IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. No.586 to 588 /Coch/2017
Assessment Years : 1999-2000 to 2001-02

Dr. R.P. Patel, Hahneman House, College Road, Kottayam. [PAN: AEVPP 8606G]	**Vs.**	The Assistant Commissioner of Income-tax, Circle-1, Kottayam.
(Assessee-Appellant)		**(Revenue-Respondent)**

S.P. Nos. 63 to 65/Coch/2017 I.T.A. No.586 to 588 /Coch/2017)
Assessment Years : 1999-2000 to 2001-02

Dr. R.P. Patel, Hahneman House, College Road, Kottayam. [PAN: AEVPP 8606G]	**Vs.**	The Assistant Commissioner of Income-tax, Circle-1, Kottayam.
(Assessee-Appellant)		**(Revenue-Respondent)**

Assessee by	Shri Iype John, CA
Revenue by	Smt. A.S. Bindu, Sr. DR

Date of hearing	01/08/2018
Date of pronouncement	17/08/2018

O R D E R

Per CHANDRA POOJARI, ACCOUNTANT MEMBER:

These appeals filed by the assessee are directed against the common order of the CIT(A), Kottayam dated 10-08-2017 and pertain to the assessment years 1999-2000 to 2001-02. The assessee has also filed Stay Petitions. Since the issues involved in these appeals are common, they were heard together and are being disposed of by this common order.

2. The first common ground is with regard to confirmation of re-opening of the assessment without authority of law based on an invalid notice u/s. 148 and also without dealing with objections to reasons recorded as per letter dated 20/07/2004.

3. The facts of the case are that in these assessment years, the assessments were re-opened since there was escapement of income. For the assessment year 1999-2000, the reason recorded for re-opening the assessment was that the assessee had not declared the income from IVP certificates though it is taxable on accrual basis. According to the assessee, since the certificate was encashed during the financial year to meet tax liabilities, the assessee was to declare income on receipt basis. So the AO found that the income is to be taxed on accrual basis. Similarly, for the assessment years 2000-01 and 2001-02, the

assessments were re-opened on the reason that the assessee did not declare interest income from IVP.

4. Against this, the assessee went in appeal before the CIT(A) challenging the re-opening of the assessments and also with regard to non-disposing of the objections raised by the assessee. The assessee challenged the re-opening of the assessments before the CIT(A) stating that re-opening of the assessments is not valid in law. The CIT(A) observed that the assessee did not declare income from IVP when it is taxable on accrual basis. So as to prove the interest income on IVP, the Assessing Officer taxed on accrual basis. The assessee stated that notice issued u/s. 148 of the Act is invalid as the reasons recorded for re-opening the assessments were not communicated to the assessee alongwith the notice issued u/s. 148 of the Act. The assessee has also challenged that the objections filed by the assessee against the re-opening of the assessments were not discussed by passing a speaking order by the AO.

5. We have heard the rival submissions and perused the material on record. The first objection of the Ld. AR is that the AO has not disclosed the reasons recorded for re-opening of the assessment in the notice issued for re-opening of the assessment. In our opinion, the statute requires that the reason should be recorded prior to the issue of notice u/s. 148 of the Act. There is no requirement in section 148 or anywhere in the Income Tax Act, 1961 that the notice should

disclose the said reasons. At the stage of the issue of notice of reassessment, it is not necessary to disclose the reasons for re-opening of the assessment. The assessee was not entitled to disclose such reasons at the time of issuing the same. The statute does not require that the notice u/s. 148 should disclose the reasons for re-opening of the assessment. Reliance is placed on the judgment of the Supreme Court in the case of ITO & Ors. vs. Biju Patnaik (188 ITR 247). The only requirement for initiating proceedings u/s. 148 is that there must be reasons to justify the belief that there is escapement of income. The requirement is only so far and no further and the requirement of furnishing of reasons at the stage of issue of notice does not arise. Because no reasons are stated in the notice, it does not mean that there is no reason for re-opening of the assessments. Reliance is placed on the judgment of the Jurisdictional High Court in the case of Dr. V. Mohandas vs. DCIT & Anr. (188 ITR 727) (Ker.).

5.1 The next grievance of the assessee is that objection raised by the assessee regarding the re-opening of the assessments was disposed of by the AO by a separate order. Admittedly, notice u/s. 148 was issued and the assessee asked for reasons for re-opening of the assessments and the same was issued to the assessee for all the assessment years. The contention of the assessee was that a separate speaking order is to be passed by the AO for disposing of the objections raised against re-opening of the assessments. We do not find any infirmity in the assessment order passed by the AO in non- disposing of the

objections raised by the assessee by separate order since the same was done by the AO by way of a speaking order in the assessment order itself. The Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO (259 ITR 19) held as under:

> *"We see no justifiable reason to interfere with the order under challenge. However, we clarify 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 a return and if so desires, to seek reasons for issuing notices, and 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 AO 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 abovesaid five assessment years"*

5.2 Further, the Jurisdictional High Court in the case of Tolins Rubbers vs. ACIT (270 ITR 280) held that when a notice under section 148 of the Income-tax Act, 1961 was issued, the proper course of action for the noticee is to file a return and if so desires, to seek reasons for issuing notices, and the AO 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 AO is bound to dispose of the same by passing a speaking order. In view of the above judgment, the AO is under the obligation to pass a speaking order on the objections submitted by the assessee to the reasons recorded by him for re-opening of the assessment. As seen from the assessment order, the AO has considered the objections of the assessee and said that it was entertainable after going through the objections

filed by the assessee before the CIT u/s. 264 of the I.T. Act. He also observed that the assessee kept silent of the fact that the Indira Vikas Patras had been encashed by the Department and utilized for the purpose of meeting the assessee's tax liabilities which is tantamount to not only receiving the maturity proceeds but also not being asked to pay tax to the extent of the amount appropriated. Therefore, the assessee cannot say that his objections were not disposed of by the AO by a speaking order. The AO is only required to dispose of the objections of the assessee to the notice issued u/s. 148 of the Act by a speaking order and there is no requirement of a separate order and disposing of the objections in the assessment order itself is tantamount to considering all the objections raised by the assessee. Hence, there is only pre condition for the Assessing Officer to pass a speaking order for disposing of the objections raised by the assessee with regard to the re-opening of the assessments and not by separate order. In our opinion, even if the Assessing Officer disposed of the objections raised by the assessee challenging the re-opening of the assessments for the relevant assessment years in the assessment order itself, it is the due compliance of the judgment of the Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO (supra). Accordingly, this ground of appeals of the assessee challenging the re-opening of the assessments is dismissed.

6. The next common ground for all the assessment years is with regard to taxability of interest income from IVPs on accrual basis.

7. The facts of the case are that the assessee claimed that investment in IVPs is also an investment in capital asset. Accordingly, it was submitted that there can be no question of assessing any interest on the same. However, the AO found that the IVPs have yielded interest which shall be taxed on accrual basis.

8. On appeal, the CIT(A) confirmed the taxability of interest income from IVPs on accrual basis by following the judgment of the Jurisdictional High Court in the assessee's own case in ITA Nos. 109, 94, 95, 98, 103, 104, 106 & 108 of 2007 dated 03/04/2009 for the AYs. 1991-92 to 1998-99 wherein it was held that the interest on IVP is to be charged on accrual basis.

9. Against this the assessee is in appeal before us.

10. We have heard the rival submissions and perused the record. As held by the CIT(A), we find that this issue is squarely covered by the judgment of the Jurisdictional High Court in the assessee's own case in ITA Nos. 109, 94, 95, 98, 103, 104, 106 & 108 of 2007 dated 03/04/2009 for the AYs. 1991-92 to 1998-99 wherein it was held that the interest on IVP is to be charged on accrual basis. This ground of appeals of the assessee is dismissed.

11. The assessee has raised additional ground in these appeals which reads as follows:

"The Commissioner of Income Tax(Appeals) erred in confirming the addition of interest charged u/s. 234B of Rs.2,75,037/- but ought to have found that the levy was not in accordance with law."

11.1 The assessee filed a petition for admission of the additional ground with a plea that due to inadvertent mistake, this ground was not raised before the Tribunal. After hearing both the parties, we admit the additional ground for adjudication as the reason advanced by the Ld. AR for not raising the ground on earlier occasion is bonafide.

11.2 We have heard the rival contentions and perused the record. The main grievance of the assessee is that while computing interest u/s. 234B of the Act, the Assessing Officer has not given due credit to the pre-paid tax. We find merit in the argument of the Ld.AR. Since the assessee has paid advance tax and self assessment tax, we direct the Assessing Officer to give due credit to the pre-paid tax before computing interest u/s. 234B of the Act. This additional ground of the assessee is partly allowed for statistical purposes.

S.P. Nos. 63-65/Coch/2017

12. Since we have disposed of the appeals, the Stay Petitions have become infructuous and they are dismissed as infructuous.

13. In the result, the appeals filed by the assessee are partly allowed for statistical purposes and the Stay Petitions are dismissed.

Order pronounced in the open Court on this 17th August, 2018.

sd/-	sd/-
(GEORGE GEORGE K.)	(CHANDRA POOJARI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Place: Kochi
Dated: 17th August, 2018
GJ
Copy to:
1. Dr. R.P. Patel, Hahneman House, College Road, Kottayam.
2. The Assistant Commissioner of Income-tax, Circle-1, Kottayam.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Pr. Commissioner of Income-tax, Kottayam.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin