

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. Nos. 99 & 100/Ahd/2018
(निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13)

Consumer Marketing (India) Private Limited Mehta Lodha & Co. Chartered Accountants 105, Sakar-1, Near Gandhigram Railway Station, Off. Ashram Road, Ahmedabad - 380009	बनाम/ Vs.	The Deputy Commissioner of Income Tax Circle 1(1)(2), Pratyaksh Kar Bhavan, Ahmedabad - 380015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCC7453K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Prakash D. Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Rajdeep Singh, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	10/10/2019 & 13/11/2019
घोषणा की तारीख /Date of Pronouncement	18/11/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed at the instance of the assessee against the respective orders of the Commissioner of Income Tax (Appeals)-1, Ahmedabad ('CIT(A)' in short), both dated 22.11.2017 arising in the assessment orders both dated 30.03.2016 passed by the Assessing Officer (AO) under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) concerning AYs. 2011-12 & 2012-13.

2. The grievances raised being common, both the cases were heard together and disposed of by the common order.

3. We shall first take up assessee's appeal in ITA No. 100/Ahd/2018 concerning AY 2012-13.

ITA No. 100/Ahd/2018-AY-2012-13

4. As per its grounds of appeal, the assessee has challenged the assumption of jurisdiction under s.147 r.w.s. 148 of the Act as well as disallowance of donation expenses of Rs.25 Lakhs on merits.

5. When the matter was called for hearing, the learned AR for the assessee first adverted to the assumption of jurisdiction under s.147 of the Act and submitted that the action of the lower authorities in issuance of notice under s.148(2) of the Act for assumption of jurisdiction under s.147 of the Act is without authority of law and subsequent order passed under s.143(3) of the Act is accordingly bad in law. To propagate further, the learned AR pointed out that despite filing return of income in pursuance of notice issued under s.148(2) of the Act, the revenue authorities have failed to provided copy of reasons recorded under s.148(2) of the Act as mandated by the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19(SC)*. The learned AR thus submitted that it is not known as to whether the action of the AO under s.147 of the Act is within four corners of law or not. Addressing the issue on merits, the learned AR submitted that the donation expenses of Rs.25 Lakhs incurred by the assessee was corroborated by receipts issued by the donee as well as bank payments etc. The donee was approved by the competent authority under Income Tax Laws for availing deduction. The learned AR however submitted that a reference has been made to some adverse statement obtained from the donee, a copy of which was never provided to the assessee. The assessee therefore could not avail its right of cross examination to the donor. It was thus pointed out that action of the Revenue for disallowance of donation expenses is clearly in violation of

principle of natural justice. On inquiry from the bench, the learned AR however fairly submitted that the issue may be remitted back to the file of the AO with suitable directions to redo the assessment by observing principles of natural justice.

6. The learned DR relied upon the orders of the lower authorities but however also voiced his concurrence with the proposal on behalf of the assessee for setting aside the present action to enable the AO to reframe the assessment in accordance with law.

7. We have carefully considered the rival submissions and perused the orders of the authorities below. It is contended on behalf of the assessee that completed/time bared assessment has been reopened by invoking powers of drastic nature embodied in Section 147 of the Act without providing the reasons recorded under s.147 of the Act. Section 148(2) of the Act requires the AO to record his reasons for issue of notice. The Courts have held that recording of such reasons is mandatory and the issue of notice without such reasons is invalid. The Hon'ble Supreme Court in *GKN Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19(SC)* also held that the AO is bound to furnish reasons within a reasonable time to the assessee and the assessee is entitled to file his objection to the maintainability of notice. The AO, in turn, is bound to dispose of the objection so filed, by passing a speaking order. Following this decision of Hon'ble Supreme Court, various cases have come up before different High Courts to consider the consequences where the AO passed the re-assessment order without following the judicial fiat laid down by the Hon'ble Supreme Court. However, when inquired on facts, the assessee however could not submit any proof demanding the copy of reasons at the threshold before the AO. The copy of recorded reasons are also not extracted by any of the lower authorities. We thus not in a position to adjudicate the legal issue raised on validity of assumption of jurisdiction under s.147 of the Act one way or the other. At this stage, having regard to the belated objection of the assessee of non-availability of reasons recorded, it will be only fair and befitting that a fresh opportunity is given to the assessee by the AO to

provide the copy of reasons and dispose of objection of the assessee in this regard, if any, as per procedure laid down by the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19(SC)*.

7.1 We also simultaneously take note of firm objection of the assessee on merits that adverse statement made on behalf of the donee against the assessee ought to have been provided to the assessee before placing reliance there upon. Judicial propriety demands that evidence collected and sought to be used against the assessee is confronted to the assessee to uphold the principles of natural justice. Needless to say, the statement of a third party which has been made the basis for addition is required to be provided to the assessee to enable him to appreciate the contents thereof and to defend its position. The Hon'ble Supreme Court in case of *Andaman Timber Industries vs. CIT (2015) 62 taxmann.com 3 (SC)* has assailed the action of the Revenue and observed that not allowing the assessee to cross examine a witness whose statement is sought to be relied upon is a serious flaw and offends the principles of natural justice. It is the contention of the assessee that such opportunity to cross examine the witness is a must to enable it to discredit the adverse testimony of the witness. The breach of sacrosanct principles of natural justice is fundamental and goes to the root of the issue. Hence, the appeal of the assessee merits acceptance.

7.2 We accordingly set aside the order of the CIT(A) and restore the issue involving lack of jurisdiction and consequent adjudication on merits back to the file of the AO for *de novo* assessment in accordance with law after following principles of natural justice and after following due procedure for re-assessment as laid down by the Hon'ble Supreme Court in *GKN Driveshafts (India) Ltd. (Supra)*. It shall be open to the assessee to place all the evidences and contentions as it may consider expedient before the AO with regard to usurpation of jurisdiction under s.147 of the Act as well as to enable the AO to frame re-assessment on merits in accordance with law.

8. In the result, appeal of the assessee for AY 2012-13 is allowed for statistical purposes.

ITA No. 99/Ahd/2018-AY-2011-12

9. In parity with the observations made in AY 2012-13, we also consider it expedient to set aside the order of the CIT(A) in AY 2012-13 appealed against in ITA No. 99/Ahd/2018 where the assessee is stated to be placed in similar situation. Thus, in consonance with the directions made in ITA No. 100/Ahd/2018 concerning AY 2012-13, all issues raised in ITA No.99/Ahd/2018 concerning AY 2011-12 are also set aside and restored to the file of the AO for *de novo* adjudication in accordance with law.

10. In the result, appeal of the assessee in ITA No.99/Ahd/2018 for AY 2011-12 is allowed for statistical purposes.

11. In the combined result, both appeals filed by the assessee are allowed for statistical purposes.

This Order pronounced in Open Court on 18/11/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad: Dated 18/11/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।