

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, BANGALORE**

Before Shri Chandra Poojari, Accountant Member

ITA No.2013/Bang/2019 : Asst.Year 2012-2013

M/s.Laxmi Rolling and Strips Private Limited, Plot No.54, Anekal Taluk, Bommasandra Industrial Area Bangalore – 560 099. PAN : AAACL8886A.	Vs.	The Income Tax Officer Ward 4(1)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Ramasubramanian, CA
Respondent by : Sri.Ganesh R.Ghale, Standing Council for DR

Date of Hearing : 23.01.2020	Date of Pronouncement : 28.01.2020
-------------------------------------	---

ORDER

This appeal filed by the assessee is directed against the order of the CIT(A), dated 06.06.2019. The relevant assessment year is 2012-2013.

2. The assessee has raised the following grounds:-

“1. That the order of the learned Commissioner of Income Tax (Appeals) is prejudicial to the interests of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.

2. The order passed u/s 143(3) r.w.s. 147 of the Act is bad in law and without jurisdiction as the learned lower authorities has not even conducted a preliminary enquiry based on the investigation report received from Kolkata.

3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in making addition

on the basis of borrowed satisfaction and without making any independent enquiries.

4. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in even though the appellant has submitted all the documents and burden u/s 68 lying on the appellant has been fully discharged.

5. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not providing the statement recorded by the investigation wing.

Each of the above grounds are without prejudice to one another, the appellant seeks the leave of the Hon'ble Income Tax Appellate Tribunal to add, delete, amend or modify otherwise each or any of the grounds either before or at the time of filing the appeal."

3. The assessee has also filed an additional ground along with petition for admission of the additional ground, as follows:-

"The appellant seeks the leave of the Hon'ble Income Tax Tribunal to file the following additional ground:

1. That the learned assessing officer erred in law and on facts in not disposing of the objections filed by the appellant by way of speaking order and therefore, the assessment order has to be quashed.

The above ground was not raised before the learned Commissioner of Income Tax (Appeals) due to the reason that the Authorized Representative appeared before the lower authorities did not advice the appellant on the due procedure of the reassessment.

The above ground is a purely a legal ground and facts and materials available on record are sufficient to decide the ground. The appellant submits that the

above additional ground may kindly be admitted in view of the decision of the Hon'ble Supreme Court in:

- (a) CIT v. National Thermal Power Corporation (229 ITR 383)*
- (b) Jute Corporation of India Ltd. v. CIT (187 ITR 688).*

4. I have heard the rival submission on the issue of admission of additional ground. As rightly placed by the learned AR, the judgments of the Hon'ble Apex Court in the case of *CIT v. National Thermal Power Corporation (supra)* and *Jute Corporation of India Ltd. v. CIT (supra)* as there is no necessity of investigation of any fresh facts, as the relevant facts are already on record, I am inclined to admit the additional ground for adjudication.

5. The facts of the issue are that the assessee filed its return of income for the assessment year 2012-2013 on 23.09.2012 declaring total income of Rs.6,00,870 and filed revised return on 06.12.2018 in response to notice u/s 147 of the I.T.Act. In this case, information received from the DDIT (Inv.), Kolkata vide letter dated 22.11.2017 that the assessee had obtained accommodation from M/s.Wipro Suppliers Pvt. Ltd. amounting to Rs.20,00,000. The A.O. noted that as per the information, the modus operandi followed by the paper / shell companies controlled and managed by entry operations is that many account are being frequently being used for depositing the unaccounted cash which are layered through several bank accounts of Jamakharchi / shell concerns and immediately transferred to the interlinked bank accounts and thereafter to

the bank accounts of the beneficiary. In this way, the beneficiary companies have brought back their unaccounted income into their regular books of accounts in the guise of bogus share / premium, pre arranged bogus LTCG / STCL, unsecured loans etc. As per the information, the assessee is one of the beneficiaries in the said transaction. Therefore, having reasons to believe that the income chargeable to tax has escaped for the assessment year 2012-2013 by reason of failure on the part of the assessee in not disclosing fully and truly all material facts necessary for the assessment, the assessment was reopened by issue of a notice u/s 148 of the Act, dated 12.03.2018. In response to the said notice, the assessee vide letter dated 18th April, 2015, enclosed copies of the return filed for the assessment year 2012-2013 and requested for reasons for reopening of the assessment proceedings.

5.1 The reasons for reopening was issued to the assessee on 10.07.2018. While completing the assessment u/s 143(3) r.w.s. 147 of the I.T.Act vide order dated 28.12.2018, the Assessing Officer made addition of Rs.20 lakh towards unexplained credit on account of receipt of share premium from M/s.Wipro Suppliers Private Limited.

6. Against the above addition made by the Assessing Officer, the assessee carried the matter to the CIT(A), who confirmed the order of the Assessing Officer. Against this, the assessee is in appeal before the Tribunal.

7. Before me, the contention of the assessee is that the objections filed by the assessee on reopening was not disposed of by a speaking order, and thus, the assessment order has to be quashed. To support the above contention of the assessee, the learned AR relied on the judgment of the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Ltd. v. ITO* [(2003) 259 ITR 19 (SC)] wherein it was held that the mandatory procedure to dispose of the objection of the assessee with regard to reopening of assessment and for the violation which would result in quashing of the assessment order. The learned AR also relied upon the following judgments :-

- (i) *General Motors India P. Ltd. v. Deputy Commissioner of Income-tax* [(2013) 354 ITR 244 (Guj.)]
- (ii) *Ms.Jayanthi Natarajan v. ACIT* [(2018) 401 ITR 215 (Mad.)]
- (iii) *Martech Peripherals P. Ltd. v. Deputy Commissioner of Income-tax* [(2017) 394 ITR 733 (Mad.)]
- (iv) *Tolins Rubbers v. ACIT* [(2004) 270 ITR 280 (Ker.)]
- (v) *Sahkari Khand Udyog Mandal Ltd. v. ACIT* [(2015) 370 ITR 107 (Guj.)]

8. The learned Departmental Representative submitted that the violation in the matter of procedure was only an irregularity which could be cured by remitting the matter to the authority and any lapse on the part of the Assessing Officer in disposing of the objection of the assessee by way of a speaking order, it could be corrected by remitting the issue back to the file of A.O. to pass a speaking order for disposing of the objections filed by

the assessee. The learned DR relied on the judgment of the Hon'ble Madras High Court in the case of *Home Finders Housing Ltd. v. ITO* [(2018) 404 ITR 611 (Mad.)] wherein it was held as under:-

"8. The petitioner is aggrieved against the order of assessment passed in pursuant to the reopening of the same under section 147 of the said Act. There is no dispute to the fact that in respect of the assessment year 2012-13, an assessment order was passed on March 23, 2015 under section 143(3) of the said Act. Thereafter, the Assessing Officer issued a notice under section 148 on October 16, 2015 stating that he had reasons to believe that the income chargeable to tax had escaped assessment, within the meaning of section 147 of the said Act. On receipt of such notice, the petitioner, through their reply dated November 20, 2015, sought the details of reasons for reopening the assessment. In response to such request, the respondent sent a communication on February 5, 2016 indicating the reason for reopening the assessment as extracted hereunder:

'It has been observed that the assessee has claimed erroneous reduction in the value of inventory being flats under construction as per joint venture development, which will be completed only on receipt of share of flats apart from cash by the assessee-company as agreed in the Joint Venture document which has not taken place during the year. Hence the claim of reduction to the tune of Rs. 1,63,58,148 is found not to be in order and thus the income to the extent is considered as having escaped assessment.'

9. The petitioner, on receipt of such communication, sent a detailed objection on March 26, 2016 running to several pages. It is specifically stated therein that the assessment itself was completed under section 143(3) read with section 147 and that the entire books of account, bank statements, reconciliation of Form 26AS with profit and loss accounts was done during the course of assessment proceedings. It is also stated in their objection that the entire details and agreements and documents were scrutinised in detail before passing the assessment order under section 143(3) and that the petitioner had furnished the details on various matters relevant to the assessment year. Therefore, it is contended by the petitioner in the said reply/objection that reopening of the assessment is without jurisdiction, since it does not satisfy the test for reopening the

assessment, as held by the apex court in the Kelvinator of India's case.

10. Though such objections of the petitioner were received by the respondent, admittedly he has not passed any order, much less a speaking order, rejecting those objections. On the other hand, he straight away passed the impugned order of assessment on December 30, 2016. It is well settled that the Assessing Officer has to first pass a speaking order on the objections raised by the petitioner against the reopening of the assessment before even proceeding to pass final order of assessment. In this aspect, the decision of the apex court reported in *GKN Driveshafts (India) Ltd. v. ITO* [2003] 259 ITR 19 (SC) ; [2003] 1 SCC 72 is relevant to be quoted wherein at paragraph No.5, it has been observed as follows (page 20 of 259 ITR) :

'We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income-tax Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above- said five assessment years.' (emphasis supplied)

8.1 The learned DR also relied on the judgment of the Hon'ble Supreme Court in the case of *Home Finders Housing Ltd. v. ITO* [(2018) 94 taxmann.com 84 (SC)], wherein the Hon'ble Supreme Court dismissed the SLP against High Court's order that non-compliance of direction of Supreme Court in *GKN Driveshafts (India) Ltd. v. ITO* [2002] 125 Taxman 963 that on receipt of objection given by assessee to notice u/s 148, Assessing Officer is bound to dispose of objections by passing a speaking order, would not make reassessment order void ab initio.

9. I have heard the rival submissions and perused the material on record. In the present case, it is an admitted fact that the assessee filed objections for reopening the assessment on 18th April, 2015 and the DR was not able to produce how the objections of the assessee were disposed of by the AO by a speaking order. In view of this, it is appropriate to remit the issue to the file of the A.O. to dispose of the objections raised by the assessee on reopening the assessment by a speaking order, and thereafter only the A.O. should pass the assessment order. With these observations, I remit the additional ground raised by the assessee to the files of the A.O. for disposing of the objections raised by the assessee with regard to the reopening of the assessment. Since I have remitted the legal issue raised by the assessee to the files of the A.O. for his consideration, I refrain from adjudicating other grounds of appeal raised by the assessee, which are kept open at this stage.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 28th day of January, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore ; Dated : 28th January, 2020.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-4, Bengaluru.
4. The Pr.CIT-4, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore