

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष  
**BEFORE SHRI D. KARUNAKARA RAO, AM**

आयकर अपील सं. / ITA No.2846/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2001-02

Govardhan L. Mundada,  
1163, Raviwar Peth,  
Opp. Someshwar Temple,  
Pune-411002.

PAN : AAZPM6499C

.... अपीलार्थी/Appellant

Vs.

ITO, Ward-5(3),  
Pune.

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Kishore Phadke  
प्रत्यर्थी की ओर से / Respondent by : Shri Abhijit Chaudhuri

सुनवाई की तारीख / <b>Date of Hearing : 13.11.2019</b>	घोषणा की तारीख / <b>Date of Pronouncement: 13.11.2019</b>
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

This appeal is filed by the assessee against the order of CIT(A)-4, Pune dated 22.12.2016 for the Assessment Year 2001-02.

2. Before me, at the outset, ld. Counsel for the assessee brought my attention to the legal/modified ground no.2 and the same is extracted as under :-

“2. The learned CIT(A) erred in law and on facts in sustaining the incorrect jurisdiction assumed by the learned A.O. u/s 147 of ITA, 1961 without appreciating that appellant has objected to the notice u/s 148 repeatedly and even by filing an Affidavit to that effect. Learned I-T authorities erred in not appreciating that, non-disposal of objections to notice u/s 148 leads to a fatal

*error of procedure and principles prescribed for 147 proceedings laid down by apex court in case of GKN Driveshafts (India) Ltd. Vs ITO – 259 ITR 19.”*

3. Analyzing the above legal ground no.2, ld. Counsel for the assessee mentioned that this is a case where the notice u/s 148 of the Act was issued on 30.03.2007 and supplied copy of the reasons to the assessee. The assessee rebutted the same objecting to the reasons for reopening of the assessment. In fact, the assessee filed an affidavit on 24.12.2007 in this regard too. In response to the objection raised by the assessee, the Assessing Officer failed to pass any order disposing of the assessee's objection in writing. It is an admitted fact that the Assessing Officer failed to do so. The ld. DR for the Revenue could not demonstrate the passing of such order, if any.

4. Further, in support of quashing of the order of reassessment, ld. Counsel for the assessee brought my attention to the decision of Pune Bench of the Tribunal in the case Abhijit Despande vs. DCIT vide ITA No.492/PUN/2018 for the assessment year 2010-11 dated 03.05.2019 and read out the contents of operational para 11 and 12 of the said order (supra). Referring to the said para 11 and 12 of the said order of the Tribunal (supra), ld. Counsel for the assessee mentioned that, in such cases where the Assessing Officer failed to pass an order giving effect to the objection of the assessee, the reassessment needs to be quashed.

5. On hearing both the sides, I find relevant to extract operational para 11 and 12 of the said order of the Tribunal (supra) and the same are extracted hereunder :-

*“11. We have heard the rival submissions and perused the material on record. It is an undisputed fact that on receipt of the reasons for re-opening of the assessment u/s 148 of the Act the assessee vide letter dt.05.03.2014 had raised objection to the re-opening of the assessment proceedings initiated by the AO. The AO did not dispose of the objections separately and proceeded and passed the re-assessment order. Before us, 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 sought for the reasons.*

*12. We also find that Hon'ble Bombay High Court in the case of M/s. Bayer Material Science Pvt. Ltd. (supra) after considering the decision of Hon'ble Apex Court in the case of GKN Driveshafts (supra) had held that the reassessment order to be non sustainable **when the objections to the re-assessment were not disposed off by the AO**. Similar view was taken by the Hon'ble Bombay High Court in the case of KSS Petron Pvt. Ltd. (supra).”*

6. It is the settled issue by the binding judgement of Jurisdictional High Court and the Hon'ble Supreme Court that the reassessment made without following the steps listed by the Hon'ble Supreme Court, has to be quashed as bad in law. Considering the above, I am of the opinion, the reassessment order passed by the Assessing Officer is bad in law and therefore, the same is set-aside. Accordingly, the legal ground no.2 raised by the assessee is allowed.

7. Considering the relief granted to the assessee on the legal issue, the adjudication of other merits related grounds becomes academic exercise

only. Thus, other merits related grounds raised by the assessee are dismissed as academic.

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

Order pronounced in the open Court on this 13<sup>th</sup> day of November, 2019.

**Sd/-**  
**(D. KARUNAKARA RAO)**  
**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक Dated : 13<sup>th</sup> November, 2019.  
*Sujeet*

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune