



ITA No.2043/Mum/201
Maharashtra State Power Generation Co. Ltd.
Assessment Year :2007-08

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं./ I.T.A. No.2043/Mum/2011
(निर्धारण वर्ष / Assessment Year:2007-08)

Maharashtra State Power Generation Co. Ltd. Plot No. G-9, Prakashgad, 2 nd Floor, Anant Kanekar Marg Station Road, Bandra (East) Mumbai-400 051.	बनाम/ Vs.	The Addl. CIT-Range-10(1) Aaykar Bhavan Maharshi Karve Road Mumbai-400 020.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAECM-2935-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Neeraj Seth - Ld.AR
Revenue by	:	Shri Ajay Kumar-Ld.CIT-DR

सुनवाई की तारीख/ Date of Hearing	:	29/07/2019
घोषणा की तारीख / Date of Pronouncement	:	31/07/2019

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2007-08 contest the order of Ld. Commissioner of Income-Tax (Appeals)-21, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No.CIT(A)-21/IT/661/2009-10* dated 20/12/2010 on various grounds of appeal. By way of Ground No.1, the assessee has



challenged the validity of reassessment proceedings. The ground read as under: -

1.Re.: Validity of re-assessment proceedings:

- 1.1 The Commissioner of Income-tax (Appeals) has erred in confirming the action of the Assessing Officer in re-opening the Appellant's assessment u/s. 148 of the Income-tax Act, 1961.
- 1.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the impugned re-opening u/s. 148 was in excess of jurisdiction and was also otherwise bad in law and the Commissioner of Income-tax (Appeals) ought to have held as such.
- 1.3 The Appellant submits that the proceedings u/s. 148 of the Act were not in accordance with law and consequently ought to be struck down.

2.1 The Ld. Authorized Representative for Assessee [AR], at the outset, submitted that the objections raised by the assessee against reopening the assessment were never disposed-off by Ld. Assessing Officer as mandated by the decision of Hon'ble Supreme Court in **GKN Driveshafts (India) Ltd. V/s ITO [259 ITR 19]** and therefore, the reassessment proceedings stood vitiated in the eyes of law. Reliance has been placed on the decision of Jurisdictional Hon'ble Bombay High Court rendered in **KSS Petron Private Limited V/s ACIT [ITA No. 224 of 2014 dated 03/10/2016]** to submit that the matter could also not be restored back to the file of Ld. AO to pass order on objections raised by the assessee.

2.2 On the other hand, Ld. CIT-DR relied on para 3.3(a) of the impugned order which would read as under: -

3.3(a) The appellant's first objection is that the AO did not dispose-off objections raised by it in respect of re-opening of the assessment proceedings. On this issue the appellant has relied on various case-laws. I have considered the facts of the case and decisions relied on by the appellant. Though as per decisions of the Hon'ble Supreme Court and other decisions, it was obligatory on the part of the AO to first dispose-off, by passing a speaking order, appellant's objections raised against reopening of the assessment. However, the Assessing Officer's action of not



disposing off appellant's objections was a procedural irregularity only which did not affect the legality of the assessment order passed. In the above decisions relied upon by the appellant, the assessment order passed was not held to be invalid on account of not disposing off the assessee's objections raised against re-opening of the assessment. In those cases the assessment order was set aside to the file of the AO for first disposing off the objections by passing a speaking order and then frame assessment order. Therefore, on account of this irregularity, the assessment order passed by the AO cannot be held to be invalid. As per existing provisions of the Act, the undersigned has no power to set aside the assessment order passed by the AO. Therefore, appellant's objections/arguments on this issue are not acceptable.

In the above background, Ld. CIT-DR pleaded for restoration of matter back to the file of Ld. AO for disposal of assessee's objection against reassessment proceedings. However, the fact that the assessee had raised objections against the reopening of the assessment and the same was not disposed-off by Ld. AO, remain uncontroverted. Nothing on record would establish that the assessee's objections against reopening of assessment were ever considered and rejected by Ld. AO at any point of time, during reassessment proceedings.

3. After due consideration of factual matrix, we find that the binding judicial precedent in the shape of cited decision of Hon'ble Bombay High Court squarely applies to the fact of the case. The relevant observation of Hon'ble court, for ease of reference, could be extracted in the following manner: -

8. We note that once the impugned order finds the Assessment Order is without jurisdiction as the law laid down by the Apex Court in GKN Driveshafts (supra) has not been followed, then there is no reason to restore the issue to the Assessing Officer to pass a further/fresh order. If this is permitted, it would give a licence to the Assessing Officer to pass orders on reopening notice, without jurisdiction (without compliance of the law in accordance with the procedure), yet the only consequence, would be that in appeal, it would be restored to the Assessing Officer for fresh adjudication after following the due procedure. This would lead to unnecessary harassment of the Assessee by reviving stale/ old matters.

9. In fact, to ensure that reopening notices are disposed of, expeditiously the parliament itself has provided in Section 153(2) of the Act a period of limitation within which the Assessing Officer must pass an order on the notice of reopening



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i.e. within one year from the end of the financial year in which the notice was issued. In fact, Section 153 (2A) of the Act as in force at the relevant time itself provides that an order of fresh Assessment, consequent to the order of Tribunal under Section 254 of the Act, would have to be passed within one year from the end of the financial year in which the order under Section 254 of the Act, was passed by the Tribunal and received by the Commissioner of Income Tax.

10. The Director of the appellant has filed an affidavit dated 19th September, 2006. In the affidavit, it is stated that consequent to the impugned order of the Tribunal dated 14th August, 2013, the Assessing Officer has not passed any order of reassessment. Time was granted on the last occasion to enable the Respondent to respond to the affidavit dated 19th September, 2006 of the Director of the Appellant Company. The Respondent is unable to dispute the facts stated in the affidavit dated 19th September, 2016 filed by the Director of the Appellant Company. The time to pass a order on the notice dated 28th March, 2008, even consequent to the impugned order of the Tribunal, has lapsed.

11. Therefore, on the above facts and law, the substantial question of law is answered in the negative i.e. in favour of the Appellant-Assessee and against the Respondent-Revenue.

This decision has subsequently been followed by the co-ordinate bench of the Tribunal in number of cases, few of which could be tabulated as follows: -

1. DCIT M/s. National Bank for Agriculture and Rural Development
[ITA No.4964/Mum/2014 (A.Y.2004-05) dated 28/10/2016]
2. Baldev Ramratan Sharma Vs. ACIT
[ITA No.1909/Mum/2017 (A.Y.2009-10) dated 28/08/2018]
3. DCIT V/s Firstsource Solutions Ltd.
[ITA Nos. 3985-86/Mum/2016 dated 22/05/2019]

4. The co-ordinate bench of the Tribunal in **DCIT V/s Firstsource Solutions Ltd. [supra]**, after considering the contrary case-laws as cited by the revenue, has concluded the matter in the following manner: -

7. We have considered rival submissions and perused the material on record. Undisputed factual position, as culled out from the material on record, clearly reveals that in the course of re-assessment proceedings, though, the assessee had raised objections challenging the validity of re-opening of assessments under section 147 of the Act, however, the Assessing Officer has not disposed of the objections independently by way of separate orders before completion of assessment proceedings under section 143(3) r/w 147 of the Act. The Hon'ble Supreme Court in GKN Driveshafts India Ltd. (supra) has held that before completion of the assessment, the Assessing Officer is duty bound to dispose of the objections of the assessee separately. Therefore, the Assessing Officer in the



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instant appeal has not followed the due judicial process while dealing with the objections of the assessee. For that reason, the impugned assessment orders are legally unsustainable. Now the issue which arises is, whether in such circumstances, the re-assessment orders passed have to be quashed as void ab initio or they are to be restored back to the Assessing Officer for enabling him to dispose of the objections of the assessee and pass fresh assessment orders. In our view, the issue is no more res integra in view of the decision of the Hon'ble Jurisdictional High Court in KSS Petron Pvt. Ltd. (supra), wherein, the Hon'ble Jurisdictional High Court has held that if the re-assessment order is passed without disposing of the objections raised by the assessee, they have to be quashed and no second opportunity can be given to the Assessing Officer to pass fresh assessment orders after disposing of the objections of the assessee. The same view has been expressed by the Co-ordinate Bench in the decisions cited by the learned Sr. Counsel for the assessee. Upon careful reading of the decision of the Hon'ble Supreme Court in Larsen Toubro Ltd. v/s State of Jharkhand & Ors., in Civil Appeal no.5390/2007, cited by learned Departmental Representative, we find it to be not applicable to the facts of the present case, as the said decision is not on the issue of validity of re-assessment order on account of non-disposal of objection raised by the assessee. It is relevant to observe, post conclusion of hearing of the appeal, the learned Departmental Representative has submitted a note citing certain decisions in support of the proposition that non-disposal of objection is a procedural irregularity, hence, the assessment order should be set aside for enabling the Assessing Officer to dispose of the objections and pass a fresh assessment order. The first decision relied upon by the learned Departmental Representative is, Home Finders Housing Ltd. v/s ITO, [2018] 94 taxmann.com 84 (SC). This is a matter arising out of a judgment delivered by the Hon'ble Madras High Court holding that non-disposal of objection before completion of assessment is a procedural irregularity which can be cured by setting aside the assessment order to the Assessing Officer for disposing of assessee's objection and thereafter completing the assessment. Against the aforesaid decision of the Hon'ble Madras High Court, the assessee filed a Special Leave Petition (SLP) before the Hon'ble Supreme Court. The Hon'ble Supreme Court in the decision cited supra, dismissed the SLP in limine without laying down any ratio. The order passed by the Hon'ble Supreme Court is as under:-

*“The Special Leave Petition is dismissed.
Pending application stands disposed of.”*

8. It is a fairly well settled legal position that dismissal of SLP in limine at the stage of admission without a speaking or reasoned order does not constitute a binding precedent under Article-141 of the Constitution of India. This principle has been well propounded in case of Kunhayammed Vs. State of Kerala 2001(129) ELT 11 (S.C.). Aforesaid view was again affirmed by the hon'ble Supreme Court in case of Khoday Distilleries Ltd. Vs. Shree Mahadeshwara Sahakara Sakkare Karkhane Ltd. while disposing of Civil Appeal no.2432 of 2019 in judgment dated. 01.03.2019. Therefore, it cannot be said that in the aforesaid decision, the Hon'ble Supreme Court has laid down the proposition that non-disposal of objections against the validity of proceedings initiated under section 147 of the Act is a procedural irregularity which



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can be cured if the Assessing Officer is given an opportunity to dispose of the objections of the assessee and thereafter complete the assessment. Moreover, the decision of the Hon'ble Supreme Court in GKN Driveshafts India Ltd. (supra) has not been overruled and still holds the field. The next decision cited by the learned Departmental Representative is of the Hon'ble Jurisdictional High Court in NTUC Income Insurance Co-operative Ltd. v/s DDIT, [2013] 33 taxmann.com 255 (Bom.). On a careful reading of the aforesaid decision, it is evident that the facts on the basis of which the Hon'ble Jurisdictional High Court restored back the issue to the Assessing Officer to re-frame assessment de novo is completely different from the present appeal. In the case before the Hon'ble Jurisdictional High Court, the Assessing Officer had not only communicated the reasons for reopening, but, by a separate communication had intimated the assessee that all conditions laid down in GKN Driveshafts India Ltd. has been met. Admittedly, the assessee did not challenge the aforesaid decision of Assessing Officer. Subsequently, the reassessment order was subjected to the proceedings under section 263 of the Act. In of revision proceeding the assessee contended that due to lack of opportunity various documents/evidences could not be produced before the Assessing Officer. Considering the aforesaid submission of the assessee, the Commissioner set aside the assessment order with a direction to frame de novo assessment. During the fresh assessment proceeding assessee pleaded that the objection against reopening of assessment should be disposed of first. In the aforesaid factual context, the Hon'ble Jurisdictional High Court did not entertain assessee's plea. However, the Hon'ble Jurisdictional High Court in KSS Petron Pvt. Ltd. (supra), in no uncertain terms, has held that if the Assessing Officer before completion of assessment has not disposed of the objection, the assessment order cannot be restored back to the Assessing Officer for framing assessment de novo after disposal of the objections of the assessee. Though, the Hon'ble Madras High Court in case of Home Finders Housing Ltd. referred to earlier as well as the Hon'ble Gujarat High Court in MGM Exports v/s DCIT, [2010] 323 ITR 33 (Guj.) and PCIT v/s Sagar Developers, [2016] 72 taxmann.com 321 (Guj.) have held contrary view, however, we are bound by the decision of the Hon'ble Jurisdictional High Court in KSS Petron Pvt. Ltd. (supra).

9. In view of the aforesaid, we do not find any infirmity in the orders passed by learned Commissioner (Appeals) in holding the assessment orders passed to be legally unsustainable. Accordingly, grounds raised in both the appeals are dismissed.

Respectfully following the cited binding judicial precedents, the action of Ld. first appellate authority in upholding the reassessment proceedings, could not be said to be in accordance with law. Therefore, we quash the reassessment order dated 29/12/2009 passed by Ld. Assessing Officer. In view of the same, dealing into the merits of the case become merely



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academic in nature and therefore, we refrain from dealing the same. Ground No. 1 stands allowed which makes other grounds of appeal *infructuous*.

5. The appeal stands allowed in terms of our above order.

Order pronounced in the open court on 31st July, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 31/07/2019

Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.