

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos. 108 & 109/CTK/2016
Assessment Years : 2004-05 & 2005-06

Sri Jaydev College of Phamaceutical Sociences, At/PO: Naharkanta, Dist: Khurda	Vs.	ITO, Khurda Ward, Khurda
PAN/GIR No. AAFTS 8620 P		
(Appellant)	..	(Respondent)

Assessee by : Shri S.K.Agarwal, AR
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 12/07/ 2017
Date of Pronouncement : 13 /07/ 2017

ORDER

Per N.S.Saini, AM

These are two appeals filed by the assessee against the separate orders of CIT(A)-3, Bhubaneswar, both dated 4.1.2016, for the assessment years 2004-05 and 2005-06 .

2. The common grounds of appeal Nos.1 & 2 reads as under:

"1. That the AO has committed an error of law in not supplying the reason for reopening of the assessment u/s.147 in spite of specific direction given by the ITAT and the CIT(A) is wrong in dismissing this ground of appeal. Therefore, the action of the authorities below is in violation of judicial discipline as well as violation of principle of natural justice and the assessment order is liable to be set aside.

2. That the assessment order passed by the AO u/s.143(3)/254 without issuing of notice u/s.143(2) is illegal and therefore the assessment order is liable to be quashed."
3. Brief facts of the case are that the assessee is a society established with the objectives of imparting education in the name and style of Sri Jaydev College of Pharmaceutical Sciences. For the assessment year 2004-05, no return of income was filed by the assessee in response to issue of notice u/s.148 of the Act on 5.6.2008. Since no return of income was filed, notice u/s.142(1) was issued on 31.3.2009 and the reassessment was completed u/s.147/144 of the Act on 8.12.2009 determining the total income at Rs.78,84,870/-.
4. Similarly, for the assessment year 2005-06, return of income was furnished on 18.7.2006, which was processed under section 143(1) of the Act. Thereafter the assessment was reopened by issue of notice u/s.148 of the Act on 1.4.2008. Since there was no compliance to the notice u/s.148 of the Act, another notice u/s.142(1) of the Act was issued on 25.1.2010 and reassessment was completed u/s.143(3)/147 on 12.10.2010 determining the total income at Rs.42,10,465/-.
5. Being aggrieved by the orders of the Assessing Officer, the assessee filed appeals before the Id CIT(A) challenging the reassessment orders u/s.147/144 for the assessment year 2004-05 and u/s.143(3)/147 of the Act for the assessment year 2005-06. Ld CIT(A) dismissed the appeals of

the assessee and confirmed the orders of the Assessing Officer on 2.12.2011. Subsequently, the assessee preferred appeals before the Tribunal and the Tribunal vide its order dated 23.11.2012 passed in ITA Nos.147,148,149,150 & 151/CTK/2012 restored back the issue to the file of the Assessing Officer for denovo consideration observing as under:

" On careful analysis of the orders passed by the Departmental Authorities in the light of rival submissions of both the parties, it is found that the Assessing Officer has issued notice u/s.148 of the Act requiring the assessee to file the returns of income. But the assessee has not complied with the said notice. Immediately the Assessing Officer issued notice u/s. 142(1) fixing the date of hearing. In response to that, the assessee along with its AR of the assessee appeared before the Assessing Officer and the matter was discussed with the AR of the assessee and having found that the books of account were not properly maintained in terms of Section 145 of the Act, the Assessing Officer has invoked the provisions of Section 144 and completed the assessments. However, on going through the assessment orders it is found that the Assessing Officer has not been able to make out as to the reason why he is initiating proceedings u/s.147 by issuing notice u/s.148 of the Act and the reasons are also not made out by the Assessing Officer. On the first date of hearing i.e., on 30.4.2009 the assessee has filed adjournment petition and the case was fixed to 13.5.2009. From then onwards, the Assessing Officer has discussed the matter with the AR of the assessee and passed the assessment orders in question. From cumulative circumstances stated supra, it is clear that the Assessing Officer has not given proper and reasonable opportunity to the assessee to substantiate its contention but however, the learned CIT(A) has endorsed the action of the Assessing Officer. Hence, under these facts and circumstances, we are of the considered view that this type of assessment should be done by the Department only after giving proper and reasonable and sufficient opportunity to the assessee to ventilate or substantiate its case before him. Having found that the Assessing Officer has not given such opportunity to the assessee, we are of the considered view that this is a fit case to be restored to the file of the Assessing Officer for de novo consideration of the assessments by permitting the assessee to file the returns for the periods under consideration and after giving sufficient opportunity of being heard before the assessments orders are passed de novo in accordance with law. With this directions, all the assessments are restored to the file of the Assessing Officer for de novo consideration. The assessee is also directed to file the returns for all the years as per law and furnish the connected information and account books of to the Assessing for verification and consideration while passing the assessment orders denovo."

5. Thereafter, the Assessing Officer vide letter dated 13.8.2013 required the assessee to furnish the return of income, which was filed by the assessee on 24.9.2013. Thereafter, the assessee requested the Assessing Officer vide letter dated 25.11.2013 placed at pages 44 to 48 of paper book for the assessment year 2004-05 and pages 49 to 52 of paper book for the assessment year 2005-06 requesting the Assessing Officer to supply the reasons for reopening the assessment to which the assessee can raise its objection, if any, before finalization of the assessment. The reassessment for both the years was completed on 3.3.2014 without supplying the reasons recorded for reopening the assessment.

6. The assessee carried the matter in appeals before the Id CIT(A), who confirmed the action of the Assessing Officer in not supplying recorded reasons to the assessee by observing as under:

As stated above, the appellant objected to the assessment u/s.143(3)/147 before the Hon'ble Tribunal by contending that reasons for reopening was not supplied. The Hon'ble Tribunal considered the issue, appreciated the reasons for reopening and set aside the order back to the file of the A.O. by holding that the A.O. should have completed the assessment by giving sufficient opportunity of being heard. The order u/s. 143 (3)/254 was passed by the A.O. on the basis of the direction given by the Hon'ble Tribunal to the A.O. and to the appellant. Therefore, the submission of the appellant that the A.O. completed the assessment u/s.143 (3)/254 without supplying the reasons for reopening is no more valid and relevant.

Regarding notice u/s.143(2) of the Act not issued by the A.O. before completing the assessment u/s.143(3)/254, the material available on record reveals that the A.O. issued notice u/s.143(2) on 08.04.2009 which was received by Principal-cum-secretary on same date. It is because of this, the appellant did not take any ground before the Hon'ble Tribunal against non-service of notice u/s.143(2) of the Act. The present order of the A.O. u/s. 143(3)/147 is passed on the basis of the specific

directions given by the Hon'ble Tribunal as discussed above and moreover, return was not filed by the appellant in course of proceedings u/s 143(3)/254 in response to any notice u/s 148 but on the basis of the direction of the Hon'ble Tribunal only. In the given facts and circumstances of the case, the ratio of the cases relied on by the Ld. A.R. is not applicable to the appellant's case. This view is fortified by decision of the Hon'ble Madras High Court in the case of Areva T & D India Ltd. Vrs. ACIT reported in 294 ITR 233 and decision of the Hon'ble Delhi High Court in case of CIT Vrs. Madhya Bharat Energy Corporation Ltd. reported in 337 ITR 389. In view of the above, these grounds of appeal are rejected."

7. Before us, Id A.R. of the assessee has relied on the decision of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd vs. ITO & Ors, 259 ITR 019 (SC) and submitted that the Hon'ble Supreme Court in para 5 of its order has held that when a notice under section 148 of the A.T.Act is issued, the proper course of action for the noticee 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 noticee 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. Hence, he submitted that this was not done in the case of the assessee. Therefore, the order of reassessment is bad in law and requires to be quashed.

8. Ld A.R. of the assessee submitted that on similar facts, this Bench of the Tribunal has cancelled the reassessment order vide its order dated 12.1.2017 in ITA No.57/CTK/2016 for the assessment year 2006-07 in the case of the assessee itself. Hence, following the precedent, the reassessment orders for both the years should be cancelled.

8. Ld D.R. relied on the order of the Id CIT(A).
9. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. We find that on similar facts in the assessee's case for the assessment year 2006-07, this Bench of the Tribunal has cancelled the reassessment orders by observing as under:

"9. I find that in the instant case, it is not in dispute that the matter was restored back to the file of the Assessing Officer by the Tribunal vide its order dated 23.11.2012 for denovo assessment after allowing proper opportunity of hearing to the assessee. The assessee was required by the Assessing Officer vide letter dated 13.8.2013 to file the return of income. The assessee filed the return of income dated 24.9.2013 and thereafter requested to supply reasons for reopening of assessment. The Assessing Officer did not supply the reasons recorded and completed the reassessment on 3.3.2014. Ld CIT(A) has confirmed the action of the Assessing Officer. I find that the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd(supra), has held that the Assessing Officer is bound to furnish reasons within a reasonable time for reopening the assessment to the assessee and the assessee if objects to the same, the Assessing Officer is bound to dispose of the same by passing a speaking order. Further, the Hon'ble Bombay High Court in CIT (Large Tax Payer Unit) vs IDBI Ltd., (2016) 76 taxmann.com 227 (Bombay) while deciding the following substantial question of law u/s.260A of the Act:

"Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in quashing the reassessment proceedings even though the assessee was aware of the reasons of reopening and also participated in the assessment proceedings"?

has held as under:

'We find that the question as framed proceeds on the basis that the respondent-assessee was aware of the reasons for reassessment. The only basis for the aforesaid submission is the submission made by the revenue before the Tribunal that the respondent-assessee is a public sector institution who was aware that search action has been initiated on certain lessees in respect of transaction with IDBI i.e. respondent-assessee. On the basis of the above, it is to be inferred that the reason for reassessment was known to the respondent-assessee. The supply of the reason in respect of the notice for

reopening of an assessment is a jurisdictional requirement. The reasons recorded form the basis to examine whether the Assessing Officer had at all applied his mind to the facts and had reasons to believe that taxable income has escaped assessment. It is these reasons which have to be made available to the assessee and it could give rise to a challenge to the reopening notice. It is undisputed that the reason recorded for issuing reopening notice were never communicated to the respondent-assessee inspite of repeated requests. Thus, The grievance of the revenue on above count is unsustainable".

10. Still further, in the case of Seista Steel Construction (P) Ltd. vs K.K..Shikare (1985) 154 ITR 547 (Bombay) the Hon'ble Bombay High Court held that in the absence of supply of reasons recorded for issue of reopening notice the assessment order will be without jurisdiction and needs to be quashed."

11. Again, in the case of CIT vs. Videsh Sanchar Nigam Ltd (2012) 340 ITR 66 (Bombay) the Hon'ble Bombay High Court held that non-supply of reasons recorded to issue a reopening notice would make the order of assessment passed thereon bad as being without jurisdiction.

12. For the above reasons, the reassessment order dated 3.3.2014 is bad in law and hence, I cancel the reassessment order dated 3.3.2014 and allow this ground of appeal of the assessee. "

10. Facts being identical, respectfully following the precedent, we hold that the impugned reassessment orders both dated 3.3.2014 passed under section 143(3)/254 for the assessment years 2004-05 and 2005-06 without issuing recorded reasons is bad in law and, therefore, we quash the reassessment orders for both the assessment years under consideration and allow the ground of appeal.

11. As we have canceled the reassessment order dated 3.3.2014 passed u/s.147 of the Act while deciding Ground Nos.1 & 2 of the appeal of the assessee, the other grounds of appeal of the assessee on merits of the addition have become infructuous and hence dismissed.

12. In the result, the appeals filed by the assessee are allowed.

Order pronounced in the open court on 13 /07/2017 in the presence of parties.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 13 /07/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Sri Jaydev College of
Phamaceutical Sociences, At/PO:
Naharkanta, Dist: Khurda
2. The Respondent. ITO, Khurda Ward,
Khurda
3. The CIT(A)-3, Bhubaneswar
4. Pr.CIT3, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack