

IN THE INCOME TAX APPELATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA NO. 3525/DEL/2018
A.Y. 2008-09

TRILOK CHAND,
5-E/19, PB, NIT, FARIDABAD
(PAN: AARPC3512A)
(Appellant)

VS. ITO, WARD 2(3)
FARIDABAD
(Respondent)

Assessee by : Sh. Virat Juneja, Advocate
Department by : Sh. S.L. Anuragi, Sr. DR.

ORDER

This is an appeal by the Assessee against the order dated 23.2.2018 of the Ld. CIT(A), Faridabad relevant to assessment year 2008-09 on the following grounds:-

- i) The Ld. CIT(A) erred in law and facts in sustaining the validity of notice of section 148 issued by the ITO.
- ii) The Ld. CIT(A) erred in law and facts in sustaining the action of ITO in treating purchases from Maa Durga Trading Company as bogus amounting to Rs. 10,80,974/- without any clinching evidence on record.
- iii) The Ld. CIT(A) erred in law and facts in sustaining 12.5% of the purchases on adhoc basis when stock tally was produced before him and books of accounts have not been rejected.

- iv) The Ld. CIT(A) erred in law and facts in sustaining the action of ITO in not responding to the objections on reopening of assessment, submitted on behalf of assessee.
- v) The Ld. CIT(A) erred in law and facts in sustaining the allegation made under a wrong impression by the ITO that the assessee claimed these purchases to reduce the GP.

The appellant craves to add, amend, alter or vary from the above grounds of appeal at or before the time of hearing.

It is therefore, prayed that the additions of Rs. 10,80,974/- be deleted altogether as such.

2. The brief facts of the case are that assessee filed his return declaring an income of Rs. 2,20,990/- on 16.9.2008. Later on, as per the information available with the Department the proceedings u/s. 147 of the I.T. Act, 1961 were initiated after recording reasons by the AO. Notice u/s. 148 of the Act was issued on 25.3.2015. No return was filed by the assessee in response to notice u/s. 148 of the Act. The reassessment u/s. 143(3)/147 was completed on 21.3.2016 at an assessed income of Rs. 13,01,964/-. Against the order of the AO, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 23.2.2018 has partly allowed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A), assessee appealed before the Tribunal.

3. During the hearing, Ld. counsel for the Assessee has not pressed the grounds No. (ii), (iii) & (v), hence, the same are dismissed as not pressed. As regards the ground no. (i) & (iv) are concerned, he drew my attention towards page no. 6 & 7 of the Paper Book which is the Objection letter dated 7.3.2016 of the assessee addressed to the Assessing Officer stating therein that as per the reasons recorded by the AO, it was observed that the case is reopened only on the basis of information received from other wing of the Income Tax Department. The information received is not substantiated by any material like any document, third party confirmation etc. reaching a conclusion that the assessee has actually made bogus purchases of the party M/s Maa Durga Trading Co. Merely on the ground that information received from other party cannot be the basis of reaching a conclusion that there is no escapement of income and it was mentioned in the said letter that if there is any additional material available on record in support of the belief, it should be provided before advancing proceedings u/s. 147 of the Act, which was not dealt with by the AO neither by a separate order nor in the final assessment order dated 21.3.2016, which is against the law laid down by the Hon'ble Supreme Court of India in the case of GKN Drive Shafts India Ltd. vs. ITO (2003) 259 ITR 19. Hence, he requested to quash the reassessment order.

4. On the contrary, Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records, especially the assessment order passed u/s. 143(3)/147 of the Act and the impugned order. I find that assessee has filed the Objection letter dated 7.3.2016 before the Assessing Officer stating therein that as per the reasons recorded by the AO, the case was reopened only on the basis of information received from other wing of the Income Tax Department. The information received was not substantiated by any material like any document, third party confirmation etc. reaching a conclusion that the assessee has actually made bogus purchases of the party M/s Maa Durga Trading Co. Merely on the ground that information received from other party cannot be the basis of reaching a conclusion that there is no escapement of income and it was mentioned in the said letter that if there is any additional material available on record in support of the belief, it should be provided before advancing proceedings u/s. 147 of the Act. The Assessing Officer has not decided the objection neither by a separate order nor in the final assessment order dated 21.3.2016, which is very essential to decide the same before completing the assessment. Therefore, in the interest of justice, I am remitting back the issue No. (i) & (iv) to the file of the Assessing Officer with the directions to first decide the objections of the Assessee and then decide the ground no. (i) & (iv), afresh, after giving adequate opportunity of being heard to the assessee. My aforesaid view is fortified by the decision of the Hon'ble Supreme Court of India in the case of

GKN Drive Shafts India Ltd. vs. ITO (2003) 259 ITR 19 wherein the Hon'ble Supreme Court of India has passed the following order:-

"Heard learned counsel for the parties.

Leave is granted.

By the order under challenge, a Division Bench of the High Court at Delhi (see [2002] 257ITR 702) dismissed the writ petition filed by the appellant challenging the validity of notices issued under sections 148 and 143(2) of the Income-tax Act, 1961. The High Court took the view that the appellant could have taken all the objections in its reply to the notices and that, at that stage the writ petition was premature. Accordingly, the writ petition was dismissed on January 31, 2002. Aggrieved by that order, the appellant is in appeal before us.

Mr. M. L. Verma, learned senior counsel appearing for the appellant, submits that the impugned notices relate to seven assessment years ; that during; the pendency of these appeals, in respect of two assessment years, viz., 1995-96 and 1996-97, assessment has been completed against which appeals have been filed. Notices relating to the other five assessment years,

viz., 1992-93 1993-94, 1994-95, 1997-98 and 1998-99, are now the subject-matter of these appeals.

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 he so desires, to seek reasons for issuing notices. 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 Assessing Officer 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 above-said five assessment years.

In so far as the appeals filed against the order of assessment before the Commissioner (Appeals), we direct the appellate authority to dispose of the same, expeditiously.

With the above observations, the civil appeals are dismissed.

No costs."

6. In the result, appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced on 08-01-2019.

**Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER**

Date:08/01/2019

SRBhatnagar

Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4.CIT (A) 5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches