

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

**BEFORE SHRI D. KARUNAKARA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No.2197/PUN/2017
निर्धारण वर्ष / Assessment Year : 2006-07

Vilas B. Rukari (HUF),
149, Shivdarshan,
Mukundnagar, Pune-37.

PAN : AAFHV6744K

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-2(1),
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Suhas Bora
Revenue by : Shri Hoshang Boman Irani

सुनवाई की तारीख / Date of Hearing : 14.11.2019
घोषणा की तारीख / Date of Pronouncement : 19.11.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee is against the order of the CIT(A)-2, Pune dated 19.07.2017 for the assessment year 2006-07.

2. Before us, at the outset, ld. Counsel for the assessee brought our attention to the legal issue vide ground no.2 and the same is extracted hereunder :-

"2. The ld. CIT(A) has erred in not appreciating the contention of the appellant about not passing separate speaking order in consequences to objection raised for issuance of Notice u/s 148 of I.T. Act, thereby has violated the direction of Hon. Supreme Court in the case of GKN Drivershafts (India) Ltd. Vs. ITO, therefore entire proceedings u/s 147 of I.T. Act, are void ab initio and needs to be quashed."

3. Referring to the above legal ground no.2, ld. Counsel for the assessee submitted that this is a case where the Assessing Officer originally made an assessment and the same was attempted for reopening and issued notice u/s

148 of the Act. The Assessing Officer supplied the reasons and the same were contested by the assessee by filing the reply. In response to the said reply containing the objections of the assessee, Assessing Officer **failed to pass** an order rebutting the objections of the assessee. Eventually, the Assessing Officer passed the reassessment order on 21.03.2014 determining the total income at Rs.1,89,58,465/- against the returned income of Rs.1,66,18,110/-. With these background of the facts, ld. Counsel for the assessee submitted that the Assessing Officer failed to comply with the binding Hon'ble Supreme Court's judgement in the case of GKN Drivershafts (India) Ltd. vs. ITO dated 25th November, 2002.

4. Further, in support of quashing of the order of reassessment, ld. Counsel for the assessee brought our 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 to 14 of the said order of the Tribunal (supra). Referring to the said para 11 to 14 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, we find relevant to extract operational para 11 to 14 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)."*

13. *We further find that Hon'ble Bombay High Court in the case of CIT Vs. Trend Electronics (2015) 379 ITR 456 (Bom) after considering the decision of Hon'ble Bombay High court in the case of CIT Vs. Videsh Sanchar Nigam Ltd (2012) 340 ITR 66 (Bom) 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.*

14. *Before us, 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, we hold the reassessment order passed by the AO to be bad in law and thus set it aside. Since we 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."*

6. It is 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, we are 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 on 19th day of November, 2019.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

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

पुणे / Pune; दिनांक / Dated : 19th November, 2019

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Pune.
4. The Pr. CCIT, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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