

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

	I.T.A.No. 300/Del/2018	
	AY: 1997-98	
AGRICO FINCAP LTD. (EARLIER KNOWN AS CITIZEN FOODS LTD.) S-11, PRASAD NAGAR, NEW DELHI - 110 005 (PAN: AAACC0377P)	VS.	ITO, WARD 5(3), NEW DELHI
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. A.K. Srivastava, CA
Department by : Shri SL Anuragi, Sr. DR

ORDER

This appeal by the Assessee is directed against the Order dated 06.10.2017 of the Ld. CIT(A)-2, New Delhi pertaining to assessment year 1997-98 on the following grounds:-

1. That the Hon'ble ITAT having restored the issue of admission of Additional Grounds of Appeal to the Learned Commissioner of Income Tax (Appeals) with direction to admit the same and decide them on merits, the observations of the learned Commissioner of Income Tax (Appeals) in para 4.4.2 that "Even during the present appellate proceedings, no reasons have been given by the Appellant for not raising this ground at the time of filing of the appeal." is bad in law and uncalled for.

1.1 That on the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in rejecting / dismissing the additional grounds of appeal.

2. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in holding that the non disposal of the objections to the notice u/s 148 is merely a procedural defect.

2.1 That the Learned Commissioner of Income Tax (Appeals) erred in not following the procedure laid down by the Hon'ble Supreme Court in the case GKN Driveshaft (India) Ltd. Vs. Income Tax Officer & Ors. 259 ITR 19(SC) and other judgments including that of the jurisdictional High Court relied upon by the Appellant.

2.2 That on the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in holding that the powers of the appellate authority are coterminous with the powers of AO, in relation to the disposal of Preliminary Objections. The same is bad in law and against the principles laid down by the Apex Court in the case cited above.

3. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in holding that the granting of satisfaction by the Commissioner of income Tax instead of by the Joint Commissioner of Income Tax, is valid sanction for reopening.

3.1 That the Learned Commissioner of Income Tax (Appeals) erred in not following the judgments of the jurisdictional High Court on the issue relied upon by the Appellant.

4. That the observations of the Learned Commissioner of Income Tax (Appeals) that details in connection with other grounds of appeal were not furnished, is contrary to the facts. The appellant had furnished the information called for.

5. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in

rejecting the ground of appeal relating to disallowance of Rs. 1,70,349/- being operational expenses incurred by the Appellant.

6. *That on the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in rejecting the ground of appeal relating to addition of Rs. 19,00,000/- as unexplained credits.*

That the Appellant craves leave to add, alter, modify, vary, delete any ground of appeal before or at the time of hearing.

2. The brief facts of the case are that originally the assessment was completed on 14.03.2015 against which the assessee filed the appeal before the Ld. CIT(A), who vide his impugned order has dismissed the appeal exparte as none attended the proceedings and against the said action of the Ld. CIT(A), assessee further appealed before the Tribunal and the Tribunal vide its order dated 11.7.2018 in ITA No. 2142/2006 has set aside the appeal to the file of the Ld. CIT(A) for reconsideration and admit the additional ground. Pursuant to the directions of the Tribunal dated 11.7.2018, the additional /modified ground of appeal was admitted by the Ld. CIT(A) being a legal ground and he held that in the absence of any reason for raising the additional ground of appeal at a later stage and in the absence of records, he rejected /dismissed the addition ground of appeal vide his order dated 06.10.2017. Aggrieved with the impugned order dated 06.10.2017, assessee is in appeal before the Tribunal.

3. During the hearing, learned A.R. of the assessee stated that the Hon'ble ITAT having restored the issue of admission of Additional Grounds of Appeal to the Learned Commissioner of Income Tax (Appeals) with

direction to admit the same and decide them on merits, the observations of the learned Commissioner of Income Tax (Appeals) in para 4.4.2 that "Even during the present appellate proceedings, no reasons have been given by the Appellant for not raising this ground at the time of filing of the appeal." He however, admitted the additional ground but not decided the same in accordance with law. He further submitted that Learned Commissioner of Income Tax (Appeals) erred in holding that the disposal of the objections to the notice u/s 148 is merely a procedural defect. It was further submitted that Ld. Commissioner of Income Tax (Appeals) erred in not following the procedure laid down by the Hon'ble Supreme Court in the case GKN Driveshaft (India) Ltd. Vs. Income Tax Officer & Ors. 259 ITR 19(SC) and other judgments including that of the jurisdictional High Court relied upon by the Assessee. It was further submitted that the powers of the Ld. CIT(A) are coterminous with the powers of AO, in relation to the disposal of Preliminary Objections, which he has not exhausted and did not decide the same. It was further submitted that Learned Commissioner of Income Tax (Appeals) has wrongly observed that details in connection with other grounds of appeal were not furnished, which is contrary to the facts, however, the assessee had furnished the information called for. In support of his contention, he relied upon the following case laws:-

- Hon'ble Supreme Court in the case GKN Driveshaft (India) Ltd. Vs. Income Tax Officer & Ors. 259 ITR 19(SC)

- ITAT, 'A' Bench decision dated 26.4.2018 passed in ITA No. 7026/Del/2014 (AY 2007-08) in the case of Sh. Aman Sharma vs. ACIT.

4. On the contrary, the learned DR relied upon the orders of the authorities below and objected to the above argument of Ld. AR of the assessee. In support of his contention, he relied upon the following case laws:-

- Home Finders Housing Ltd. vs. ITO, Corporate Wards 2(3) (2018) 94 taxmann.com 84 (SC) dated 18.5.2018.
- Yogendrakumar Gupta vs. ITO 51 taxmann.com 383
- Raymond Woolen Mills Ltd. vs. ITO and others 236 ITR 34

5. I have heard both the parties and perused the records especially the orders of the authorities below. We note that originally the assessment was completed on 14.03.2015 against which the assessee filed the appeal before the Ld. CIT(A), who vide his impugned order has dismissed the appeal exparte as none attended the proceedings and against the said action of the Ld. CIT(A), assessee further appealed before the Tribunal and the Tribunal vide its order dated 11.7.2018 in ITA No. 2142/2006 has set aside the appeal to the file of the Ld. CIT(A) for admitting the following additional ground and reconsideration thereof.

"That on the facts and circumstances of the case and in law the framing of assessment under section 147 read

with section 143(3) of the Act without first disposing of the preliminary objections is bad in law, the assessment order is void-ab-initio and deserves to be quashed.”

5.1 Pursuant to the directions of the Tribunal dated 11.7.2018, the Ld. CIT(A) admitted the additional /modified ground of appeal being a legal ground and held that in the absence of any reason for raising the additional ground of appeal at a later stage and in the absence of records, rejected /dismissed the additional ground of appeal vide his order dated 06.10.2017, which shows that Ld. CIT(A) despite the directions of the Tribunal has not adjudicated the additional ground. We further note that Ld. CIT(A) has held that the non-disposal of the objections to the notice u/s. 148 is merely a procedural defect, which is against the mandate of the decision of Hon'ble Supreme Court of India in the case of GKN Driveshaft (India) Ltd. vs. ITO & Ors. 259 ITR 19 (SC). We further note that the powers of the Ld. CIT(A) are coterminous with the powers of AO, in relation to the disposal of Preliminary Objections, however, Ld. CIT(A) has not exercised his said powers and did not dispose of the said preliminary objections, which is not sustainable in the eyes of law. It is noted that the case laws cited by the Ld. DR are distinguished on facts. However, the Hon'ble Apex Court in the case of GKN Driveshafts vs ITO reported in 259 ITR 19 has observed as under:-

"19. Apart from the aforesaid fact, in case of GKN Drio shafts (India) Ltd. (supra), the Supreme Court has clearly laid down the law that the Assessing Officer is bound to disclose the

reason of reassessment within reasonable time and on receipt of the reasons, the assessee is entitled to raise objection and if any such objection is filed, the same must be disposed of by a speaking order before proceeding to reassess in terms of the notice earlier given.

20. In the case before us, in spite of repeated reminders by the assessee even pointing out the above law laid down by the Supreme Court, the Assessing Officer failed to dispose of the said objections and instead of that, straightaway passed the order of reassessment.

21. Thus, we find that the Assessing Officer acted without jurisdiction in initiating the proceedings for reassessment in spite of non-existence of the required conditions specified under the Act- and even did not care to follow the norms laid down by the Supreme Court in the above decision by not disposing of the objections before passing the order of reassessment."

5.2 In view of the binding decision of the Hon'ble Supreme Court, as aforesaid, the re-assessment cannot be sustained. As observed herein above though the preliminary objection was raised against reopening of the assessment, the AO did not dispose of the same till the conclusion of re-assessment proceedings and passed order under section 147 of the Act and even on the directions of the Tribunal, the Ld. CIT(A) who had the co-terminus powers with the AO has not adjudicated the same.

5.3 Keeping in view of the facts and circumstances of the case as explained above and respectfully following the precedent, as aforesaid, I am of the considered view that AO is under a mandate to dispose of such

objections before proceeding with the assessment by passing a speaking order and even the Ld. CIT(A) has co-terminus with the powers of AO, which have not been exercised by them, therefore, the reassessment under section 147 cannot be sustained and hence, I quash the reassessment order and allow the legal ground raised by the assessee. Since I have already quashed the reassessment order, there is no need to adjudicate the other grounds on merits being academic.

6. In result, the appeal filed by assessee is allowed.

Order pronounced on 11/02/2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 11/02/2019

"SRBHATNAGAR"

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches