

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.3426/Del/2015
Assessment Year: 2009-10**

**M/s Astron Polymers P.Ltd.,
Plot No.3, Site No.2,
Lajwanti Chemical Complex,
14/3, Mathura Road, Faridabad.
PAN: AACCA4260B
(Appellant)**

**vs Dy. Commissioner of Income-
tax, Circle-1, Faridabad.

(Respondent)**

**Assessee by Shri Alok Kumar Gupta, CA
Revenue by Shri Surender Pal, Sr. DR**

**Date of Hearing 28.11.2018
Date of Pronouncement 10.12.2018**

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 30.3.2015 in Appeal No.35/2014-15, passed by the Learned Commissioner of Income Tax (Appeals)-Faridabad (Ld. CIT(A)), assessee preferred this appeal.

2. Brief facts of the case as could be culled out from the record are that assessee is a domestic closely held private company engaged in the manufacturing and sale of rubber and plastic components. During the assessment year under

consideration, the assessee received share application money from the following two applicants against which shares were allotted:

Name of the share applicant	Adjusted against share capital (Rs)	Adjusted against share premium (Rs)	Total amount received (Rs.)
M/s VIP Leasing and Finance P. Ltd	2,00,000.00	18,00,000.00	20,00,000.00
M/s Euro Asia Mercantile P. Ltd.	1,50,000.00	13,50,000.00	15,00,000.00

The initial assessment was completed u/s 143(3) of the Income-tax Act, 1961 (“the Act”) by order dated 22.11.2011. Later on, on receipt of some information, learned AO to the effect that the assessee received accommodation entries amounting to Rs.35 lacs from various companies pertaining to one Shri S.K. Jain during the financial year 2008-09. On this, learned AO initiated re-assessment proceedings by issuance of notice u/s 148 of the Act and pleaded the same by adding Rs.35 lacs to the income of the assessee.

3. Aggrieved by the said addition, assessee preferred an appeal before the learned CIT(A) but by order dated 31.3.2015, learned CIT(A) dismissed the appeal and confirmed the addition.

4. The assessee is, therefore, before us in this appeal challenging the impugned order on both the question of law and also on facts, contending that the assessment is liable to be quashed because the learned AO had not passed an order dealing with the objections filed by the assessee for initiation of proceedings u/s 147 of the Act and thereby violating the law laid down by the Hon’ble Supreme Court in the case of GKN Driveshaft (India) Ltd. Vs ITO, 259 ITR 19 rendering the assessment order illegal. Assessee further contended that the learned AO did not provide any material which was in his possession in support of recording the reasons u/s 148(2)

of the Act for reopening of the assessment proceedings and thereby rendering the assessment order illegal and void. In so far as merits are concerned, it is contended that the learned erred in confirming the addition of Rs.35 lacs made by the learned AO to the returned income on the account of alleged accommodation entry of the same amount ignoring the position of law and facts.

5. It is argued by the learned AR that in this case, the learned AO has recorded the reasons u/s 148(2) of the Act and the assessee filed the objections challenging the same by letter dated 22.7.2014 contending that the reasons recorded were not definite and clear cut nor categorical and surrounded with ambiguity. The assessee also further demanded the material on which the AO formed the satisfaction that there was escapement of income. Learned AR submitted that for violation of the principles laid down by the Hon'ble Apex court in the case of GKN Driveshaft (India) Ltd. (supra), the assessment order is bad as is held by the Hon'ble jurisdictional high Court in the case of PCIT vs Tupperware India P. Ltd. (2016) 236 Taxman 0494 (Del). He further submitted that the learned CIT(A) also has not adverted to this fact.

6. Per contra, it is the argument of the learned DR that there is no proof that the assessee had filed the letter dated 27.2.2014 with the learned AO. He further submitted that in the case of Thakur Bhai Magan Bhai Patel vs ITO (2017) 393 ITR 0612 (Guj), it was held that the reopening of assessment u/s 147 is valid despite the AO not passing speaking order against objections field by the assessee and the SLP filed against this decision of the High Court was dismissed by the Hon'ble Supreme Court vide order reported in (2017) 78 Taxmann.com 201. He further contended that the assessment order clearly reads that the assessee entered appearance and cooperated in the assessment proceedings by filing requisite details/information required by the learned AO, as such, it is not open for the

assessee to contend that they have raised any objections to the reopening of the proceedings and for non disposal of such objections, the assessment order is bad in law.

6. We have gone through the record. Assessee claims to have raised the objections to the reopening of the proceedings by letter dated 27.2.2014. A copy of such letter is found to be at page 7 & 8 of the paper book filed by the assessee. The first appellate order shows that the assessee contended before the learned CIT(A) that during the assessment proceedings the assessee challenged the proceedings u/s 147/148 of the Act vide letter dated 27.2.2014; that it was incumbent on the learned AO to first dispose of the objections, the proceedings u/s 147/148 of the Act as it is mandated and laid down by the Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd. (supra); that only after that the assessment could be framed u/s 147 of the Act; and since the learned AO has not passed any order to challenge the proceedings u/s 147/148 of the Act, the assessment framed is illegal and fit to be quashed.

7. If really the assessee did not deliver the letter dated 27.2.2014 before the learned AO raising objections to the reopening of the proceedings, and when such fact is raised before the learned CIT(A) specifically giving date of the letter and the contents thereof, should there be anything wrong with the statement, learned AO should have contended before the learned CIT(A) that the letter dated 27.2.2014 was not at all filed and it was for the first time assessee was raising such objections before the first appellate authority and such statement was baseless. It is pertinent to note that in respect of this contention raised by the assessee in ground No.3, the learned CIT(A) did not deal with this aspect at all. It is, therefore, futile for the revenue to contend that there is no evidence to show that the letter dated 27.2.2014

was not filed before the learned AO and the order of assessment does not reflect the filing of such letter.

8. Now it is clear that the assessee contended before the learned AO that reopening proceedings are unnecessary, illegal and are near reversion of the assessment framed, but the learned AO did not advert to such objections by a separate order or during the course of assessment order. To this set of facts, the decision of the Hon'ble jurisdictional High Court in PCIT vs. Tupperware India Ltd. (supra) is applicable. In such decision the Hon'ble jurisdictional High Court held that after having correctly understood the decision of the Supreme Court in G.K.N. Driveshafts (India) Ltd. (supra) as mandatorily requiring the AO to comply with the procedure laid down therein and to dispose of the objections to the reopening order with a speaking order, the CIT (A) committed an error in not quashing the reopening order and the consequent assessment.

9. Further contention of the assessee is that the documents relied upon by the learned AO at page nos. 6 & 7 of his order were not furnished to him in respect of the specific request made by letter dated 27.2.2014. Because of this non-furnishing of the copies required by the assessee, learned AR submits that the assessee lost a valuable right to submit his explanation adverting to these documents. It is not the case of the revenue that any such documents were furnished to the assessee. There is no reason as to why such documents were not furnished when the assessee made a specific request by letter dated 27.2.2014 requiring the copies of the documents to prepare his defense and to assist the learned AO in reaching the correct tax liability, denial of the same would amount to the violation of the principles of natural justice.

10. We have gone through the order of the Hon'ble Gujarat High Court in the case of Thakur Bhai Magan Bhai Patel(supra) and vide para 10, the Hon'ble Gujarat High Court adverted to the aspect of the guidelines laid down by the Hon'ble apex court in the case of GKN Driveshaft (supra) but has not been laid down the law as argued by the learned DR to the effect that despite the AO not passing speaking order against the objections filed by the assessee, the reopening of assessment u/s 147 is valid. Observations of the Hon'ble High Court need to be extracted and they are as follows:

“10. We may first take up the question of non disposal of the objections. It is true that in the communications, the petitioner has requested for supply of documents. However, the petitioner also raised the objections to the Assessing Officer exercising the powers of reassessment. In true spirit if these communications were examined, the Assessing Officer would have realized that the assessee was objecting to the process of reopening. In terms of decision of Supreme Court in case of GKN Driveshafts (India) Ltd. v. Income-tax officer and others reported in 259 ITR 19, the Assessing Officer ought to have disposed of the objections. Ordinarily, we would have insisted on Assessing Officer doing so. However, facts in the present case are somewhat peculiar and no useful purpose would be served in ensuring only cosmetic purpose of completion of formality and then inviting a fresh litigation. Under the circumstances, we have examined the merits of the petitioner's challenge to the reopening also.”

11. In view of the above factual and legal position, we are of the considered opinion that the assessment order passed in violation of the guidelines laid down by the Hon'ble Apex court in the case of GKN Driveshaft Ltd. (supra) is bad in law in view of the judgment of the Hon'ble jurisdictional High Court in the case of Tupperware India Ltd. (supra). The assessment order consequently, liable to be quashed and accordingly we quash the same. Since we quash the assessment order on the question of law, we deem it not necessary to delve into the merits in the case.

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

Order pronounced in the Open Court on 10th December, 2018.

Sd/-

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 10th December, 2018

VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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