

आयकर अपीलिय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.132/Vizag/2016
(निर्धारण वर्ष / Assessment Year: 2007-08)

Sri Pinnamaraju Venkatapathi Raju
Visakhapatnam
[PAN No.ACAPP9548A]
(अपीलार्थी / Appellant)

JCIT, Circle-3(1),
Visakhapatnam

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri C. Kameswara Rao, AR
प्रत्यार्थी की ओर से / Respondent by : Shri P.S. Murthy, DR
सुनवाई की तारीख / Date of hearing : 21.02.2018
घोषणा की तारीख / Date of Pronouncement : 28.02.2018

आदेश / ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal filed by the assessee is directed against order of the Commissioner of Income-Tax (Appeals)-I {CIT(A)}, Visakhapatnam vide ITA No.265/2011-12/DC,C-3(1),Vsp/2015-16 dated 16.2.2016 for the assessment year 2007-08.

2. The assessee filed return of income in this case for the assessment year 2007-08 declaring total income of ₹ 31,66,816/- besides agricultural income of ₹ 1,75,000/- on 31.3.2008. The return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called as 'the Act') and subsequently the assessment was reopened u/s 147 of the Act by issue of notice u/s 148 and completed the assessment u/s 143(3) r.w.s. 147 on total income of ₹ 47,55,478/- apart from the agricultural income of ₹ 1,35,000/-. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and agitated before the CIT(A) with regard to the issue of non supply of the reasons for reopening the assessment, apart from the technical ground of the validity of issue of notice u/s 148 of the Act, the assessee also challenged the order on merits . The Ld. CIT(A) upheld the validity of the reassessment made u/s 147 of the Act and allowed the appeal partly. Agitated by the order of the Ld. CIT(A), the assessee is in appeal before this Tribunal and the raised the following grounds of appeal:

- 1. The Learned Commissioner Of Income Tax (Appeals) has eared both on facts and in law in confirming the action of the Assessing Officer in denying the claim of the assessee U/s.54 of the Income Tax act. 1961 of Rs. 10,16,860/ out of the total claim of Rs.28,98,350/-*
- 2. The Learned Commissioner of Income Tax (A) has failed to appreciate the evidence on record, the registered sale deeds and the link documents, evidencing that there exists only one residential house property, and the assessee has purchased said residential house in two parts from two persons father and daughter.*

3. *The Learned Commissioner of Income Tax (Appeals) has misdirected himself on the Assessing Officers remand report, which is based on Inspectors report, which the Assessing officer considered it as internal correspondence.*
 4. *The Learned Commissioner of Income Tax (Appeals) has failed to appreciate the law involved in not supplying the reasons recorded by the A.O for issuing notice U/s.148 in spite of the specific request of the assessee. The Learned Commissioner of Income Tax (Appeals) has equated discussing the reasons with the Authorised Representative, during the course of assessment proceedings with that of supplying the reasons recorded to the assessee.*
 5. *The Assessment order is liable to be quashed for not supplying the reasons recorded for issuing notice u/s. 148, even at the specific request of the assessee.*
 6. *The appellant pleads for permission to add, amend, modify, and / or alter any of the above grounds at the time of hearing. For these and any other reasons that may be submitted at the time of hearing the appellant pleads for relief.*
3. Ground Nos.4 & 5 are related to the validity of reassessment made u/s 147 r.w.s 143(3) of the Act without supplying the reasons recorded for reopening of the assessment by the A.O. During the appeal hearing, the Ld. Counsel for the assessee submitted that the assessee has made the request for supply of the reasons to the A.O. in writing vide letter dated 12.8.2008 but the A.O. has not supplied the reasons. Therefore, the Ld. A.R. argued that as per the Hon'ble Supreme Court judgement in the case of GKN Driveshafts (India) Limited Vs. ITO and Others 259 ITR 19 (SC), the assessment made without supply of reasons is invalid, accordingly, requested to quash the assessment made u/s 147 r.w.s. 143(3) of the Act vide order dated 22.11.2011.

4. On the other hand, the Ld. D.R. argued that though the A.O. has not supplied the reasons, the A.O. has discussed the issue in detail with the assessee's A.R during the assessment proceedings, which was signed by the Ld. A.R. Mr. Y.S.N. Murthy in the order sheet. According to the Ld. D.R., the reasons for reopening were discussed with the Ld. A.R., thus there is no requirement of supply of reasons separately, since the reasons for reopening of the assessment was made known to the assessee and argued that there is no infirmity in the order of the assessing officer in reopening of assessment and accordingly requested to uphold the order of the A.O. and dismiss the appeal of the assessee.

5. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In this case, the A.O. has reopened the assessment by issue of notice u/s 148 of the Act. During the reassessment proceedings, the assessee has replied to the notice issued u/s 148 of the Act and requested for supply of the reasons recorded for the issue of notice u/s 148 of the Act. However, the A.O. has not supplied the reasons. As per the Hon'ble Supreme Court decision in the case of GKN Driveshafts (India) Limited Vs. ITO and Others cited (supra), once the notice u/s 148 of the Act is issued, the proper course of action is to file the return and if the assessee so desires to seek the reasons for issue of notice and the A.O.

is bound to furnish the reasons within a reasonable time. On receipt of the reasons, the assessee is entitled to file objections to issuance of notice and the A.O. is bound to dispose of the same by passing speaking order. The assessing officer has not followed the above law laid down by the Hon'ble Supreme Court. Non-furnishing of reasons to the assessee is fatal to the reassessment made u/s 147 of the Act. Further, as per the provisions of Income Tax Act, before issuing the notice u/s 148 of the Act, the A.O. is bound to record the reasons for issue of such notice. For ready reference, we reproduce hereunder section 148 of the Act:

"Section 148 [Issue of notice where income has escaped assessment.

148 [(1)] *Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:*

[GKN Driveshafts (India) Limited Vs. ITO and Others that in a case—

- (a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on 30th day of September, 2005 in response to a notice served under this section, and*
- (b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the*

expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case—

(a) where a return has been furnished during the period commencing on 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.]

[Explanation -- For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.

[(2) The Assessing Officer shall, before issuing any notice under this section record his reasons for doing so.]”

6. In the instant case, on verification of the assessment record, it is noticed that the A.O. typed the reasons but not signed the order sheet, thus there are no reasons recorded for reopening of assessment as required u/s 148 of the Act. The A.O. neither complied with the statutory requirement of recording the reasons for issue of notice nor complied with the law laid down by the Hon'ble Supreme Court in the case of reassessment proceedings. Therefore, the notice issued u/s 148 is bad in law accordingly same is quashed and the consequent assessment order made u/s 147 r.w.s. 143 (3) is annulled and the appeal of the assessee is allowed.

7. In the result, the appeal filed by the assessee is allowed.

The above order was pronounced in the open court on 28th Feb'18.

Sd/-

(वी. दुर्गराव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 28.02.2018

VG/SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 28.02.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – Sri P. Venkatapathi Raju, 3rd Floor, Srivarshini Enclave, HIG-40, Seethammadhara, NE, Visakhapatnam-530 013.
2. प्रत्यार्थी / The Respondent – The JCIT (OSD), Circle-3(1), Visakhapatnam
3. आयकर आयुक्त / The Principal CIT-1, Visakhapatnam
4. आयकर आयुक्त (अपील) / The CIT (A)-1, Visakhapatnam
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /
DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM