

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.2929/Bang/2017
Assessment year : 2008-09

Shri. S. K. Ramprasad, No.83, Ramson Building, Silver Jubilee Park Road, Bangalore-560 002. <b>PAN : AANPR 1165 L</b>	Vs.	Commissioner of Income Tax (Appeals-5), 7 <sup>th</sup> Floor, BMTC Building, 80 Feet Road, Koramangala, Bangalore -560 095.
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Chandrasekhar, Advocate
Revenue by	:	Shri. M. Rajasekhar, Addl. CIT

Date of hearing	:	14.03.2019
Date of Pronouncement	:	24.05.2019

**ORDER**

***Per Shri Jason P Boaz, A.M. :***

This appeal by the assessee is directed against the order of CIT(A)-5, Bangalore, dated 28.09.2017 for Assessment Year 2008-09.

2. Briefly stated, the facts of the case are as under:

2.1 The assessee, an individual, deriving income from salaries, business and capital gains, filed the return of income for Assessment Year 2008-09 on 25.03.2009 declaring income of Rs.6,82,340/-. The Assessing Officer (AO) initiated

proceedings under section 147 of the Income Tax Act, 1961 (in short 'the Act') to reopen the assessment for Assessment Year 2008-09 and issued notice under section 148 of the Act on 20.03.2015. In response thereto, the assessee filed letter dated 09.04.2015 requesting that the original return of income for Assessment Year 2008-09, filed on 25.03.2009, be treated as filed in response to notice under section 148 of the Act. In this letter dated 09.04.2015, the assessee also requested the AO to furnish to him the reasons recorded for taking up proceedings under section 147 and 148 of the Act. The assessment was concluded under section 143(3) r.w.s. 147 of the Act vide order dated 30.03.2016, wherein the assessee's income was determined at Rs.41,40,740/-; in view of the AO making an addition of Rs.34,58,400/-; on account of the assessee's 1/5<sup>th</sup> share of the guidance value of a property sold on 30.11.2007; by invoking the provisions of section 50C of the Act. The assessee's appeal was dismissed by CIT(A)-5, Bangalore, vide order dated 28.09.2017.

3.1 Aggrieved by the order of CIT(A)-5, Bangalore, dated 28.09.2017 for Assessment Year 2008-09, the assessee has preferred this appeal before the Tribunal, wherein he has raised the following grounds and additional grounds:

1. The order of the Commissioner of Income Tax(appeals) and the assessing officer is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.
2. The appellant denies himself liable to be assessed to a total income of Rs.41,40,740/- as against the income returned by the appellant of Rs.6,82,340/- on the facts and circumstances of the case.
3. The authorities below erred in law in taxing the capital gain income in the hands of the appellant on the facts and circumstance of the case.

4. The learned authorities below failed to appreciate that the appellant has already offered the capital gains to tax, in the assessment year 2003-04 and taxing the capital gains once again when the developer is selling the property amounts to double taxation and contrary to law on the facts and circumstance of the case.
5. The learned Commissioner of Income-tax has grossly erred in understanding that the property sold was an apartment and not land which was already transferred to M/s Dynasty Developers Pvt. Ltd in the previous year relevant to the assessment year 2003-2004 under a General Power of Attorney who in turn developed the land and sold flats on their own account without any recourse to the appellant.
6. The learned Commissioner of Income-tax failed to appreciate that the tax has been paid by the appellant in the year of transfer of property itself that is, AY 2003-04 .
7. The learned Commissioner of Income Tax also failed to appreciate the judgment of the Karnataka High Court in the case of CIT V/s Dr. TK Dayalu (2011 14 Taxmann.com 120) in which the court clarified the taxability of capital gain is in the year of entering into agreement and the authorities further failed to appreciate that the appellant had already offered to capital gains tax and thus the question of taxing anything on the appellant in the impugned assessment year is contrary to law on the facts and circumstance of the case.
8. The authorities below failed to appreciate that the appellant alone has been singled out for the purpose of these proceedings and no such proceedings have been initiated against the other vendors on the facts and circumstance of the case.

9. The authorities failed to appreciate that the question of applying the provisions of section 50 C on the appellant does not arise on the facts and circumstance of the case. t
10. The appellant denies the liability to pay interest under section 234A, 234B and 234C of the Act in view of the fact that there is no liability to additional tax as determined by the learned assessing officer. Without prejudice the rate, period and on what quantum the interest has been levied are not in accordance with law and further are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case

**PRAYER FOR ADMISSION OF ADDITIONAL GROUNDS OF APPEAL**

The appellant begs to submit the under mentioned additional grounds of appeal which were not urged specifically in the grounds of appeal filed before the Hon'ble Income Tax Appellate Tribunal. These grounds do not involve any investigation of any facts otherwise on the record of the department and are also pure question of law. It is humbly prayed before the Hon'ble Income Tax Appellate Tribunal that the additional grounds may kindly be admitted and disposed off on merits for the advancement of substantial cause of justice. Reliance is placed on the decision of the Hon'ble Apex Court in the case of National Thermal Power Company Limited Vs. CIT, reported in 229 ITR 383 and also on the ratio of the decision of the Hon'ble Karnataka High Court in the case of Gundathur Thimmappa & Sons Vs. CIT, reported in 70 ITR 70.

1. Grounds on reopening.
  - a) The order of reassessment is bad in law and void ab initio for want of requisite jurisdiction especially the mandatory requirement to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently the order of reassessment requires to be cancelled.

- b) The order of reassessment is bad in law as the assessing officer has not given the reasons recorded in spite of requests and thus the entire assessment is bad in law on the facts and circumstance of the case.
- c) The order of assessment is bad in law as the providing of reasons is a jurisdictional requirement and failure to furnish the same is fatal to the assessment order and hence the assessment order is liable to be quashed on the facts and circumstance of the case.
- d) The notice is bad in law and is non application of mind as the same does not indicate whether the assessing officer had proposed to assess or reassess and the failure to disclose this correctly is fatal to the notice and thus all consequential proceedings are bad in law.

- 12. The appellant craves for leave of the Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.
- 13. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.

3.2 We have heard / considered the rival contentions / submissions, including the details filed in paper book (pages 1 to 146) and judicial pronouncements cited.

**4. Additional grounds of appeal**  
**Ground Nos.11 to 13**

4.1 At the outset of proceedings, the assessee through the learned AR has raised a preliminary objection, though for the first time before the Tribunal; in regard to the procedure adopted by the AO in initiating re-assessment proceedings and subsequent proceedings in completing the assessment for Assessment Year 2008-09 in the case on hand. As this is a legal ground, we proceed to address the same before taking up the grounds raised by the assessee on merits. We have heard the rival contentions in the matter of admission of additional grounds 11 to 13 (supra). Taking into account the factual matrix of the case on hand and the additional grounds raised, we find that they are purely legal grounds that do not involve facts other than those that are already on the records of the Department. In our view, the additional grounds raised go to the very root of the matter of jurisdiction and validity of proceedings under section 147 / 148 of the Act. Following the ratio of the decision of the Hon'ble Apex Court in the case of NTPC Ltd., (229 ITR 383) (SC), we admit the additional grounds raised (supra) for consideration and adjudication.

4.2 The learned AR for the assessee submitted that the AO served a notice under section 148 of the Act dated 20.03.2015 on the assessee for re-opening the assessment for Assessment Year 2008-09. In response to the said notice under section 148, the assessee filed letter dated 09.04.2015 on 13.04.2015 requesting the AO (i) to treat the original return of income filed by the assessee on 25.03.2009 for Assessment Year 2008-09 as one filed in response / compliance to the notice under section 148 of the Act and (ii) to furnish to him the reasons recorded for taking re-opening proceedings under section 147 and 148 of the Act. According to the learned AR, the AO, without providing the assessee with the reasons recorded for initiation of re-assessment proceedings under section 147 / 148 of the Act, completed the assessment under section 143(3) r.w.s. 147 of the Act vide order dated 30.03.2016; which is against the law as enunciated by the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd., 259 ITR 19 (SC). In this regard, the learned AR also

placed reliance, *inter alia*, on the decision of the Hon'ble Karnataka High Court in the case of PCIT Vs. V. Ramaiah (2019) 103 taxmann.com 201 (Kar), which has been upheld by the Hon'ble Apex Court in (2019) 103 taxmann.com 202 (SC) i.e.,; where the Hon'ble High Court upheld the Tribunal's order quashing re-assessment proceedings on the ground that reasons recorded by AO for re-opening assessment were never communicated to the assessee, the SLP filed by the Department against the said decision was dismissed by the Hon'ble Apex Court. The learned AR prayed that in view of the above, the order of assessment passed by the AO under section 143(3) r.w.s. 147 of the Act vide order dated 30.03.2016 for Assessment Year 2008-09 requires to be quashed.

4.3 Per contra, the learned DR for Revenue, on this issue, placed reliance on the decision of the Hon'ble Madras High Court in the case of Home Finders Housing Ltd., Vs. ITO (2018) 93 taxmann.com 371 (Madras), wherein on further appeal by the assessee, the Hon'ble Apex Court has dismissed the assessee's appeal. It is submitted that on similar facts i.e., the completion of assessment by the AO, without disposing off the objections raised by the assessee to the reasons recorded for assumption of jurisdiction under section 147 of the Act without passing a speaking order thereon. The learned DR submits that such non-compliance of the procedure laid down by the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd., (supra) would not render the order void or non est, as such a violation is a procedural irregularity which could be cured by remitting the matter to the assessing authority for considering the matter afresh after disposal of the assessee's objections.

4.4 In rejoinder, the learned AR of the assessee submitted that the decision of the Hon'ble jurisdictional High Court of Karnataka in the case of V. Ramaiah (supra), wherein the Hon'ble Court had quashed the re-assessment proceedings on the ground of non-furnishing of reasons recorded by the AO for re-opening the assessment to the assessee, the SLP filed by Revenue against the said decision was

dismissed by the Hon'ble Apex Court. It is further submitted that while passing the decision in the case of Vs. Ramaiah (supra), the Hon'ble Karnataka High Court had also considered the decision of the Hon'ble Madras High Court in the case of Home Finders Housing Ltd., (404 ITR 611) (Mad) before quashing the reassessment proceedings on ground of non furnishing of reasons recorded by AO for re-opening the assessment to the assessee. In the light of the above, the learned AR submitted that binding decision of the Hon'ble Karnataka High Court, affirmed by the Hon'ble Apex Court, in the case of V. Ramaiah (supra) ought to be followed and the order of assessment for Assessment Year 2008-09 passed under section 143(3) r.w.s. 147 of the Act vide dated 30.03.2016 be accordingly quashed.

4.5.1 We have heard and considered the rival contentions in regard to the legal issue raised by the assessee in Additional Ground Nos. 11 to 13 (supra) and considered the material on record; including the judicial pronouncements cited. The facts of the matter, as emerge from a perusal of the record are that re-assessment proceedings were initiated by the AO for Assessment Year 2008-09 under section 147 of the Act and thereafter notice under section 148 of the Act was issued to the assessee on 20.03.2015. In response to the notice under section 148 of the Act, the assessee admittedly filed letter dated 09.04.2015 (acknowledged to have been received by the Department on 13.04.2015); a copy of which is placed at page 2 of paper book; stating therein that the return of income filed on 25.03.2009 for Assessment Year 2008-09 be treated as filed in response to the aforesaid notice under section 148 of the Act and further requesting the AO to furnish the reasons recorded for taking up proceedings under sections 147 and 148 of the Act. As per the records before us and the impugned order of assessment, there is no proof of the reasons recorded having been furnished to the assessee by the AO. The learned DR for Revenue was also not able to controvert the factual position of the matter as laid out above i.e., that the reasons recorded by the AO for initiating re-assessment proceedings under sections 147 / 148 of the Act was not furnished to the assessee

by the AO as requested by the assessee vide letter dated 09.04.2015. Having considered the rival contentions and the material on record, there is no dispute that the AO is bound to furnish the reasons recorded for initiating re-assessment proceedings to the assessee as requested for vide letter dated 09.04.2015, as per the law laid down by the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd., Vs. ITO (259 ITR 19) (SC). The Hon'ble Karnataka High Court in the case of PCIT Vs. V. Ramaiah (2019) 103 taxmann.com 201 (KAR); which was upheld / affirmed by Hon'ble Apex Court in its order (2019) 103 taxmann.com 202 (SC); while rendering its decision, has considered the decision of the Hon'ble Madras High Court in the case of Home Finders Housing Ltd., Vs. ITO (2018) 93 taxmann.com 371 (Madras), and then proceeded to hold that the re-assessment order / proceedings are to be quashed on the ground that the reasons recorded by the AO for re-opening the assessment were never furnished to the assessee as requested for.

4.5.2 In the case of Vs. Ramaiah (supra), the substantial question of law framed was as under:

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in setting aside the re-assessment order by holding that the assessing authority had not supplied the reasons for re-assessment even though the assessee was made aware of the crux of the case and assessee was provided sufficient opportunity of hearing and assessee had actively contested the case before assessing authority?"

4.5.3 The consideration of the issue, the reference to the decision of the Hon'ble Madras High Court in Home Finders Housing Ltd., (supra) and their decision at paras 3 to 9 thereof, the Hon'ble Karnataka High Court in the case of PCIT Vs. V. Ramaiah (supra) is extracted hereunder:

3. The learned counsel for the Revenue Mr. Sanmathi.E.I, relying upon the decision of the Madras High Court in the case of *Home Finders Housing Ltd. v. ITO* [2018] 93 taxmann.com 371/404 ITR 611 has submitted that this was a procedural requirement and any lapse in such compliance cannot result in the quashing of the reassessment order and the Tribunal ought to have remanded the case back to the learned assessing authority. Para 18 of the said Judgment is quoted below for ready reference:

"The disposal of objections is in the value of a procedural requirement to appraise the assessee of the actual grounds which made the Assessing Officer to arrive at a prima facie satisfaction that there was escape of assessment warranting reopening the assessment proceedings. The disposal of such objection must be before the date of hearing and passing a fresh order of assessment. In case, on a consideration of the objections submitted by the assessee, the Assessing Officer is of the view that there is no ground made out to proceed, he can pass an order to wind up the proceedings. It is only when a decision was taken to overrule the objections, and to proceed further with the reassessment process, the Assessing Officer is obliged to give disposal to the statement of objections submitted by the assessee."

4. On the other hand, the learned counsel for the assessee Mr.A.Shankar submitted that non-supply of the reasons recorded for re-assessment goes to the root of the matter and is a jurisdictional issue and in view of the Hon'ble Supreme Court decision in the case of *GKN Driveshafts (India) Ltd. v. ITO* [2002] 125 Taxman 963/[2003] 259 ITR 19, it cannot be treated only as a procedural lapse on the part of the assessing authority. He further submitted that the facts of the case before the Madras High Court in the aforesaid case were different, where the assessing authority failed to pass a preliminary order once the assessee raised the objections with regard to the reassessment proceedings.

5. Having heard the learned counsels for the parties, we are satisfied that no substantial question of law arises in the present appeal filed by the Revenue in as much as the recording of reasons for reassessment under Section 147/148 of the Income Tax Act or non-communication thereof to the assessee does not amount to a mere procedural lapse. In view of the aforesaid Supreme Court decision in *GKN DRIVESHAFT's* case, it goes to the root of the matter and renders the reassessment order passed by the assessing authority without recording such reasons and communicating the same to the assessee, as being without jurisdiction.

6. The contention raised by the learned counsel for the Revenue that in the order sheet dated 04.11.2011 in the reassessment proceedings were duly noted by the authorised representative appearing on behalf of the assessee and therefore, such assessee should be deemed to have been made aware of the reasons for reopening does not impress us.

7. The Tribunal has clearly noted in its order after looking into the record of the case that the reasons which were placed before the learned Tribunal itself only for the first time were never communicated to the assessee during the contemporary period. Mere participation of the assessee or Authorized Representative in the reassessment proceedings does not amount to the assessee being made aware or known of the reasons for such reopening. The reasons now quoted by the learned Tribunal in the impugned order clearly indicates that they are purportedly detailed reasons and had the assessing authority given the said reasons before hand, the assessee could have raised objections before the assessing authority and the assessee could have rebutted the material on the basis of which the impugned reassessment proceedings were undertaken by the assessing authority. The assessee in the present case twice made a request to the assessing authority, but despite the specific requests, the assessing authority did not comply with the said request and supplied the reasons to the assessee. That casts a doubt even on fact of the recording of the reasons in the contemporary period by the assessing authority. The fact that such reasons are supplied before the learned Tribunal only for the first time was enough for by the learned Tribunal to hold that in view of the decision of the Hon'ble Supreme Court, the assessing authority lacked the jurisdiction in invoking the reassessment proceedings and therefore, the impugned reassessment order deserves to be quashed.

8. The decision relied upon by the learned counsel for the Revenue is distinguishable on facts. The order which was to be passed by assessing authority as preliminary objection of assessee, once the assessee has raised the objection to such reassessment proceedings, the meeting of such objections in the main reassessment order, could be procedural aspect of the matter, but the recording of the reasons before the initiation of the reassessment proceedings and communication thereof to the assessee is sine qua non, as held by Hon'ble Supreme Court and that goes to the root of the matter and confers or deprives the assessing authority of the jurisdiction to undertake such reassessment proceedings, as the case may be.

9. In the present case, admittedly, such reasons were not supplied to the assessee during the contemporary period before going ahead with the reassessment proceedings. Therefore, the Tribunal in our opinion was perfectly justified in quashing such reassessment order.

4.5.4 Taking into consideration the factual and legal matrix of the case, as discussed above from paras 4.1 to 4.5.3 of this order (supra), we are of the view that the decision of the Hon'ble Karnataka High Court in the case of PCIT Vs. V. Ramaiah (supra), is squarely applicable to the facts of the assessee in the case on hand, where also the AO has not provided the assessee with the reasons recorded for re-opening the assessment as requested for by the assessee vide letter dated 09.04.2015. Respectfully following the aforesaid decision of the Hon'ble Karnataka High Court in the case of V. Ramaiah (supra), we are of the view and hold and direct that since the AO has failed to provide the assessee with reasons recorded for re-opening the assessment, in spite of the assessee's written request for being provided with the same, the re-assessment order passed under section 143(3) r.w.s. 147 of the Act dated 30.03.2016 for Assessment Year 2008-09 is liable to be quashed. Consequently, the additional grounds No.11 to 13 raised by the assessee are allowed.

5. In view of our finding / decision, allowing the additional ground Nos. 11 to 13 raised by the assessee by quashing the re-assessment order dated 30.03.2016 for Assessment Year 2008-09 , the other grounds of appeal raised on merits by the assessee at Sl. Nos. 1 to 9 (supra) are rendered academic and do not require to be adjudicated at this juncture.

6. In the result, the assessee's appeal for Assessment Year 2008-09 is allowed as indicated above.

*Order pronounced in the open court on this 24<sup>th</sup> day of May, 2019.*

Sd/-  
**(PAVAN KUMAR GADALE)**  
**Judicial Member**

Sd/-  
**(JASON P BOAZ)**  
**Accountant Member**

Bangalore.

Dated: 24<sup>th</sup> May, 2019.

/NS/\*

Copy to:

- |               |               |
|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.