

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA

BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA Nos.179/Kol/2017

(निर्धारणवर्ष / Assessment Year: 2008-09)

Globsyn Technologies Ltd.	Vs.	I.T.O, Ward-2(3), Kolkata
XI-11 & 12, Block-EP & GP, Sector-V, Kolkata – 700 091.		Aayakar Bhawan, P-7, Chowringhee Square, Kolkata – 700 069.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAACG 3401 C		
(Appellant)	..	(Respondent)

Appellant by : Shri Manish Tiwari, FCA
Respondent by : Shri G. Hangshing, CIT(DR)

सुनवाईकीतारीख/ **Date of Hearing** : **12/04/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **26/04/2018**

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the Assessee, pertaining to Assessment Year 2008-09, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-14, Kolkata, in appeal No.178/CIT(14)/Wd-2(3)/2015-16, dated 30.11.2016, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3)/147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), dated 19.03.2014.

2. The grievances of the assessee are as follows:

"1. (a) That on the facts and in the circumstances of the case, the action of Ld. CIT(A) is unjustified in holding that initiation of re-assessment proceeding U/s 147 is not bad in law.

(b) That on the facts and in the circumstances of the case, the findings of Ld. CIT(A) that section 148 and 147 exist also of inadvertent escapement of income is opposed to law and therefore the action of Ld. CIT(A) to dismiss ground No.1 where initiation of proceeding U/s 147 was challenged is liable to be quashed.

2. That on the facts and in the circumstance of the case, Ld. CIT(A) is wrong and unjustified in dismissing ground No. 2 & 3 wherein the appellant contested the action of Assessing Officer who withdrew unabsorbed depreciation allowance of Rs. 2,30,92,733/- as allowed in order U/s 143(3) dated 16.12.2010.

3. That the appellant craves leave to add, alter, adduce or amend any ground on or at the time of hearing of the appeal.”

3. At the outset, itself the Id. counsel for the assessee has pointed out that during the reassessment proceedings u/s 147/148, the Assessing Officer has not provided the reasons for reopening the assessment. That is, the Assessing Officer has not furnished the reasons recorded u/s 147/148 of the Act. In the assessee's case under consideration, the assessment was completed u/s 143(3) of the Act on 16.12.2010. Subsequently, the assessee's case was reopened u/s 147 and notice u/s 148 was issued to the assessee on 20.03.2013 requesting him to file fresh return of income. In response to that, the assessee submitted a letter dated 04.12.2013 stating that original return filed u/s 139(1) of the Act should be treated as if the return filed u/s 148 of the Act. The Id. counsel submitted that if the reasons recorded u/s 147/148 of the Act is not furnished to the assessee then it is difficult for the assessee to defend his case. It is the duty of the Assessing Officer to furnish the reasons for reopening the assessment u/s 147/148 of the Act and the same should be provided along with the notice u/s 148 of the Act.

4. The Counsel pointed out that during the appellate proceedings, the assessee has objected reopening u/s 147/148 of the Act but the Id. CIT(A) rejected the contention of the assessee and held that the assessee has not cooperated during the assessment proceedings and the Assessing Officer after due diligence discovered the escapement of income. While dismissing the appeal of the assessee, the Id. CIT(A) observed as follows:

“As far as the appellant's objection that the AO could have found out from the material on record that there was no irregularity in the set off of loss and that the only basis was a misplaced reliance of the AO upon the revenue audit objection,

and that there was no "formation of opinion" on the part of the AO, it may be pointed out that the appellant, throughout reassessment proceedings did not cooperate with the AO and it was the AO same AO, who after examining therecords, decided that the set off was irregular. Therefore, the AO's opinion was consistent both before and after the issue of notice u/s 148 of the Act. The only point that remains is whether, if after due diligence at the time of proceedings u/s 143(3) of the Act, the AO could have discovered the escapement of income, the Assessing Officer could still reopen the assessment proceedings u/s 148. The judicial opinion is very clear on this issue and that is that even if the AO could have, after due diligence, brought the income that has escaped assessment, to tax, there is no embargo upon the reopening of assessment proceedings if the AO is of the bona fide belief that income has escaped assessment. Section 148 and 147 exist also for inadvertent escapement of income. Thus the contention of the appellant is not based on a correct reading of law and cannot be sustained."

5. The Id. counsel for the assessee, therefore, submitted before us that the Id CIT(A) was erred in holding that reassessment under section 147/148 was valid. Apart from this, it is necessary to furnish the reasons recorded u/s 147/148 of the Act, to the assessee otherwise, the assessee would not be able to defend his case and, therefore, it is against the principle of natural justice, and hence, reopening u/s 147/148 of the Act is bad in law.

6. On the other hand, the Id. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that it is an undisputed fact that the reasons recorded u/s 147/148 of the Act, have not been furnished to the assessee during the reassessment proceedings. The reasons recorded by the Assessing Officer should be furnished to the assessee to defend his case, as the principle of natural justice requires that the assessee should be given sufficient opportunity to defend his case and without knowing the reasons for reopening, how the assessee can defend his case.

8. We note that for passing an order under section 147 of the Act, recording of reasons u/s. 148 of the Act and communication thereof to party concerned is mandatory, for that we rely on the judgment of Hon`ble Supreme Court in the case of Nandlal Tejmal Kothari v. Inspecting ACIT (1998) 230 ITR 943 (SC), wherein it was held as follows:

“The controversy raised in this appeal is covered by the judgment of this Court in C. B. Gautam vs. Union of India (1992) 108 CTR (SC) 304 r/w (1993) 110 CTR (SC) 179 : (1993) 199 ITR 530 (SC) : TC 3PS.87, wherein it was held that :

“31. The recording of reasons which lead to the passing of the order is basically intended to serve a two-fold purpose :

(1) that the 'party aggrieved' in the proceeding before (sic—the Appropriate Authority), acquires knowledge of the reasons and in a proceeding before the High Court or the Supreme Court (since there is no right of appeal or revision), it has an opportunity to demonstrate that the reasons which persuaded the Authority to pass an order adverse to his interest were erroneous, irrational or irrelevant, and

(2) that the obligation to record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers . . .”

However, the above cited judgment of the Hon`ble Supreme Court is in the context of section 269C of the Income Tax Act, but we note that the *ratio decendi* , of the said judgment may be used in the context of section 147/148 of the Act.

9. We note that when a notice under Section 148 of the Income Tax 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. In the assessee`s case under consideration, the reasons were not

furnished to the assessee therefore, the reassessment order cannot be upheld. For that we also rely on the judgment, of the Coordinate Bench of ITAT, Kolkata in the case of Bhanu Vyapaar Pvt. Ltd. vs. ITO, Ward-6(4), Kolkata, on the same identical facts, wherein it was held as under:

“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 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. 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.”

10. Therefore, respectfully following the judgment of the Coordinate Bench in the case of Bhanu Vyapaar Pvt. Ltd. (supra), where we note the assessee's facts under consideration are identical and the Coordinate Bench has dismissed the appeal of the Revenue observing that the reasons recorded u/s 147/148 were not provided to the assessee. In the assessee's case under consideration, similar, identical facts exist, therefore, respectfully following the judgment of the Coordinate Bench, we allow the appeal of the assessee. Since, we have allowed the appeal of the assessee based on the technical reasons(not furnishing the

reasons recorded U/s 147 to assessee), therefore, other grounds raised by the assessee on merits, do not require adjudication.

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

Order is pronounced in the open court on 26/04/2018.

Sd/-
(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 26/04/2018

(RS, SPS)

Sd/-
(A. L. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- Globsyn Technologies Ltd.
2. प्रत्यर्थी/ The Respondent- I.T.O, Ward-2(3), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.