

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "एक सदस्य" पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE  
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1797/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2003-04

Shri Vijaykumar L. Jain,  
Plot No. 289, Sector No. 25,  
Pradhikaran, Nigadi,  
Pune – 412101

..... अपीलार्थी /  
Appellant

PAN : AASPJ0388C

बनाम v/s

The Income Tax Officer,  
Ward – 9(3), Pune

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri S.N. Puranik  
Revenue by : Shri Chandra Bhanu Mandal

सुनवाई की तारीख / Date of Hearing : 01.10.2019	घोषणा की तारीख / Date of Pronouncement: 03.10.2019
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**आदेश / ORDER**

**PER ANIL CHATURVEDI, AM :**

1. This appeal filed by assessee is against the order of Commissioner of Income Tax (Appeals) – 9, Pune for the assessment year 2003-04.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual stated to be having income from capital gains and other sources. Assessee filed its return of income

for A.Y. 2003-04 on 30-09-2003 declaring total income at Rs.2,15,568/-. The case was initially selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 13-02-2006 accepting the total income declared by the assessee. Thereafter, the Assessing Officer has noted that the Investigation wing, Mumbai during the course of search action u/s. 132 of the Act on the several stock brokers in the month of January, 2006 noted that they were engaged in arranging bogus purchases and sale of shares and resultant gains were claimed as exempt Long Term Capital Gain or liable for lower tax rate of 10%. The Assessing Officer noted that the assessee had shown Long Term Capital Gain of Rs.6,63,649/- which was claimed exempt and assessee had also claimed deduction u/s. 54F of the Act being investment in residential property. The Assessing Officer was of the view that the capital gains stated to have been earned by assessee were not genuine and therefore he issued notice u/s. 148 of the Act on 10-01-2007 which was served on the assessee. Thereafter, the case was taken up for scrutiny and assessment was framed u/s. 143(3) r.w.s. 147 of the Act vide order dated 31-12-2007 wherein the total income was determined at Rs.8,81,720/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 26-04-2017 (in appeal No.PN/CIT(A)-III/ITO, Ward-9(2)/509/2007-08) dismissed the appeal of the assessee. Aggrieved by the order of Ld. CIT(A), assessee is now in appeal and has raised the following grounds :

- “1. Honorable Commissioner (Appeals) has also erred in not declaring the Order as bad in law, for not providing the Appellant opportunity to Cross examine the Brokers whose statements are relied by Assessing Officer, more particularly when Assessing Officer herself offered that she will produce Mr.*

*G R Pandya for Assessee's Cross examination. (Assessing Officer's letter dated 12.12.2007).*

2. *Honourable Commissioner of Income Tax Appeals has erred in not declaring the Assessment u/s 143(3) r.w.s 147 as bad in law, for not providing reasons for issue of Notice u/s 148. Appellant prays to declare that Order u/s 143(3) r.w.s. 147 is bad in law and may please be cancelled.*
3. *CIT(A) has erred in not. declaring the Proceeding initiated u/s 147/148 itself are without jurisdiction and bad in law (as transaction of Purchase and Sale of Shares (Penny Stock) were verified by Assessing Officer during Original Assessment proceedings u/s 143(3) for Assessment Year 2003-04 and Purchase of Shares appearing in Balance sheet for AY 2002-03 of which assessment was under search proceedings.)*
4. *CIT(A) has erred in confirming the addition of Rs.6,63,649/- as Income from Other Sources as against Long Term Capital Gain as offered by Assessee. Appellant prays to confirm the same as Long Term Capital Gain.*
5. *Appellant prays for just and equitable relief.*
6. *Observations of CIT(A) in Para 7.6 may please be held perverse.*
7. *CIT(A) has erred in confirming (not adjudicating) ground relating to charging of interest u/s 234 B, 234 C Appellant prays to delete The same or if addition is confirmed restricting the same in terms of Sec. 234 B(3) as was applicable for the year.*
8. *Appellant prays to add, alter, amend, clarify and/or withdraw the ground/s of the appeal as the occasion may demand."*

3. Before me, the ld. AR submitted that the reassessment order passed by the Assessing Officer be declared as bad in law in view of the fact that the assessee had sought reasons for reopening vide letter dated 27-02-2007 from the Assessing Officer but the reasons for not supplied by the Assessing Officer and in support of which he pointed to the copy of letter which is placed at page 13 of the paper book. He submitted that the assessee thereafter again vide letter dated 17-12-2007 requested the Assessing Officer to furnish the

Assessing Officer reasons sought by the assessee earlier and in support of his contention he pointed that the letter which is placed at page 7 of the paper book. He submitted that even after reminding the Assessing Officer for furnishing the recorded reasons, the reasons have not been furnished to the assessee till date. He relying on the decision of Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO [2003] 259 ITR 19 (SC) submitted that furnishing the reasons recorded for reopening of the assessment is mandatory condition. He thereafter relying on the decisions of Hon'ble Bombay High Court in the case of CIT Vs. Videsh Sanchar Nigam Ltd. [2012] 340 ITR 66 (Bom) and in the case of CIT Vs. Trend Electronics [2015] 379 ITR 456 (Bom) and the decision of Hon'ble Bombay High Court in the case of CIT Vs. M/s. IDBI Ltd. in Income Tax Appeal No. 494 of 2014, dated 19-09-2016 submitted that the High Court in the aforesaid decisions have held that failure to furnish the recorded reasons for issue of reopening would make the reassessment order passed to be bad in law. He therefore, submitted that the order of Assessing Officer be set aside.

4. The ld. DR on the other hand supported the order of Assessing Officer and CIT(A).

5. I have heard the rival submissions and perused the material on record. In the present ground the assessee is challenging the reassessment framed u/s 143(3) r.w.s 148 of the order. Before me, it is assessee's contention that the reasons for reopening the assessment was never furnished to the assessee despite having asked

for it. In support of his contention that assessee had sought the reasons from the AO and were never furnished to the assessee, he has pointed to the letter written by the assessee to the AO which is placed in paper book. Before me, Revenue has not placed any material on record to demonstrate that the reasons recorded for reopening the assessment was furnished to the assessee. In the present case it is thus clear that despite the request by the assessee, the Assessing Officer has completed the assessment without furnishing the reasons recorded for reopening of assessment. Furnishing the reasons recorded for reopening of the assessment is mandatory condition as held by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO (supra) wherein the Hon'ble Supreme Court has laid down the principle that recorded reasons must be furnished to the assessee when the assessee seeks the reasons.

6. I further find that Hon'ble Bombay High Court in the case of CIT Vs. Trend Electronics (supra) after considering the decision of Hon'ble Bombay High court in the case of CIT Vs. Videsh Sanchar Nigam Ltd. (supra) has held that recorded reasons as laid down by the Apex Court must be furnished to the assessee when sought for so as to enable the assessee to object to the same before the AO. It has further held that the recording of reasons and furnishing of the same has to be strictly complied with as it is a jurisdictional issue and in the absence of reasons being furnished when sought for would make an order passed on reassessment bad in law.

7. Before me, Revenue has not placed any contrary binding decision in its support. Considering the totality of the aforesaid facts and relying on the decisions cited herein above, I hold the reassessment order passed by the AO to be bad in law and thus set it aside. Since I have set aside the re-assessment order, the grounds raised on merits requires no adjudication as they have been rendered academic. Thus the appeal of the assessee is allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced on the 03<sup>rd</sup> day of October, 2019.

**Sd/-**

**(ANIL CHATURVEDI)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 03<sup>rd</sup> October, 2019.

RK

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT (A)-9, Pune
4. The Pr.CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.