

**आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ, कटक**

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH CUTTACK

**BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER**

**ITA No.420 & 421/CTK/2017**

(निर्धारण वर्ष / Assessment Year :2007-2008 & 2009-2010)

Soumya Ranjan Mohanty, PlotNo.1545/4366, Road No.4/A Jagannath Nagar, Gobindaprasad Laxmisagar, Bhubaneswar-25	Vs.	ITO, Ward-4(2), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>ACXPM 8957 B</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri K.K.Bal/S.D.Nayak, AR

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR

सुनवाई की तारीख / Date of Hearing : **29/01/2018**

घोषणा की तारीख/Date of Pronouncement **31/01/2018**

**आदेश / O R D E R**

These are appeals filed by the assessee against the order of the CIT(A), Bhubaneswar for assessment years 2007-08 & 2009-10, both dated 25.07.2017.

2. Ground No.2 of the appeal reads as under :-

*2. For that Ld Assessing officer erred in not disposing the preliminary objection to the Notice issued u/s 148 of the Income tax Act, with a reasoned and speaking order. Therefore the order of assessment is without jurisdiction and without authority of law and liable to be quashed.*

3. Brief facts of the case are that the assessee for the assessment year 2007-08 received notice u/s.148 of the Act dated 16.04.2014 on 22.04.2014. In compliance with the same, the assessee filed return of income on 20.05.2014. The reasons for reopening of assessment was supplied to the assessee by the AO on 15.09.2014. On 20.09.2014 the assessee filed objection to the reasons for reopening of assessment. Notice u/s.143(2) was issued on 27.10.2014 and the assessment was

completed on 29.03.2016 u/s.147/144 of the Act. Similarly in the assessment year 2009-2010, the assessee received notice issued u/s.148 of the Act dated 21.04.2014 on 24.04.2014. In response to the same, the assessee filed return of income on 30.05.2014.

4. The assessee asked for supply of reasons for reopening of assessment on 23.05.2014. The AO supplied the reasons for reopening of assessment to the assessee on 15.09.2014. The assessee filed objection to the reasons for reopening of assessment on 20.09.2014. The AO issued notice u/s.143(2) of the Act on 27.10.2014. The notice u/s.142(1) was issued on 26.11.2014. The reassessment was completed u/s.147/144 of the Act on 29.03.2016.

5. The assessee carried the matter in appeal before the CIT(A) and by raising the grounds of appeal being ground No.7, contended that the AO has proceeded to complete the assessment without considering the objection to the issuance of notice u/s.148 of I.T.Act, therefore, there is a violation of specific guidelines issued by the Hon'ble Supreme Court. The CIT(A) dismissed the grounds of appeal of the assessee observing that it is seen that the assessee had filed the objection to the reopening of the assessment on 30.09.2014 and the objection of the assessee was that he had claimed TDS and, therefore, receipt compensation of Rs.31,95,331/- was in the knowledge of Assessing Officer and as such, it is a case of change of opinion. The second objection raised by the assessee was that the Assessing Officer has not applied his mind before issue of notice u/s.148 of the Act. He observed that the two objections of the assessee

are not tenable, and, hence, they are rejected. He further observed that the assessee has not complied with any of the notices issued by the Assessing Officer. The AO has also issued notice u/s.143(2) of the Act dated 27.10.2014 requiring the assessee to furnish the details in support of the return. When the notice was ignored by the assessee further the AO issued show cause notices to the assessee stating that non-submission of details called for by him will result in the assessment u/s.144 of the IT Act. The AO also rejected the objections raised by the assessee and has fulfilled all the requirements as mentioned by the Hon'ble Supreme Court in the case of GKN Driveshaft India Ltd. Vs. ITO, 259 ITR 19(SC). Therefore, he dismissed the ground of appeal of the assessee.

6. Before me, the AR of the assessee argued and submitted that according to the decision of Hon'ble Supreme Court in the case of GKN Driveshaft India Ltd. (supra), the assessee is required to file return of income pursuant to the issue of notice u/s.148 of the Act and thereafter the assessee can seek the reasons for reopening of the assessment from the AO. Thereafter the assessee is to file its objection if any to the reasons for reopening of the assessment. After that, the AO has to dispose of the objection of the assessee by passing a separate and speaking order. In case of the assessee this has not been done by the AO and, therefore, the order of AO is not tenable in law and, hence, should be quashed.

7. He relied on the decision of Hon'ble Chhattisgarh High Court in the case of Smt. Kamala Ojha Vs. ITO & Ors, 397 ITR 197, where the Hon'ble High Court held that the order disposing of the preliminary objection to the reopening of the assessment is not in accordance with law and secondly the order finally passed making reassessment is also contrary to law.

8. He further relied on the decision of Delhi Bench of the Tribunal in the case of Asha Jain, ITA No.3519/Del./2014 for the assessment year 1999-2000 order dated 19.04.2017, wherein the Tribunal held that it is well settled law that the reopening of the assessment u/s.147 and issuance and service of notice u/s.148 of the Act is a jurisdictional matter and whenever such a jurisdiction is challenged, then it is incumbent upon the Assessing Officer to pass an order either rejecting the assessee's objection or drop the proceedings in case he agrees with such an objection. This is a clear mandate of the law laid down by the Hon'ble Apex Court in the case of GKN Driveshaft India Ltd. (supra), which has been well explained by Hon'ble Jurisdictional High Court in the case of Pr. CIT Vs. Tupperware India (P) Ltd. (2016) 284 CTR 68 (Delhi).

9. The Tribunal further observed that the Delhi Bench of the Tribunal in the case of Suresh Chandra, ITA No.3061/Del/2012, order dated 13.03.2015 following various decisions of High Court, had quashed the reassessment proceedings wherein the AO has failed to dispose of the assessee's objections.

10. Therefore, the AR of the assessee concluded his arguments by submitting that the facts in the present appeals before the Tribunal are identical to the facts that were before the Delhi Bench of the Tribunal and following the same, the reassessment order passed u/s.147 of the Act in assessment year 2007-08 & 2009-2010 should be quashed.

11. We have heard rival submissions and perused the orders of lower authorities and materials available on record. In the instant case the undisputed facts of the case are that the assessee has filed its return of income originally u/s.139(1) of the Act on 31.12.2008. The return was processed u/s.143(1) and became final because of non-issuance of any notice u/s.143(2) of the Act.

12. Thereafter the AO issued a notice u/s.148 dated 31.03.2014 to reopen the assessment proceedings. The assessee complied with the notice by filing the return of income on 20.05.2014. The assessee also sought reasons recorded for reopening the assessment on 20.05.2014. The Assessing Officer provided the reasons to the assessee on 15.09.2014 i.e. almost after four months of seeking of reasons. The assessee thereafter filed its objection to issue of notice u/s.148 of the Act on 20.09.2014.

13. Similarly in the assessment year 2009-2010, the assessee has filed its return of income originally u/s.139(1) of the Act on 31.03.2011. The return was processed u/s.143(1) of the Act and became final because of non-issuance of any notice u/s.143(2) of the Act. Thereafter the AO issued notice u/s.148 of the Act dated 21.04.2014, to reopen the

assessment proceedings the assessee complied with the notice by filing a return of income on 20.05.2014. The assessee also sought reasons recorded for reopening the assessment on 23.05.2014. The AO provided reasons to the assessee on 15.09.2014 i.e. almost after four months of seeking of reasons. The assessee thereafter filed its objection to issue of notice u/s.148 of the Act on 20.09.2014.

14. The above facts that the assessee has filed his objection to issuance of notice u/s.148 of the Act on 20.09.2014, is not disputed by the Revenue.

15. Thereafter the AO without disposing of the objection filed by the assessee proceeded with the reassessment and issued notice to the assessee and ultimately completed the assessment u/s.144 r.w.s.147 of the Act.

16. In my considered opinion, it is a well settled position of law that the AO cannot assume jurisdiction to proceed with the reassessment that first disposing of the objection by a separate speaking order and thereafter allowing reasonable time to the assessee to file Writ against that order before the Hon'ble High Court, if so desired by the assessee.

17. The above position of law is well settled by the Hon'ble Apex Court of the country in the case of GKN Driveshaft India Ltd. Vs. ITO, 259 ITR 19(SC).

18. On similar facts the Hon'ble Delhi High Court in the case of Pr. CIT Vs. Tupperware India (P) Ltd. (2016) 284 CTR 68 (Delhi), has held as under :-

*“5. Apparently, the Assessee did raise an objection to the order of the AO reopening the assessment. In the order dated 28th January 2011 allowing the Assessee’s appeal, the Commissioner of Income Tax (Appeals) [„CIT (A)“] noted that the Assessee had indeed filed objections to the reopening of the assessment by its letter dated 9th August 2006. In the remand report dated 20th December 2010, the AO quoted a paragraph from the order sheet which stated that the aforementioned letter dated 9th August 2006 had been handed over to the AO and that the AO had sought some more information which the Assessee had not filed. The CIT (A) accordingly held that by stating that no objections had been filed, the AO had "very conveniently disregarded the guidelines" laid down by the Supreme Court in G.K.N. Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19 (SC). The CIT (A), therefore, agreed with the Assessee that since the procedure laid down by the SC in the aforementioned decision was mandatory, the AO had in fact not disposed of the objections by a speaking order. Nevertheless, the CIT (A) held that the said defect "does not make the assessment order illegal and hence it cannot be quashed. It is a technical mistake which is curable.*

*6. The Court is of the considered view that after having correctly understood the decision of the Supreme Court in G.K.N. Driveshafts (India) Ltd. (supra) as mandatorily requiring the AO to comply with the procedure laid down therein and to dispose of the objections to the reopening order with a speaking order, the CIT (A) committed an error in not quashing the reopening order and the consequent assessment.”*

19. To the same effect is also the decision of Delhi Bench of the Tribunal in the case of Suresh Chandra, ITA No.3061/Del/2012, order dated 13.03.2015, where it was held as under :-

*“7. Having gone through the above cited decisions regarding the manner in which the Assessing Officer is to dispose of the*

*objections raised against the jurisdiction of the Assessing Officer for issuance of notice under sec. 148 of the Act, we find that the ratios laid down in this regard by the Hon'ble Supreme Court in the case of G.K.N. Drive Shaft (India) Ltd. vs. ITO (supra) along with other decisions have been discussed by the Hon'ble Gujarat High Court in the case of General Motors India (P) Ltd. vs. DCIT (supra) and the Hon'ble High Court after detailed deliberation has come to the following conclusions:*

*“23. From the aforesaid decision, we are of the considered opinion that writ petition under Article 226 of the Constitution of India is maintainable where no order has been passed by the Assessing Officer deciding objection filed by the assessee under sec. 148 of the Act and assessment order has been passed or the order deciding an objection under sec. 148 of the Act has not been communicated to the assessee and assessment order has been passed or the objection filed under sec. 148 has been decided along with the assessment order. If the objection under sec. 148 has been rejected without there being any tangible material available with the Assessing Officer to form an opinion that there is escapement of income from assessment and in absence of reasons having direct link with the formation of the belief, the writ petition filed by the petitioner is maintainable. The Assessing Officer is mandated to decide the objection to the notice under sec. 148 and supply or communicate it to the assessee. The assessee gets an opportunity to challenge the order in a writ petition. Thereafter the Assessing Officer may pass the reassessment order. We hold that it was not open to the Assessing Officer to decide*

*the objection to notice under sec. 148 by a composite assessment order. The Assessing Officer was required to, first decide the objection of the assessee filed under sec. 148 and serve a copy of the order on assessee. And after giving some reasonable time to the assessee for challenging his order, it was open to him to pass an assessment order. This was not done by the Assessing Officer, therefore, the order on the objection to the notice under sec. 148 and the assessment order passed under the Act deserves to be quashed.”*

*“8. In view of the above decisions, we find that the Assessing Officer is mandated to decide the objection to the notice under sec. 148 of the Act and supply or communicate it to the assessee. Thereafter, the assessee gets an opportunity to challenge the order in a writ petition. Thereafter, the Assessing Officer may pass the reassessment order. It is not open to the Assessing Officer to decide the objection raised against notice under sec. 148 by a composite assessment order. Thus, the Assessing Officer was required to first decide the objection of the assessee filed under sec. 148 and serve a copy of the order on assessee. And after giving some reasonable time to the assessee for challenging his order, it is open to him to pass an assessment order. Since such compliance has not been made by the Assessing Officer in the present case, we hold the impugned assessment order dated 03.10.2008 as not valid and the same is held as void ab initio.”*

20. Further, the Hon'ble Gujarat High Court in the case of Arvind Mills Ltd. Vs.ACWT (2004) 270 ITR 469 (Guj) has held as under :-

*“The Hon'ble Supreme Court in the case of GKN Driveshaft India Ltd. (supra) provides the challenge to the reassessment notice in two stages, i.e.*

- (i) raising preliminary objections before the AO and in case of failure before the AO;*

(ii) *challenging the speaking order of the AO u/s.148 of the Act.*

*The position in law is, thus, well settled. After a notice for reassessment has been issued, an assessee is required to file the return and seek reasons for issuance of such notice. The AO is then bound to supply the reasons within a reasonable time. On receipt of reasons, the assessee is entitled to file preliminary objections to issuance of notice and the AO is under a mandate to dispose of such preliminary objections by passing a speaking order, before proceeding with the assessment in respect of the assessment year for which such notice has been issued.”*

21. Further the Hon'ble Gujarat High Court in the case of General Motor India P. Ltd. Vs. DCIT (2013) 354 ITR 244 (Guj.), has held as under :-

*The AO was required to first decide the objection of the assessee filed u/s.148 of the Act and serve a copy of the order on the assessee and after giving some reasonable time to the assessee for challenging the order, it was open to him to pass an assessment order. This was not done by the AO. Therefore, the assessment order passed under the Act, deserves to be quashed.*

22. Further, the Hon'ble Bombay High Court in the case of M/s Bayer Material Science Pvt. Ltd. Vs. DCIT, (2016) 382 ITR 333 (Bom), has held as under :-

*“The passing of the draft assessment order without having disposed of the objections filed by the assessee to the reasons recorded in support of the notice was in defiance of the Hon'ble Supreme Court's decision in GKN Driveshafts (India) Ltd. vs. ITO (2003) 259 ITR 19, the draft assessment order was not sustainable being without jurisdiction.”*

23. Thus, respectfully following the above well settled position of law, I find that it was mandatory for the Assessing Officer to dispose of the objections filed by the assessee against the issuance of notice u/s.148 of the Act by passing a speaking order and thereafter to wait for a reasonable time before proceeding with reassessment which the AO has failed to do. Consequently, the impugned reassessment orders for both the assessment years under consideration i.e. AY 2007-08 & 2009-10 are bad in law and are liable to be quashed. I accordingly quash the same and allow this ground of appeal of the assessee for both the assessment years under consideration.

24. As I have quashed the reassessment order passed u/s.147 r.w.s144 of the Act, dated 29.03.2016 in the assessment year 2007-08 & 2009-10, the other grounds of appeal taken by the assessee in both the years under consideration on the merits of the additions, have become infructuous and are accordingly dismissed.

25. In the result, both appeals of the assessee are allowed.

Order pronounced in the open court on this 31/01/2018.

**Sd/-**  
**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**कटक Cuttack; दिनांक Dated 31/01/2018**

प्र.कु.मि/PKM, Senior Private Secretary

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-  
Soumya Ranjan Mohanty,  
PlotNo.1545/4366, Road No.4/A  
Jagannath Nagar, Gobindaprasad  
Laxmisagar, Bhubaneswar-25
2. प्रत्यर्थी / The Respondent-  
ITO, Ward-4(2), Bhubaneswar

3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Senior Private Secretary)**

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack