ayakar Bhawan, P-7, Chowringhee Sq., Kolkata – 700 069.**
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches