

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.389/Del./2019
(ASSESSMENT YEAR : 2010-11)**

M/s. DS Doors (India) Ltd., vs. ITO, Ward 1 (2),
11/7, Mile Stone, Faridabad.
Delhi Badarpur Border, NH – 2,
Faridabad.

(PAN : AAACD5805B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Saubhagya Aggarwal, Advocate
Shri Kunal Jangid, Advocate
Shri Sumit Baskar, Advocate
REVENUE BY : Ms. Ashima Neb, Senior DR

Date of Hearing : 16.04.2019

Date of Order : 08.05.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, M/s. DS Doors (India) Ltd. (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 31.12.2018 passed by the Commissioner of Income-tax (Appeals), Faridabad qua the assessment year 2010-11 on the grounds inter alia that :-

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the

action of Ld. AO in passing the impugned reassessment order u/s 143(3)/147 and that too without assuming jurisdiction as per law and without complying the mandatory conditions of section 147 to 151 of the Income Tax Act, 1961.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in passing the impugned reassessment u/s 143(3)/147, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed u/s Ld. AO on the ground that no 'reason' recorded have ever been provided to the assessee, despite the specific request made and thus Ld. CIT(A) ought to have quashed the reassessment order on this ground itself.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.25,00,000/- by treating it as alleged accommodation entry u/s 68 of Income Tax Act, 1961.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of search and seizure operation at the residence and various premises of Shri Shirish C Shah, one of the companies M/s. Avance Technologies Limited, controlled by Shirish C Shah notice under section 148 of the Income-tax Act, 1961 (for short ‘the Act’) was served upon the assessee on 30.03.2017. During the assessment proceedings, Assessing Officer received information from Deputy Commissioner of Income-tax, Central Circle 2(2), Mumbai supported with assessment order passed in case of M/s. Avance Technologies Limited u/s 153C of the Act wherein it is accepted by

Director of the Company that the company was only engaged in providing bogus accommodation entries. AO noticed that assessee company was one of the beneficiaries of the accommodation entry in the shape of bogus share premium and relied upon the material supplied by the DCIT, Central Circle 2(2), Mumbai to believe that there was an escapement of tax. AO, after declining the contentions raised by the assessee, reached the conclusion that when it stands proved that the purported investor company was only dealing in providing accommodation entries to various beneficiaries, share premium of Rs.25,00,000/- received by the assessee company is found to be ingenuine transaction and thereby made an addition of Rs.25,00,000/- u/s 68 of the Act.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. AR for the assessee challenging the impugned order contended that AO as well as CIT (A) have erred in passing/

confirming the assessment order as AO has no jurisdiction u/s 143(3)/147 of the Act as he has failed to comply with the mandatory conditions laid down under sections 147 to 151 of the Act and as such, reassessment order is liable to be quashed on legal ground. Ld. AR for the assessee further contended that the AO has never supplied the “reasons recorded” to the assessee despite demand and relied upon the case of *Pr.CIT vs. Jagat Talkies Distributors – (2017) 85 taxmann.com 189 (Delhi)*.

6. To counter the arguments addressed by the Id. AR for the assessee, Id. DR for the Revenue contended that the assessee was duly confronted with the reasons recorded in this case and there is no need to supply the reasons recorded and relied upon the decision rendered by Hon’ble Supreme Court in the case of *S. Narayanappa & Ors. vs. CIT, Bangalore – 1967 AIR 523*. Without prejudice, the Id. DR for the Revenue further contended that non-supplying the reasons recorded to the AO is a mere irregularity which does not affect the legality and validity of the assessment order and relied upon the decision rendered by Hon’ble Supreme Court in the case of *Home Finders Housing Ltd. vs. ITO – (2018) 94 taxmann.com 84 (SC)*. Ld. DR also filed written submissions which have been made part of the judicial record.

7. Undisputedly, during the assessment proceedings, AO on receipt of an information from DCIT, Central Circle 2(2), Mumbai, in the form of assessment order passed u/s 153C of the Act in case of M/s. Avance Technologies Limited wherein the Director of the said company had admitted in their statement that the company was only engaged in providing bogus accommodation entries. It is also not in dispute that on the basis of aforesaid information a show-cause notice was issued to the assessee on 08.12.2017 along with notice u/s 142(1). It is also not in dispute that the assessee company has been supplied with the copy of assessment order passed u/s 153C/143(3) for AY 2011-12 in case of M/s. Avance Technologies Limited. It is also not in dispute that the AO has not supplied reasons recorded for reopening of the assessment despite demand or sought for and has not disposed off the objections of the assessee with respect to reopening of the assessment.

8. From the undisputed facts of this case, order passed by the lower Revenue authorities, arguments addressed by the ld. AR for the parties to the appeal and case laws relied upon, the sole question arises for determination in this case is :-

“as to whether reassessment order passed by the AO u/s 143(3)/147, confirmed by the ld. CIT (A), is liable to be quashed on the ground that no reasons have been recorded before reopening nor the copy thereof has been supplied to the assessee despite demand?”

9. When we examine the question framed in the light of the undisputed facts that “reasons recorded”, if any, has never been supplied to the assessee by the AO despite demand vide letter dated 04.04.2017, available at page 6 of the paper book, it becomes clear that reasons recorded, if any, have not seen the light of the day.

10. Ld. DR for the Revenue has impliedly admitted that reasons recorded have not been supplied to the assessee as she has relied upon noting sheet dated 24.07.2017 recorded by the AO, available at page 15 of the synopsis filed by the ld. DR, showing that reasons recorded were confronted to the assessee. But we fail to understand if the noting sheet dated 24.07.2017 relied upon by the ld. DR is qua confronting the “reasons recorded” to the assessee, which is extracted for ready perusal as under :-

“24.7.17 Sh. S.R. Malta, Sr. Accounts Manager attended. Asked to submit information/detail relating to amounts credited in the books of account on account of share premium, share capital or advance of any kind confronted with the information received from DCIT, CC 2(2), Mumbai regarding receipt of Rs.25,00,000/- on 25-2-2010 by the assessee company from M/s. Avance Technologies Ltd. It has been found.”

11. Bare perusal of the aforesaid note recorded by the AO shows that only information received by him from DCIT, CC-2(2), Mumbai as to receipt of Rs.25,00,000/- on 25.02.2010 by the

assessee company from M/s. Avance Technologies Limited has been confronted to the assessee and it cannot be treated as reasons recorded by any stretch of imagination, so question of confronting the same to the assessee does not arise.

12. So, we can safely conclude that the assessee has not been supplied with “reasons recorded” despite demand rather no reason has been recorded by the AO before reopening the assessment by applying his independent mind. Had there been any reasons recorded on the file, the same would have been brought to the notice of the Bench by the Id. DR along with order sheets and written submissions filed at the time of arguments.

13. Hon’ble Apex Court in case of *M/s. GKN Driveshaft India Ltd. vs. ITO – 259 ITR 19* has laid down the law that it is mandatory for the AO to supply the reasons recorded within reasonable time, to which the assessee is entitled to file the objection to the issuance of the notice and then AO is bound to dispose off the objections by passing a speaking order. Operative part of the Hon’ble Apex Court in the case of *M/s. GKN Driveshaft India Ltd.* (supra) is extracted below for ready perusal:-

“ 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 abovesaid five assessment years.”

14. Ld. DR for the Revenue by relying upon the decision rendered by Hon’ble Apex Court in the case of *Home Finders Housing Ltd. vs. ITO – (2018) 94 taxmann.com 84 (SC)* dismissing the SLP filed by the assessee contended that non-compliance of the procedure laid down by the Hon’ble Supreme Court in *M/s. GKN Driveshaft India Ltd.* (supra) would not make the order void and non est and such a violation was a procedural irregularity which could be cured by remitting the matter to the authority. Operative part of the decision rendered by Hon’ble Supreme Court in *Home Finders Housing Ltd. vs. ITO* (supra) is extracted for ready perusal as under :-

“Section 148, read with section 147, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (General) - Assessing Officer noticed that income chargeable to tax had escaped assessment and he initiated reassessment under section 147 - Assessee raised objections - However, Assessing Officer without giving disposal to objections of assessee, passed

reassessment order - Assessee challenged reassessment order before High Court on ground that by not passing a specific order after receiving objections, Assessing Officer violated law declared by Supreme Court in GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963 that Assessing Officer should pass a speaking order taking into account objections for re-opening assessment under section 147, and resultantly, order was bad in law - High Court held that non-compliance of procedure indicated by Supreme Court would not make order void or non est and such a violation was a procedural irregularity which could be cured by remitting matter to authority - Whether SLP against impugned order was to be dismissed - Held, yes [Para 2] [In favour of revenue]"

15. We are of the considered view that facts of the case at hand are distinguishable from the case of *Home Finders Housing Ltd. vs. ITO* (supra) because in that case, reasons recorded were supplied to which assessee had filed objections which had not been disposed off by the AO. But, in the instant case, reasons have not been recorded by the AO rather based the assessment order on the information received from DCIT, CC 2(2), Mumbai along with assessment order of M/s. Avance Technologies Limited passed u/s 153C of the Act, so the question of supplying reasons recorded to the assessee does not arise.

16. More particularly, when assessee had made a request for supply of the reasons recorded and the said request had not been adhered to and the AO proceeded to pass the assessment order even

without providing an opportunity to cross examine the Director of M/s. Avance Technologies Limited whose statements have been relied upon to prove the fact that M/s. Avance Technologies Limited, a accommodation entry provider has provided accommodation entry of Rs.25,00,000/- to the assessee.

17. So, the very initiation of assessment proceedings u/s 147/148 of the Act were void and non est at the very outset because the AO has not recorded any reasons after applying his mind nor supplied the copy thereof to the assessee and as such, in these circumstances, question of filing / disposing off the objections by assessee/AO does not arise.

18. Hon'ble jurisdictional High Court in case cited as *Pr.CIT-16 vs. Jagat Talkies Distributors – (2017) 85 taxmann.com 189 (Delhi)* wherein *GKN Driveshaft (India) Ltd.* (supra) and other case laws discussed held that when the assessee has not been given copy of reasons recorded for issuance of notice u/s 148 by the AO, entire assessment proceedings and resultant assessment order passed u/s 143(3)/148 was to be quashed.

19. In view of what has been discussed above, we are of the considered view that the case law relied upon by the Id. DR is not applicable to the facts and circumstances of the case. Since the AO has failed to record the reasons after being satisfied that the income

has escaped assessment, which he has not supplied to the assessee despite demand the initiation of reassessment proceedings at the very outset were void and non est and as such, consequent assessment order passed by the AO is liable to be quashed without going into the merits of this case, hence hereby quashed. Resultantly, the appeal filed by the assessee is hereby allowed.

Order pronounced in open court on this 8th day of May, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 8th day of May, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Faridabad.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**