आयकर अपीलीय अधिकरण, B/'SMC' **न्यायपीठ, चेन्नई ।**

IN THE INCOME TAX APPELLATE TRIBUNAL
B/"SMC" BENCH, CHENNAI

श्री. **चंद्र पूजारी** लेखा सदस्य , के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

I.T.A.No.2315/Mds./2017
(Assessment Year : 2006-07)

Shri M.Sajjanraj, 52,Dr.Alagappa Chettiar Road, Chennai. **PAN** AALPS 4144 A (**अपीलार्थी /Appellant**)	**Vs.**	The Income Tax officer, Non-corporation ward 10(2), Chennai. (**प्रत्यर्थी/Respondent**)

अपीलार्थी की ओर से / Appellant by	:	Mr.T.Banusekar,C.A
प्रत्यर्थी की ओर से/Respondent by	:	Mr.B.Sagadevan, JCIT, D.R

सुनवाई की तारीख/ Date of hearing	:	07.12.2017
घोषणा की तारीख /Date of Pronouncement	:	22.01.2018

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is filed by the assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-12, Chennai dated 16.08.2017 pertaining to assessment year 2006-07.

2. The assessee raised the following grounds for adjudication.

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to the law, facts and circumstances of the case to the extent prejudicial to the interest of the assessee and is opposed to the principles of equity, natural justice and fair play.
2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.
3. For that the reopening was bad in law.
4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that Assessing Officer could not have had any reason to believe that income has escaped assessment based on an estimated value of the cost as on 01 .04.1981.
5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that guideline value cannot be taken for determining the fair market value.
6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer having obtained the guideline value from the Sub Registrar's Office on 04.03.2014 would not have had reason to believe that income has escaped assessment on the date of issue of notice u/s.148 i.e. on 28.03.2013.
7. For that the Commissioner of Income Tax (Appeals) erred in upholding the adoption of fair market value as on 01.04.1981 for 3.5 grounds at Rs.1,05,000/-.
8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the value adopted by the appellant at Rs.5 lakhs for 3.5 grounds as on 01 .04.1981 is reasonable.
9. For that the appellant objects to the levy of interest under sections 234A, 234B and 234C.

3. The brief facts of the case are that the assessee is an individual who derived income from business, capital gains and other sources

and filed return of income for the assessment year 2006-07 on 21.03.2007 admitting a total income of ₹11,36,199/-. The appeal was filed in time. The return was processed u/s 143(1) of the Act on 31.10,2007 and the case was selected for scrutiny under CASS and notices u/s 148 and 143(2) were issued. The AO completed assessment u/s 143(3) on 30.03.2014 by arriving at assessed Income of ₹30,98,809/- by making addition of Taxable Long Term Capital Gain amounting to ₹29,83,150/-. Aggrieved by the order of ld. Assessing Officer, the assessee carried the appeal before the Ld.CIT(A). On appeal, the Ld.CIT(A) confirmed the order of ld. Assessing Officer. Against the order of Ld.CIT(A), now the assessee is in appeal before Tribunal.

4. At the outset, the ld.A.R submitted that the assessment was re-opened by ld. Assessing Officer. Further, ld.A.R submitted that vide letter dated 17.04.2013 at page-3 of paper book the assessee requested the ld. Assessing Officer to provide a copy of the reasons recorded for re-opening of assessment. The ld.A.R submitted that the AO furnished the reasons recorded for reopening of assessment vide letter dated 04.02.2014 placed at page-4 of the paper book.

According to ld.A.R, the reasons furnished to the assessee and the reasons recorded for re-opening of assessment are totally different. Hence, ld.A.R submitted that in view of the decisions of the Supreme Court in the case of GKN Driveshafts (India) Ltd., Vs. I.T.O reported in [2003] 259 ITR 19(SC), the Assessing Officer is bound to furnish reasons for re-opening of assessment to the assessee within a reasonable time. When the ld. Assessing Officer failed to do so, the assessment to be quashed. Hence, ld.A.R pleaded the Bench to quash the order of re-assessment.

5. On the other hand, ld.D.R relied upon the order of the lower authorities. Further, ld.D.R submitted that the AO furnished the reasons to the assessee vide letter dated 04.02.2014 on which the assessment was re-opened. As such, it cannot be said that the reasons for re-opening of assessment was not at all furnished to the assessee.

6. I have heard both the parties and perused the material on record. In this case the reasons recorded for re-opening of assessment is as follows:-

"As per the AIR information forwarded to this office from I.T.O,ward V(1),Chennai, the assessee sold two vacant plots on 03.02.2006 through two separate sale transactions for ₹37,80,000/- each in the financial year 2005-06. The total sale consideration of ₹85,05,000/- has been offered by the assessee in the return filed. The assessee has claimed indexed cost of acquisition at ₹24,85,000/- for 8,400 sq.f.t (as on 01.04.1981). The cost per ground has been adopted at ₹1,42,857/- as on 01.04.1981. This cost is very much on the higher side because the cost per ground in the said locality as on 01.04.1981 was not more than ₹50,000/- as per records of SRO. A fair estimate shows that income to the tune of not less than ₹16 lakhs has escaped assessment .

In view of the above, there is reason to believe that the income has escaped assessment and it is a fit case for re-opening the assessment for assessment year 2006-01.

I request the JCIT's approval for issue of notice u/s.148."

6.1 The ld. Assessing Officer furnished the reasons for re-opening of assessment to the assessee in his office letter dated 04.02.2014 as follows:-

"As stated by you the return of income for assessment year 2006-07 has been filed on 21.03.2007 returning a total income of ₹11,36,199/-. This Return of income has been processed u/s.143(1) on 31.10.2007 resulting in NIL demand.

Subsequently, it is learnt that the capital gains have been under assessed. In order to assessee the escaped income namely the capital gains, the assessment has been reopened. A notice u/s.143(2) is enclosed. You are requested to appear on 12.02.2014 as required in the said notice"

7. I have heard both the parties and perused the material on record. Admittedly, there is a difference between the reasons recorded for re-opening and what is furnished to the assessee vide its letter dated 04.02.2014. As held by the Supreme court in the case of GKN Driveshafts (India) Ltd., Vs. I.T.O(supra), it is mandatory on the part of the AO to furnish the reasons recorded for reopening of assessment to the assessee, when it was asked for. In my opinion, the actual reasons were recorded by the AO for re-opening of assessment was not furnished to the assessee. Thus, there was a deviation from the judgement of Supreme Court by the ld. Assessing Officer. The reasons supplied to the assessee were not the reasons actually recorded and objections, which the assessee would like to place before the AO, cannot be put into action. Therefore, in my opinion, the AO is not justified in not furnishing the actual reasons for

reopening of assessment . As such, the assessment order cannot be upheld. In the similar circumstances, the Delhi High Court in the case of Haryana Acrylic Manufacturing Co. Vs. C.I.T & Anr., reported in [2009] 308 ITR 38(Del.) observed as under:-

> *"31. This argument suffers from several infirmities. First of all, the respondents cannot be permitted to gloss over the fact that the reasons which were supplied to the petitioner were different from the reasons purportedly recorded in the said form on which they now seek to rely. If the reasons in the said form were the " actual" reasons, why were they not communicated to the petitioner ? Why was nothing said about these reasons (noted in the form) when the petitioner filed its objections to the reasons which were supplied to it ? It must be remembered that in its objections, the petitioner took the specific plea that in the absence of any allegation that the petitioner had failed to disclose fully and truly all material facts necessary for assessment, the Assessing Officer had no jurisdiction to issue the notice under section 148 and initiate action under section 147 after four years from the end of the relevant assessment year. Despite this precise objection, there is no mention of the reasons noted in the said form in the impugned order dated March 2, 2005. If the respondents had regarded the reasons noted in the said form to be the " actual" reasons, it would have been very easy for the Assessing Officer to have countered this objection by simply referring to the reasons noted in the form and saying that the allegation of failure to disclose is very much there. It is obvious that the reasons noted in the said form were never regarded as the reasons for initiating action under section 147 of the said Act. Thus, the respondents cannot now be permitted to fall back on those purported reasons noted in the said form.*

32. Secondly, let us assume for the sake of argument that the " actual" reasons were those as noted in the said form. Then why did the Assessing Officer communicate a different set of reasons to the petitioner ? Did he think that the supplying of reasons and the inviting of objections were mere charades ? Did he think that it was a mere pretence or a formality which had to be gotten over with ? At this point, it would be well to remember that the Supreme Court in G. K. N. Driveshafts [2003] 259 ITR 19 had specifically directed that when a notice under section 148 of the said Act is issued and the noticee files a return and seeks reasons for the issuance of the notice, the Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of the reasons, the noticee is entitled to file objections to the issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. These are specific directions given by the Supreme Court in all cases where notices under section 148 of the said Act are issued. Surely, the Assessing Officer could not have construed these specific directions to be a mere empty formalities or dead letters ? There is a strong logic and purpose behind the directions issued by the Supreme Court and that is to prevent high-handedness on the part of Assessing Officers and to temper any action contemplated under section 147 of the said Act by reason and substance. In fact, even section 148(2) stipulates that the Assessing Officer shall, before issuing any notice under the said section, record his reasons for doing so. The Supreme Court has only carried forward this mandatory requirement by directing that the reasons which are recorded be communicated to the assessee within a reasonable period of time so that at that stage itself the assessee may point out any objections that he may have with regard to the initiation of action under section 147 of the said Act. The requirement of recording the reasons, communicating the same to the assessee, enabling the assessee to file objections and the

requirement of passing a speaking order are all designed to ensure that the Assessing Officer does not reopen assessments which have been finalized on his mere whim or fancy and that he does so only on the basis of lawful reasons. These steps are also designed to ensure complete transparency and adherence to the principles of natural justice. Thus, a deviation from these directions would entail the nullifying of the proceedings. Assuming as we have done that the " actual" reasons were those as noted in the said form, it is obvious that the reasons were never communicated to the petitioner and it is only for the first time in the course of the present writ petition that those " reasons" have surfaced. Therefore, if he proceeded on the assumption that the " actual" reasons were those as noted in the said form, the proper course of action as directed by the Supreme Court in G. K. N. Driveshafts [2003] 259 ITR 19, has not been followed. It would mean that the reasons which were supplied to the petitioner were not the actual reasons and the objections which were taken by the petitioner were not to the actual reasons and the speaking order dated March 2, 2005, which was passed was also neither on the basis of the actual reasons nor the objections to the actual reasons. The entire process would be a sham and would amount to making a mockery of the law as settled by the Supreme Court. Therefore, for this reason also, the notice under section 148 as well as all proceedings subsequent thereto as also the order dated March 2, 2005, are liable to be quashed.

33. Thirdly, it could be argued that the reasons supplied to the petitioner in September, 2004, be disregarded so also the objections filed by it as also the impugned order dated March 2, 2005, and the reasons noted in the said form be now taken as the reasons for the issuance of the notice under section 148 and the petitioner may now prefer his objections, if

any, and thereupon the Assessing Officer be directed to pass a speaking order. In other words, such an argument requires us to sweep all the proceedings emanating from the supply of reasons in September, 2004, and culminating in the passing of the order dated March 2, 2005 " under the carpet", as it were. And, starting the process as per the directions given in G. K. N. Driveshafts [2003] 259 ITR 19 (SC) afresh considering the reasons noted in the said form to be the actual reasons for the issuance of the notice under section 148. If we were to accept this argument, we would have to ignore the directions given by the Supreme Court in G. K. N. Driveshafts [2003] 259 ITR 19 that the Assessing Officer is bound to furnish reasons within a reasonable time. The notice under section 148 was issued on March 29, 2004 The petitioner filed the return and sought reasons by its letter dated May 11, 2004, If the date of filing of the counter-affidavit in this writ petition is taken as the date of communication of the reasons which forms part of the said form, a copy of which is annexure A to the counter-affidavit, then the date of supply of reasons, based on this argument, would be November 5, 2007. This immediately makes it clear that the Assessing Officer, who was bound to furnish his reasons within a reasonable time, did not do so. The period which elapsed between May 11, 2004, when the petitioner made the request for communicating the reasons, and November 5, 2007, the date when the counter-affidavit was filed, can certainly not be regarded as a reasonable period of time. Apart from this, we must not forget the provisions of section 149 which prescribes the time limit for a notice under section 148. Section 149(1)(b) stipulates the outer limit of six years from the end of the relevant assessment year where the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees one lakh or more for that year. This means that a notice under section 148, in the present case, could not, in any event,

have been issued after six years from the end of the assessment year 1998-99, i.e., after March 31, 2005. In whichever way we look at it, a notice under section 148 without the communication of the reasons therefor is meaningless inasmuch as the Assessing Officer is bound to furnish the reasons within a reasonable time. In a case, where the notice has been issued within the said period of six years, but the reasons have not been furnished within that period, in our view, any proceedings pursuant thereto would be hit by the bar of limitation inasmuch as the issuance of the notice and the communication and furnishing of reasons go hand-in-hand. The expression " within a reasonable period of time" as used by the Supreme Court in G. K. N. Driveshafts [2003] 259 ITR 19 cannot be stretched to such an extent that it extends even beyond the six years stipulated in section 149. For this reason also, even assuming that we overlook all that has happened between May 11, 2004, when the petitioner sought the reasons, and November 5, 2007, when the said form annexed to the counter-affidavit was filed in this court, the validity of the notices under section 148 issued on March 29, 2004, and any proceedings pursuant thereto cannot be upheld."

7.1 In view of the above, I am of the opinion that the re-assessment order have no leg to stand and it is to be quashed by placing reliance in the judgemnent of Apex Court in the case of GKN Driveshafts (India) Ltd., Vs. I.T.O (supra) and also the judgement of Delhi High Court in the case of Haryana Acrylic Manufacturing Co. Vs. C.I.T & Anr. (supra).

8. Since I have quashed the re-assessment order, I am refrained from going into other grounds of appeal.

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

Order pronounced on 22nd,January,2018.

Sd/-
(**चंद्र पूजारी**)
(**CHANDRA POOJARI**)
लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,
Dated the 22nd January, 2018.

K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF