

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC' NEW DELHI**

**BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER**

**ITA No.-2916/Del/2018  
(Assessment Year: 2010-11)**

Archna Garg D/o. Sh. Mahesh Chand 164-Devi Nagar, S.K.Road, Meerut PAN : AJWPG1087E	vs	ITO, Ward-1(1), Meerut
<b>Assessee by</b>		<b>Shri Piyush Agarwal, CA</b>
<b>Revenue by</b>		<b>Shri P.S.Thuinguleny, Sr. DR</b>

<b>Date of Hearing</b>	<b>13.12.2018</b>
<b>Date of Pronouncement</b>	<b>18.12.2018</b>

**ORDER**

**PER N.S.SAINI, ACCOUNTANT MEMBER :**

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-Meerut, dated 15.02.2018 for assessment year 2010-11. The assessee raised following grounds of appeal :-

*"1. That each ground of appeal is without prejudice to each other.*

*2. That the Ld. CIT(A) erred in law to direct AO that "-the AO can again proceed to make fresh reasstt. by starting the reasstt. Proceedings from the stage of receipt of objections as per the ratio of GKN Drive Shafts (Supra) and only thereafter, if*

*the need remains, he will frame the fresh reassstt.  
Order as per law."*

2. The brief facts of the case are that the assessee filed original return of income for the assessment year 2010-11 on 30.07.2010 showing income of Rs. 1,61,300/-. The Assessing Officer issued notice u/s 148 of the Act on 21.03.2017 for reopening of the assessment after recording the reasons for reopening of the assessment on 07.03.2017. The Assessing Officer in the reasons recorded has stated that the assessee has made cash deposit of Rs. 26,34,850/- in Saving Bank Accounts maintained with State Bank of India corporate centre. The assessee was issued show cause notice on 06.01.2017 for verification of source of cash deposit to which the assessee made no compliance therefore the Assessing Officer inferred that assessee failed to disclose fully and truly all material facts necessary for his assessment.

3. The assessee demanded copy of reasons recorded vide letter dated 14.06.2017. The Assessing Officer supplied copy of the recorded reasons to the assessee on 08.11.2017 and thereafter the assessee submitted to the Assessing Officer that the original return filed by the assessee on 30.07.2010 may be treated as the return filed pursuant to the notice u/s 148 of the Act. The assessee thereafter filed objection against the reopening of the assessment before the Assessing Officer on 06.12.2017. The Assessing Officer passed assessment order u/s 147 r.w.s. 143(3) of the Act on 08.12.2017 without disposing the objections filed by the assessee.

4. The assessee filed appeal before the Commissioner of Income Tax (Appeals) and contended that since the assessment order was passed by the Assessing Officer on 08.12.2017 u/s 147 r.w.s. 143(3) of the Act without disposing of the objections filed by the assessee against the reopening of the assessment therefore the re-assessment order passed by the Assessing Officer was bad in law.

5. The Commissioner of Income Tax (Appeals) after considering the submission of the assessee held that he has no inherent power to set aside the matter to the Assessing Officer therefore, he deemed it appropriate to cancel the impugned assessment order. Thereafter he proceeded to direct the Assessing Officer that he can again proceed to make fresh re-assessment proceedings from the stage of receipt of objections and thereafter to dispose off the said objections as per the ratio of G.K.N. Drive Shaft (supra) and after disposing of the objections of the assessee and thereafter if need remain to reframe the fresh reassessment as per law. Being aggrieved by the order of the Commissioner of Income Tax (Appeals) the assessee is in appeal before me.

6. The contention of the Authorised Representative of the assessee is that since the reassessment order dated 08.12.2017 passed by the Assessing Officer u/s 147 r.w.s. 143(3) of the Act without disposing of the objections of the assessee for reopening of the assessment was bad in law the said reassessment order was liable to be quashed. The Commissioner of Income Tax (Appeals) was not justified in directing the Assessing Officer to start the reassessment proceedings from the stage of receipt of objections by the

assessee. He relied on the decision of Hon'ble Delhi High Court in the case of Multiplex Trading & Industrial Co. Ltd. 170 (Delhi).

7. On the other hand the Departmental Representative supported the order of the Commissioner of Income Tax (Appeals).

8. I have heard the rival submissions and perused the orders of the lower authorities and materials available on record. The undisputed facts of the case are that the assessee filed original return of income on 30.07.2010 showing income of Rs. 1,61,300/-. The Assessing Officer reopened the assessment by issue of notice u/s 148 of the Act on 21.03.2017. The assessee filed application on 14.06.2017 for supply of reasons recorded. The reasons were supplied to the assessee on 08.11.2017. Thereafter the assessee filed objection to the reasons recorded for reopening of the assessment on 06.12.2017. The Assessing Officer without disposing of the objections of the assessee to the reopening of the reassessment passed order u/s 147 r.w.s. 143(3) of the Act on 08.12.2017. The assessee carried matter in appeal before the Commissioner of Income Tax (Appeals) and contended that reassessment order dated 08.12.2017 was bad in law and liable to be quashed as the same was passed by the Assessing Officer before disposing of the objections of the assessee.

9. The Commissioner of Income Tax (Appeals) though cancelled the reassessment order but further directed the Assessing Officer to commence the reassessment proceeding from the stage of receipt of objections by the assessee and to

reframe the reassessment order after disposing of the objections of the assessee.

10. The contention of the Authorised Representative of the assessee is that this direction of the Commissioner of Income Tax (Appeals) is unsustainable because when the reassessment order is passed by the Assessing Officer without first disposing of the objections of the assessee the said assessment order is bad in law and liable to be quashed in view of the decision of Hon'ble Delhi High Court in the case of Multiplex Trading & Industrial Co. Ltd.

11. I find that the Hon'ble Delhi High Court in the case of Multiplex Trading & Industrial Co. Ltd. (supra) has held as under :

*"32. There is yet another safeguard provided to the Assessee which was sought to be side-stepped by the AO. The Supreme Court in the case of G.K.N Driveshafts (India) Ltd. v. ITO: (2003) 259 ITR 19 (SC); (2003) 1*

*SCC 72 had held that if an Assessee if so desirous, could seek reasons for issuance of notice under Section 148 of the Act and the AO would be bound to furnish the same within a reasonable time. The Court further held that that the noticee would be entitled to file objections against the issuance of the notice and the AO would be bound to dispose of the same by passing a speaking order.*

*33. In the present case, the Assessee filed its objections by a letter dated 12th December, 2008 and requested the AO to drop the proceedings. The Assessee by its letter dated 18th December, 2008*

*sent in response to another notice, also provided its response in respect of the alleged accommodation entries, which were reported by the Investigation Wing. However, the objections filed by the Assessee were not disposed of by the AO and he proceeded to frame the assessment. This Court in M/s Haryana Acrylic Manufacturing Co. (P) Ltd. (supra) had observed that the requirements regarding recording the reasons to believe; communicating the same to the Assessee; permitting the Assessee to file the objections; and passing a speaking order disposing of the objections are all designed to ensure that the AO does not reopen assessments, which have been finalized, on his mere whim and fancy and that he does so only on the basis of lawful reasons. It was further held that a deviation from the directions issued by the Supreme Court in G.K.N Driveshafts (India) Ltd.(supra) would entail nullifying the proceedings. Although the AO is required to provide reasons, receive objections and pass a speaking order thereon, only after the notice under Section 148 of the Act has been issued; these requirements are an integral part of the safeguards which have been inbuilt for ensuring that the assessments are reopened only for lawful reasons and in a transparent manner. If the said safeguards are flouted, it would invalidate the exercise of jurisdiction under Section 147 and 148 of the Act.”*

12. I find that the instant case on the above stated facts the decision of the Hon'ble Delhi High Court squarely applies to the case of the assessee. Therefore, respectfully following the above quoted order of the Hon'ble Delhi High Court, I set aside the order of the Commissioner of Income Tax (Appeals) directing the AO to commence the reassessment proceeding from the stage of receipt of objections to the reopening filed by the assessee and reframe the reassessment order and allow the grounds of appeal of the assessee.

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

**Order pronounced in the Court on 18<sup>th</sup> December,  
2018 at New Delhi.**

**Sd/-  
(N.S.SAINI)  
ACCOUNTANT MEMBER**

Dated: 18.12.2018  
\*BR\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	17.12.2018
Date on which the typed draft is placed before the dictating Member	18.12.2018
Date on which the typed draft is placed before the Other Member	18.12.2018
Date on which the approved draft comes to the Sr. PS/PS	18.12.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	18.12.2018
Date on which the fair order comes back to the Sr. PS/PS	18.12.2018
Date on which the final order is uploaded on the website of ITAT	18.12.2018
Date on which the file goes to the Bench Clerk	18.12.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	