

आयकरअपीलीयअधिकरणसूरतन्यायपीठ,सूरत
IN THE INCOME TAX APPELLATE TRIBUNAL,SURAT
BENCH,SURAT

श्रीसीएमगर्ग, न्यायिकसदस्यएवंश्रीओपीमीना, लेखासदस्यकेसमक्ष
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER AND
SHRI O.P.MEENA, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.1397/AHD/2016/SRT
निर्धारणवर्ष/ Assessment Year: 2008-09

Anis Ahmed Miya Mohammed
Kapadia,
11/900, Sindhiwad, Chowk Bazar,
Surat – 395 003.

[PAN: ADTPK 8547N]
(अपीलार्थी/Appellant)

Vs. Income Tax Officer,
Ward-3(3)(1),
Surat.

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by

: Shri R.N. Vepari, C.A

प्रत्यर्थीकीओरसे/Respondent by

: Mrs. R.Kavitha, Sr. D.R

सुनवाईकीतारीख/Date of Hearing

: 07-03-2018

घोषणाकीतारीख/Date of Pronouncement

: 13-03-2018

आदेश/ORDER

PERC.M.GARG, JUDICIAL MEMBER:

This appeal by the Assessee has been filed against the order of Commissioner of Income Tax (Appeals)-3, Surat ('CIT(A)' for short) dated 14.03.2016 for the assessment year (AY) 2008-09 passed in the first Appeal No.CAS/3/TRFD/V/118/2014-15.

2. The assessee has challenged reopening of assessment u/s. 147 of the Income Tax Act, 1961 (for short 'the Act') and consequently notice issued u/s. 148 of the Act by adjudicating the following grounds:

1. *On the facts and circumstances of the case and as per law, the learned Commissioner of Income-tax (Appeals) ought to have quashed the assessment order on reopening when the Assessing Officer had not disposed of the objections as required by the Supreme Court in case of G.K.N. Driveshafts(259-ITR-19).*
2. *The reopening is also bad in law as it has been done by invoking section 50C and for substituting the value as per Stamp Valuation Authorities which is only an estimate.*
3. *Without prejudice to the above, the learned Commissioner of Income-tax (Appeals) ought to have referred the matter for valuation u/s. 50C(2) of the Act.*

3. We have heard the arguments of the both sides, and carefully perused the relevant material placed on the record of the Tribunal. The Id. Assessee's Representative (AR) submitted that the Id. CIT(A) ought to have quashed the assessment order on reopening being bad in law as the Assessing Officer (AO) has not disposed of the objections of the assessee by passing a speaking order as per directions of Hon'ble Supreme Court in the case of *G.K.N. Driveshafts* (supra). The Id. AR further pointed out that the assessee received notice u/s. 148 of the Act dated 04.09.2012 and the assessee filed his objections to the reopening on 28.11.2013 which were not disposed of by the AO as per directions of Hon'ble Supreme Court in the case of *G.K.N. Driveshafts*(supra). The Id. AR submitted that only on this ground the reopening for assessment and reassessment order passed u/s. 143(3) r.w.s 147 of the Act should be quashed being bad in law. The Id. AR drew our attention towards copy of the order of Hon'ble Supreme Court to support his contention.

4. Replying to the above, the Id. AR placing reliance on the ratio of the decision of Hon'ble Gujarat High Court in the case of *Vishwanath Engineers v. ACIT [2013] 354 ITR 211 (Guj)* submitted that the AO in para 7 of the reassessment order as reproduced the objections of the assessee which have been adjudicated therein. Therefore, there is no fault on the part of the AO and it cannot be allotted that the AO has not considered the objection of the AO while passing the impugned reassessment order.

5. On careful consideration of above rival submissions, first of all we note that undisputedly in response to the notice u/s. 148 of the Act the assessee filed petition to the reopening on 28.11.2013, which were not adjudicated by the AO by passing a speaking order prior to passing the impugned reassessment order u/s. 143(3) r.w.s. 147 of the Act. At this juncture, we find it profitable to take respectful cognizance of the directions of Hon'ble Supreme Court in the case of *G.K.N. Driveshafts* (supra), which has been followed by the Hon'ble High Court of Gujarat in the case of *Arvind Mills Ltd. V. ACIT 270 ITR 469 (Guj)* wherein their lordships speaking for the jurisdictional High Court held that the AO has not passed a speaking order in disposing the assessee's objections against the notice u/s. 148 of the Act before proceeding with the

reassessment proceedings, hence, the subsequent assessment order is bad in law and deserves to be quashed.

6. Furthermore, ongoing through the facts and circumstances of the case of the present case, we are of the considered view that the legal issue in dispute i.e., objections of the assessee to the reopening of assessment and notice u/s. 148 of the Act has not been disposed of by the AO by passing a speaking order before proceeding with the reassessment proceedings, is squarely covered by the decision of Hon'ble Supreme Court in the case of *G.K.N. Driveshafts* (supra) and the decision of Hon'ble jurisdictional High Court in the case of *Arvind Mills Ltd.* (supra). We also opening with the contention of the Id. AO that these decisions followed by the ITAT Delhi Bench in the case of *ITO v. M.L. Creations* in I.T.A. No.4009/Delhi/2016 and in I.T.A. No. 2115/Delhi/2016 in the case of *Khusrolrshad v. ITO*. On the basis of foregoing discussion, we are inclined to hold that in the present case the reassessment order dated 30.01.2014 passed u/s. 143(3) r.w.s. 147 of the Act being bad in law deserves to be quashed on account of non-disposal of objections of assessee dated 28.11.2013 and we quash the same. Since, we have already quashed the reassessment order in the earlier part of this order, hence, it is not necessary to adjudicate upon the grounds on merits.

7. In the result, the appeal of the assessee is allowed on legal ground.

Order pronounced in the open court on this day of 13th March, 2018.

Sd/-

(ओपीमीना)

(O.P.MEENA)

लेखासदस्य/Accountant Member

सूरत/Surat; दिनांक Dated : 13th March, 2018

EDN

Sd/-

(सीएमगर्ग)

(C.M.GARG)

न्यायिकसदस्य/Judicial Member/

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी/ The Appellant;
2. प्रत्यर्थी/ The Respondent;
3. आयकरआयुक्त(अपील) / The CIT(A)-3, Surat;
4. Pr. CIT-III, Surat;
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, सूरत/ DR, ITAT, Surat;
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

सहायकपन्जीकर / **Assistant Registrar**

आयकरअपीलीयअधिकरण, सूरत / ITAT, Surat