

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.391 & 392/PUN/2016  
निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

Dy. Commissioner of Income Tax,  
Central Circle – 1(1), Pune

.....अपीलार्थी / Appellant

**बनाम / V/s.**

P3 Properties,  
504, Corporate Plaza,  
Next to Chaturshingi Temple,  
Pune – 411016

PAN : AAIFP1712G

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak &  
Shri Suhas P. Bora  
Revenue by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 19-04-2018  
घोषणा की तारीख / Date of Pronouncement : 04-05-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

These two appeals have been filed by the Revenue against the order of Commissioner of Income Tax (Appeals)-13, Pune dated 31-12-2015 common for the assessment years 2008-09 and 2009-10.

2. The Revenue in appeal for assessment year 2008-09 has assailed the order of Commissioner of Income Tax (Appeals) by raising following grounds :

1. *“On the facts and the circumstances of the case and in law, the Ld. CIT(A) was not justified in allowing the appeal of the assessee on the ground non-rebuttal of assessee's objection against notice u/s. 148 issued for the purpose of re-assessment and the same has been accepted without any verification.*
2. *On the facts and the circumstances of the case and in law, the Ld.CIT(A) ignored the fact that the re-assessment order framed u/s. 148 duly complied with the decision of the Hon'ble Apex Court in the case of G K N Driveshafts (India) Ltd.*
3. *The order of the Ld. CIT(A) may be vacated and the assessing officer be restored.*
4. *The appellant craves leave to add, alter amend and modify any of the above grounds of appeal.”*

Identical grounds have been raised by the Revenue for the assessment year 2009-10.

3. The brief facts of the case as emanating from records are: The assessee firm is engaged in construction of buildings and development of housing projects. A search action u/s. 132 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) was carried out on the assessee on 11-01-2008. Notice u/s. 153A of the Act was issued to the assessee on 29-09-2008 for assessment years 2008-09 and 2009-10. In reply to notice the assessee filed its return of income claiming deduction u/s. 80IB(10) of the Act in both the assessment years. The assessments for assessment years 2008-09 and 2009-10 were completed u/s. 153A r.w.s. 143(3) of the Act on 31-12-2009 allowing assessee's claim of deduction u/s. 80IB(10) of the Act. Thereafter, second search was conducted on the assessee on 07-09-2011. The case of the assessee was reopened u/s. 147 of the Act. In response to notice u/s. 148, the assessee vide letter dated 30-03-2013 declared the

same income as was disclosed in return of income filed u/s. 153A of the Act. In reassessment proceedings, the Assessing Officer vide order dated 26-03-2014 disallowed assessee's claim of deduction u/s. 80IB(10) of the Act in assessment year 2008-09. Similarly in assessment year 2009-10, the Assessing Officer vide order of even date denied deduction u/s. 80IB(10) to the assessee.

Aggrieved by the assessment orders for the respective assessment years, the assessee filed appeal before the Commissioner of Income Tax (Appeals), challenging the validity of reassessment proceedings, as well as addition made on merits. The Commissioner of Income Tax (Appeals) vide impugned order held that the Assessing Officer has not followed the discipline as set out by the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & Ors. reported as 259 ITR 19. The Commissioner of Income Tax (Appeals) observed that the Assessing Officer has not disposed of the objections filed by the assessee against reopening and held the reopening in both the assessment years as bad in law. Against the findings of Commissioner of Income Tax (Appeals), the Revenue is in appeal before the Tribunal.

4. Shri Achal Sharma representing the Department submitted that the Commissioner of Income Tax (Appeals) has erred in holding that the Assessing Officer has not disposed of objections filed by the assessee against reasons recorded for reopening in assessment years 2008-09 and 2009-10. The Assessing Officer has considered the objections filed by the assessee and vide order dated 21-03-2014 has disposed of the same before passing the assessment orders. The Commissioner of Income Tax (Appeals) has wrongly assumed that the Assessing Officer has not disposed of the objections filed by the assessee. The Assessing Officer before

passing the assessment order has duly complied with the directions of Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & Ors. (supra).

5. On the other hand Shri Nikhil Pathak appearing on behalf of the assessee fairly admitted that the objections filed by the assessee against reasons recorded for reopening were disposed of by the Assessing Officer vide separate order dated 21-03-2014. The ld. AR contended that the Assessing Officer has violated the time line set out by the Hon'ble Bombay High Court in the case of Asian Paints Ltd. Vs. Deputy Commissioner of Income Tax & Anr. reported as 296 ITR 90 in passing the assessment orders. The ld. AR submitted that the notice u/s. 148 was issued to the assessee on 22-03-2013 for the impugned assessment years. The assessee vide letter dated 30-03-2013 declared the income as was returned by the assessee in response to notice u/s. 153A. The assessee sought reasons for reopening of the assessment vide letter dated 30-03-2013. The same were supplied to the assessee on 26-08-2013. The assessee filed objections against reopening of the assessment on 10-09-2013 and vide order dated 21-03-2014 the Assessing Officer disposed of the objections raised by the assessee against reopening of assessment. The order disposing of the objections was served on the assessee on 25-03-2014. On the very next day i.e. 26-03-2014 the Assessing Officer passed the assessment order. The ld. AR submitted that the Hon'ble Jurisdictional High Court in the case of Asian Paints Ltd. Vs. Deputy Commissioner of Income Tax & Anr. (supra) has held that if the Assessing Officer does not accept the objections filed by the assessee, he shall not proceed further in the matter within a period of four weeks from the date of service of the order on objections. The Hon'ble High Court has allowed the window of four weeks time to the

assessee to file appeal/writ against the rejection of the objections. The ld. AR further submitted that the Hon'ble Bombay High Court in the case of Aroni Commercials Ltd. Vs. Deputy Commissioner of Income Tax reported as 44 taxmann.com 304 has reiterated the time period regarding grant of four weeks time and has further reprimanded the Assessing Officer for violating the directions of the Hon'ble High Court, where the discipline in allowing four weeks time to the assessee before passing the assessment order is not followed.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The Revenue in appeal for both the assessment years has assailed the action of Commissioner of Income Tax (Appeals) in holding the reassessment proceedings as bad in law on the ground that the objections filed by the assessee against reopening are not disposed of. From the perusal of documents on record we observe that the Commissioner of Income Tax (Appeals) has failed to take note of the fact that the objections filed by the assessee against reopening of assessment u/s. 147 were disposed of by the Assessing Officer vide order dated 21-03-2014. Therefore, we are of considered view that the reason given by the Commissioner of Income Tax (Appeals) for setting aside the assessment orders is against the facts.

7. However, we observe that the Assessing Officer has violated the time line laid down by the Hon'ble Jurisdictional High Court in passing the assessment orders. Before proceeding further it would be relevant to have glance at the date and events necessary for the adjudication of the issue in hand :

Sl. No.	Events	Date
1	Notice u/s. 148	22-03-2013
2	Asking of the reasons for reopening by the assessee	30-03-2013
3	Reasons for reopening the assessment supplied by the Assessing Officer	26-08-2013
4	Objections filed by the assessee against reopening of the assessment	10-09-2013
5	Objections decided by the Assessing Officer	21-03-2014
6	Service of order deciding objections	25-03-2014
7	Assessment order	26-03-2014

8. The Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & Ors. (supra) has held that when a notice u/s. 148 of the Act is issued, the proper course of action for the assessee is to file return and if he so desires seek reasons for issuing notice. The Assessing Officer is duty bound to furnish reasons within a reasonable time. On receipt of reasons, the assessee 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.

9. In the present case, we observe that the assessee, as well as the Assessing Officer have complied with the necessary course as set out by the Hon'ble Apex Court in performing their respective parts starting from issuance of notice u/s. 148 to disposal of reasons. However, we observe that the Assessing Officer has violated the directions of Hon'ble Jurisdictional High Court in the case of Asian Paints Ltd. Vs. Deputy Commissioner of Income Tax & Anr. (supra) in not allowing four weeks time to the assessee before passing the assessment order after rejecting the objections. The time line set out by the Hon'ble Bombay High Court in

allowing four weeks time to the assessee is binding on the Assessing Officer. The violation of the directions of the Hon'ble Jurisdictional High Court would make the assessment order bad in law. The Hon'ble Bombay High Court in the case of Aroni Commercials Ltd. Vs. Deputy Commissioner of Income Tax (supra) in similar circumstances where the assessment order was passed in undue haste has condemned the action of Assessing Officer and has set aside the assessment order. The observations of the Hon'ble High Court are as under :

*“6. It is axiomatic that the law declared by this Court is binding on all authorities functioning within the jurisdiction of this Court. It is not open to the Assessing Officer to feign ignorance of the law declared by this Court and pass orders in defiance of the law laid down by this Court. We do not accept this submission made on behalf of the revenue that the Assessing Officer was not aware of the decision of this Court in Asian Paints (supra). On the contrary, it appears that the order dated 19 December 2013 was passed only to make the entire proceeding pending before this Court redundant and to present the Court with a fait accompli. This is particularly so as the petitioner had on 18 December 2013 informed the Commissioner of Income Tax that a writ petition has been filed challenging the order dated 20 November 2013 in respect of A. Y. 2008-09 and is posted for admission on 23 December 2013. It is averred in the petition that the Assessing Officer was informed at the hearing held on 10 December 2013, that it is preparing a petition to challenge the re-opening for A. Y. 2008-09 on identical grounds as done in earlier Assessment Year namely A. Y. 2007-08 which is pending in this Court and ad interim relief has also been granted, restraining the revenue from proceeding with the assessment for A. Y. 2007-08. The passing of an order on 19 December 2013 by the Assessing Officer in undue haste and thereafter contending that in view of alternative remedy, the writ petition should not be entertained, does not appear bonafide. This undue haste in passing the impugned order dated 19 December 2013 is an attempt to overreach the Court and to thwart the petitioner's challenge to the impugned order dated 20 November 2013 pending before this Court.*

*7. In the above circumstances, we set aside the order dated 19 December 2013 passed by the Assessing Officer under Section 143(3) read with Section 147 of the Act for A. Y. 2008-09.”*

10. In the present case we observe that objections against reopening were disposed of by the Assessing Officer on 21-03-2014. The said order was served on the assessee on 25-03-2014. The Assessing Officer passed the assessment order on 26-03-2014 i.e. on the very next day of service of

the order rejecting objections. There was no time with the assessee to avail appropriate remedy against rejection of objections. Thus, there was clear violation of principle of natural justice and the law laid down by the Hon'ble Jurisdictional High Court. Since, the Assessing Officer has violated the time line in passing the assessment order, the assessment order is liable to be set aside. We hold and direct accordingly. Thus, the appeals filed by the Revenue are liable to be dismissed being devoid of any merit.

11. In the result, both the appeals by the Revenue are dismissed.

Order pronounced on Friday, the 04<sup>th</sup> day of May, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 04<sup>th</sup> May, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-13, Pune
4. The DGIT (Inv.), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.  
//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune