

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

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1807/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Gera Developments Pvt. Ltd.,
200, Gera Plaza,
Boat Club Road,
Pune – 411001

.... अपीलार्थी/Appellant

PAN: AAACG6703F

Vs.

The Dy. Commissioner of Income Tax,
Circle 1(2), Pune

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1808/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Gera Developments Pvt. Ltd.,
200, Gera Plaza,
Boat Club Road,
Pune – 411001

.... अपीलार्थी/Appellant

PAN: AAACG6703F

Vs.

The Addl. Commissioner of Income Tax,
Range 1, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Nilesh Khandelwal

प्रत्यर्थी की ओर से / Respondent by : Dr. Mahesh Akhade

सुनवाई की तारीख / Date of Hearing : 12.09.2018	घोषणा की तारीख / Date of Pronouncement: 29.11.2018
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आदेश / ORDER**PER SUSHMA CHOWLA, JM:**

Both the appeals filed by assessee are against separate orders of CIT(A), Pune-1, dated 13.03.2014 & 26.03.2014 relating to assessment years 2010-11 and 2011-12 against respective orders passed under sections 143(3) r.w.s. 147 and 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. Both the appeals relating to the same assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. First, we shall take up the appeal of assessee in ITA No.1807/PUN/2016, relating to assessment year 2010-11, wherein the preliminary issue raised is against re-assessment proceedings initiated under section 147/148 of the Act. The assessee has by way of ground of appeal No.4 challenged the re-assessment proceedings being invalid as reasons recorded for reopening the assessment have not been furnished to the assessee. The assessee has also raised various other grounds of appeal by way of additional ground of appeal also, but during the course of hearing, the learned Authorized Representative for the assessee pointed out that in case jurisdictional issue raised vide ground of appeal No.4 is decided in favour of assessee, the other grounds of appeal would become academic. The ground of appeal No.4 raised by assessee reads as under:-

“4. *The Id CIT(A) grossly erred in not following the principles laid down by the Jurisdictional High Court that where the reasons recorded are not furnished to the assessee till the completion of the reassessment, the order or reassessment is liable to be quashed and set aside.*”

4. Briefly, in the facts of the case, original assessment was completed under section 143(3) of the Act on 28.03.2013 and deduction under section 80IB of the Act was disallowed in the hands of assessee and income was computed at ₹ 1,42,39,620/-. The Assessing Officer received information from the office of Director General (Inv) Pune that the assessee was one of the beneficiaries and indulged in hawala transactions. The Assessing Officer thus, recorded reasons for reopening the assessment under section 147 of the Act and issued notice under section 148 of the Act on 22.03.2013. The Assessing Officer notes that reasons were recorded and were provided to the assessee and the same are reproduced at page 2 of assessment order. In response to the notice issued under section 148 of the Act, the assessee has participated in assessment proceedings and the assessment was completed after making addition of ₹ 9,69,481/-.

5. The CIT(A) has upheld the order of Assessing Officer, against which the assessee is in appeal.

6. The learned Authorized Representative for the assessee pointed out that certain factual aspects need to be considered for adjudicating the issue raised in the present appeal. The original assessment order under section 143(3) of the Act was passed on 28.03.2013. He further pointed out that when original assessment proceedings were pending, notice under section 148 of the Act was issued to the assessee on 22.03.2013, copy of which is placed at page 9 of Paper Book. The assessee in response furnished letter saying that return of income already filed may be treated as filed in response to notice issued under section 148 of the Act. Vide the said letter itself the assessee requested for copy of reasons recorded under section 148(2) of the Act. This letter is dated

02.05.2013. The assessee claims that it never received reasons recorded for reopening the assessment. However, after re-assessment order was passed under section 143(3) r.w.s. 147 of the Act, letter was filed before the Assessing Officer on 03.04.2014 and it was pointed out that in the body of aforesaid assessment order following incorrect statements have been made:-

- (i) *That the reasons recorded under section 148(2) of the Act, were provided to the assessee Company; and*
- (ii) *That Shri Soniminde, AR of the assessee Company attended the office of the AO, in connection with the re-assessment proceedings.*

7. The assessee reiterated that both the aforesaid statements were not only factually incorrect but also false. The assessee thus, pointed out that since it was filing appeal against aforesaid re-assessment order, it was requested that reasons recorded under section 148(2) of the Act were provided to the assessee, be supplied and also the evidence by way of relevant part of order sheet that Shri Soniminde had attended the office of the Assessing Officer in connection with the impugned re-assessment proceedings, be also provided for. A reminder was made to the Assessing Officer to provide the above information vide letter dated 10.10.2015. In reply, vide letter dated 11.02.2016, the Assessing Officer reported to the CIT(A) that on verification of record, it was seen that reasons for reopening the assessment were recorded and as per order sheet entry dated 07.05.2013, the same were given to Shri Soniminde and both the copies of reasons recorded and the copy of order sheet were enclosed for information. Before the CIT(A), the assessee filed written submissions pointing out the above said facts and circumstances and pointed out that the contents of re-assessment order that reasons recorded under section 148(2) of the Act were supplied to the assessee and Shri Soniminde attended the office in connection with re-assessment proceedings, were totally incorrect. In this regard, reliance was placed on series of decisions

with lead order by the Hon'ble Bombay High Court in CIT Vs. Videsh Sanchar Nigam Ltd. (2012) 340 ITR 66 (Bom), where the reasons recorded for reopening the assessment have not been furnished to the assessee till completion of assessment, re-assessment order could not be upheld. The assessee also filed comments to the letter of Assessing Officer addressed to CIT(A) dated 11.02.2016 vide his letter dated 10.03.2016 and stressed that the statements in re-assessment order and order sheet entries and even comments of the Assessing Officer in remand report were totally incorrect and false. It was pointed out that the Assessing Officer has recorded that Shri Soniminde was Accountant who had attended the proceedings from time to time but Shri Soniminde was the Vice President (Finance) of the company and not the Accountant of assessee company and number of accountants were working under him and hence, the Assessing Officer had made false / incorrect statements in the assessment order. The assessee stressed that it had never been provided reasons recorded for reopening the assessment and Shri Soniminde had never appeared before the Assessing Officer during the impugned assessment proceedings and there is no merit in the assessment proceedings.

8. The learned Departmental Representative for the Revenue has not controverted the submissions of learned Authorized Representative for the assessee except for relying on the orders of authorities below.

9. We have heard the rival contentions and perused the record. The first issue which needs to be addressed is whether re-assessment proceedings which were initiated by issue of notice under section 148 of the Act during pendency of original assessment proceedings are validly initiated. It is very

clear from the factual aspects that original assessment order was passed on 28.03.2013, copy of which is placed at pages 1 to 8 of Paper Book. Notice under section 148 of the Act was issued on 22.03.2013, copy of which is placed at page 9 of Paper Book. The reasons for reopening the assessment were recorded prior to that, wherein the Assessing Officer mentions in re-assessment order that it had received aforesaid information and reasons were recorded for reopening the assessment and thereafter, notice under section 148 of the Act dated 22.03.2013 was issued. The re-assessment order was passed on 14.03.2014. However, initiation of re-assessment proceedings during pendency of original assessment proceedings makes the initiation itself invalid. The Assessing Officer while carrying on original assessment proceedings has the authority to take cognizance of information received and make enquiries and decide the issue and while those original assessment proceedings were pending, there is no merit in the action of Assessing Officer in recording reasons for reopening the assessment and issuing the said notice under section 148 of the Act on 22.03.2013, the same is invalid. For the aforesaid proposition, we place reliance on the ratio laid down by the Hon'ble Bombay High Court in Ador Technopack Ltd. Vs. Dr. Zakir Hussein, Dy. Commissioner (2004) 140 TAXMAN 16 (Bom), wherein it was held that income cannot be said to have escaped assessment within meaning of section 147 of the Act, if the assessment proceedings in respect of that income and / or issue are still pending and have not yet been culminated into a final order.

10. Now, coming to the next stand of assessee that it has not been provided reasons for reopening the assessment though the Assessing Officer in assessment order claims that it had handed over the same to the Accountant of assessee Shri Soniminde. The stand of authorities in this regard is not to be

appreciated especially where the assessee had time and again requested for providing copies of reasons vide separate letters before the Assessing Officer i.e. letters dated 02.05.2013 and 03.04.2014 and even during the pendency of appellate proceedings, the assessee has made the said claim vide letter dated 10.10.2015. The assessee has also pointed out that he has no Accountant by name Shri Soniminde, which is mentioned in order sheet entries and the Assessing Officer claimed to have handed over the reasons to him; in fact, Shri Soniminde is Vice President (Finance) and he cannot be equated to be an Accountant of assessee company. In such scenario, we find no merit in the orders of authorities below in holding that reasons recorded for reopening the assessment have been handed over to the assessee.

11. The non-handing over of reasons recorded for reopening the assessment makes re-assessment proceedings fatal and invalid as held by the Hon'ble Bombay High Court in CIT Vs. Videsh Sanchar Nigam Ltd. (supra). The Hon'ble Bombay High Court held that since the reasons recorded for reopening the assessment were not furnished to the assessee till completion of assessment, re-assessment order cannot be upheld. The Hon'ble High Court also noted the fact that similar view was taken by the said Court in CIT Vs. Fomento Resorts & Hotels Ltd. in IT Appeal No.71 of 2006, dated 27.11.2006 and the Special Leave Petition filed by Revenue against the said decision had been dismissed by the Apex Court vide order dated 16.07.2007. It may also be appreciated that the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. Vs. ITO (2002) 125 Taxman 963 (SC) has held that after notice was issued under section 148 of the Act, proper course of action for noticee is to file return and if he so desires, to seek reasons for issuing notice and on receipt thereof to file objections to issuance of notice. The Hon'ble Supreme Court in the said case

while deciding Civil Appeal against Writ Petition had held that where the notice issued under section 143(2) of the Act and 148 of the Act and all that assessee was agitating, could be submitted by filing reply to said notices, the assessee was unjustified in invoking extraordinary writ jurisdiction at notice stage itself but the proposition which has been laid down by the Hon'ble Supreme Court is course of action to be taken after notice under section 148 of the Act is issued and that is for the assessee to file return of income and if he so desires, to seek reasons for issuing notice and on receipt thereof, to file objections to the issuance of notice.

12. In the present case, where the assessee has not been given reasons for reopening the assessment, then other procedure which is available to the assessee i.e. filing objections against reasons recorded for reopening, could not be complied with. In such circumstances, we hold the re-assessment proceedings initiated in the case are both invalid and bad in law and consequent re-assessment order passed cannot stand in the eyes of law. Thus, the preliminary issue raised vide ground of appeal No.4 is allowed and the issue raised on merits become academic.

13. Now, coming to the appeal in ITA No.1808/PUN/2016, relating to assessment year 2011-12, where the addition has been made in the hands of assessee on account of bogus purchases.

14. The learned Authorized Representative for the assessee in this regard has placed reliance on the decision of Pune Bench of Tribunal in bunch of appeals with lead order in M/s. Chhabi Electricals Pvt. Ltd. Vs. DCIT in ITA No.795/PUN/2014, relating to assessment year 2010-11, order dated

28.04.2017. He further pointed out that the assessee had produced copies of purchase order, invoices, receiving report, quotation challans and ledger extract of both the parties from whom purchases were made and the payments were also made to them vide cheques and VAT which was not deposited by them was deposited by assessee, hence there was no merit in making the aforesaid addition.

15. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the orders of authorities below.

16. We have heard the rival contentions and perused the record. The issue arising in the present appeal is against addition of ₹ 29,86,838/- made on account of alleged hawala purchases of construction material by the assessee. The assessee was engaged in construction business and had made said purchases from three different parties. The Assessing Officer had received certain information from the Sales Tax Authorities, under which it was alleged that purchases were made from hawala parties. The said information was collected by the Sales Tax Department and no efforts were made by Assessing Officer in this regard. However, the assessee on the other hand, has furnished trail of goods by furnishing purchase orders, bills, receiving report, delivery challans along with stamp of inward and even payments for purchases were made by cheque, then in such scenario, there is no merit in holding that the said purchases are not to be accepted in the hands of assessee. At best it could be case of making purchases from black market and as held by us in series of decisions, GP rate of 10% over and above declared by the assessee can be made in the hands of assessee. Such is the proposition laid down in series of decisions with lead order in M/s. Chhabi Electricals Pvt. Ltd. Vs. DCIT

(supra). Following the same parity of reasoning, we direct the Assessing Officer accordingly. Thus, the grounds of appeal raised by assessee are partly allowed.

17. In the result, appeal of assessee in assessment year 2010-11 is allowed and appeal of assessee in assessment year 2011-12 is partly allowed.

Order pronounced on this 29th day of November, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / **ACCOUNTANT MEMBER**

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 29th November, 2018.
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A), Pune-1;
4. The Pr.CIT-1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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