

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND SHRI RAJESH
KUMAR, ACCOUNTANT MEMBER**

**ITA No.7413/MUM/2018
Assessment Year: 2009-10**

Babulal H. Jain 47/49, 1 st Pathan Street, 4 th Kumbharwada, Mumbai, Pin-400004. PAN: AACPJ5406F	Vs.	ITO-19(1)(2), Mumbai
(Appellant)		(Respondent)

Present for:

Appellant by

:Devendra Jain, Advocate

Respondent by

: R. Bhoopathi, CIT

Date of Hearing : 06.01.2020

Date of Pronouncement : 31.01.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 12.02.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The assessee challenged the order of the CIT(A) on legal as well as on merits. The ground no.1 raised by the assessee is against the order of ld. CIT(A) confirming the action of AO in completing the assessment without providing a copy of reasons recorded u/s 148(2) of the Act and thereby wrongly upholding the order of AO on the jurisdictional issue. The ground raised by the assessee is as under:

“1. In the facts and circumstances of the case and in law, the learned CIT(A)-30, Mumbai has erred in confirming the action of the assessing officer in completing the assessment without providing the copy of reasons recorded u/s. 148(2), thereby violating the principle/procedure laid down in case of:

- (a) GKN Driveshaft (I) Ltd. vs. ITO [259 ITR 19]*
- (b) CIT vs. Videsh Sanchar Nigam Ltd. [340 ITR 66 (2011)]*
- (c) CIT v. Fomento Resorts and Hotels Ltd. (ITA No. 71 of 2006)*
- (d) CIT v. Trend Electronics (ITA No. 1867 of 2013)*
- (e) CIT v. IDBI Ltd. (ITA No. 494 of 2014)”*

3. At the outset, the ld. Counsel for the assessee drew our attention of the Bench to the delay of 10 days in filing the appeal which the ld. Counsel tried to explain by filing condonation application along with affidavit. The ld. AR submitted that the delay in filing the appeal has happened due to the reasons which are purely beyond the control of the assessee more particularly the Chartered Accountant of the assessee was occupied in transfer pricing audits, GST returns and annual returns, hence the delay has occurred in filing the appeal. The ld. AR submitted that since the reasons are beyond the control of the assessee, the same may kindly be taken leniently and the delay may kindly be condoned. The ld. DR, on the other hand, opposed the admission of the appeal, however left the issue to the discretion of the Bench.

4. After hearing both the parties, perusing the material on record, we observe that the delay has happened because of preoccupation of the Chartered Accountant of the assessee which in our opinion is a reasonable cause for non-filing the appeal within the due time. The said delay cannot be attributed to be deliberate or willfully on the part of the assessee. Besides, the delay is only of 10 days. Accordingly we condone the delay and admit the appeal for prosecution.

5. The facts in brief is that the assessee filed the return of income on 30.09.2009 declaring a total income of Rs.3,47,138/- which was processed u/s 143(1) of the Act accepting the returned income. Thereafter the AO received information from DGIT(Inv.) Wing, Mumbai that the assessee is beneficiary of hawala purchase transactions from nine hawala parties to the tune of Rs.2,56,68,849/- and accordingly the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 on 15.03.2014. The said notice was duly complied by the assessee by filing a letter dated 15.04.2014 requesting the AO to treat the return filed originally on 30.09.2009 as a compliance to this notice. Thereafter, the assessee requested the AO to supply the reasons recorded u/s 148(2) of the Act. The AO did not provide the copy of the reasons recorded u/s 148(2). However, the same was reproduced in the assessment order thereby denying the opportunity to file a objections against the re-assessment proceedings and finally framing of assessment u/s 143(3) r.w.s 147 vide order dated 13.03.2015 by making addition on account of profit element in the bogus purchases @12.50% which comes to Rs.32,08,606/-. Before the Id. CIT(A), the assessee specifically challenged the issue of not supplying the reasons u/s 148(2) however the Id. CIT(A) has not giving any specific findings on the grievance of the assessee and upheld the assessment u/s 143(3) r.w.s 147 by upholding the reopening of the assessment.

6. The Id. AR vehemently submitted before us that supplying or providing copy of the reasons to believe is sine qua non for a valid assessment lest in absence of supplying reasons to the assessee during assessment proceedings, the assessment becomes null and void and has no sanctity in the eyes of law. In defence of the arguments, the Id. AR relied on the decisions of Hon'ble Supreme

Court and Hon'ble jurisdictional High Court reported in ITA No.494 of 2014

(a) *GKN Driveshaft (I) Ltd. vs. ITO [259 ITR 19] (SC)*

(b) *CIT vs. Videsh Sanchar Nigam Ltd. [340 ITR 66 (2011)] [Bom-HC]*

(c) *CIT v. Fomento Resorts and Hotels Ltd. (ITA No. 71 of 2006) [Bom-HC]*

(d) *CIT v. Trend Electronics (ITA No. 1867 of 2013) [BOM-HC]*

(e) *CIT v. IDBI Ltd. (ITA No. 494 of 2014)(Bom)*

6.1 The ld. Counsel submitted that the Hon'ble Jurisdictional High Court has held that supply of reasons as recorded u/s 148(2) of the Act for reopening of an assessment is a jurisdictional requirement and the assessment framed by the AO in such scenario is without jurisdiction. The ld. AR therefore prayed the Bench that the assessment framed by the AO may kindly be quashed.

7. The ld. DR, though candidly admitted that the reasons have not been supplied during the assessment proceedings however submitted that the same were reproduced in the assessment order. The ld. DR requested that in such a scenario the best course would be to restore the issue back to the file of AO to follow the due procedure under law.

8. After hearing both the parties, perusing the material on record, we observe that in this case the assessment was reopened u/s 147 r.w.s 148 of the Act when the assessee was found to be beneficiary of hawala purchase transactions after receipt of information from DGIT(Inv.), Mumbai that the suppliers from whom the assessee has allegedly purchased were all hawala parties who were not doing actual business but supplying of bogus hawala entries. The case of

the assessee was reopened by issuing a u/s 148 on 15.03.2014 which was duly served on the assessee and the assessee has duly complied with the said notice vide letter dated 15.04.2014. The assessee also requested for supplying of reasons recorded u/s 148 however, the same was not supplied to the assessee, thus non-supply of reasons during assessment proceedings is also undisputed. Now, the only issue before us for adjudication is whether the assessment is valid in absence of or for the want of supply of reasons recorded u/s 148(2) of the Act. In our opinion, the requirement of supply of reasons u/s 148 of the Act when the assessee has specifically requested for the same after complying with the notice u/s 148 is sine qua non and goes to the root of the jurisdiction of the AO. In our opinion, the assessment framed without supplying reasons recorded u/s 148 deprives the assessee from filing the objections to the said reopening. Therefore the assessment framed by the AO without supplying reasons is without jurisdiction and cannot be sustained. The case of the assessee is squarely covered by the decision of hon'ble jurisdictional High Court in the case of CIT vs. M/s IDBI Ltd. (supra) wherein the hon'ble jurisdictional High Court has held as under:

“(v)We find that the question as framed proceeds on the basis that the Respondent assessee was aware of the reasons for re-assessment. The only basis for the aforesaid submission is the submission made by the Revenue before the Tribunal that the Respondent Assessee is a public sector institution who was aware that search action has been initiated on certain lessees in respect of transactions with IDBI i.e. Respondent Assessee. On the basis of the above, it is to be inferred that the reason for re-assessment was known to the Respondent Assessee. The supply of reason in support of the notice for reopening of an assessment is a Jurisdictional requirement. The reasons recorded form the basis to examine whether the Assessing Officer had at all applied his mind to the facts and had reasons to believe that taxable income has escaped reassessment. It is these reasons, which have to be made available to the Assessee and it could give rise to a challenge to the reopening notice. It is undisputed that the reasons recorded for issuing reopening notice were never communicated to the Respondent Assessee in spite of its repeated requests. Thus, the grievance of the Revenue on the above count is unsustainable.

(vi) An alternative submission is made on behalf of the Revenue that the obligation to supply reasons on the Assessing Officer was consequent to the decision of the Apex Court that GKN Driveshafts (India) Ltd. vs. Income-tax Officer rendered in 2003 while, in the present case, the reopening notice is dated 9 December 1996. Thus it submitted at the time when the notice under Section 148 of the Act was issued and the time when assessment was completed, there was no such requirement to furnish to the assessee a copy of the reasons recorded. This submission is not correct. We find that the impugned order relies upon the decision of this Court in Seista Steel Construction (P.) Ltd. (supra) when it is held that in the absence of supply of reasons recorded for issue of reopening notice the assessment order would be without jurisdiction and needs to be quashed. The above view as taken by the Tribunal has also been taken by this Court in CIT vs. Videsh Sanchar Nigam Ltd. viz. non-supply of reasons recorded to issue a reopening notice would make the order of Assessment passed thereon bad as being without jurisdiction.”

9. We, therefore respectfully following the decision of the jurisdictional High Court ,set aside the order of the CIT(A) and quash the assessment framed by the AO for the reasons stated hereinabove. The appeal of the assessee is allowed on legal issues.

10. Since we have allowed the appeal of the assessee on the issue raised in Ground No.1 therefore, other grounds raised by the assessee on legal issues and on merits are rendered academic and need not to be adjudicated.

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

Order pronounced in the open court on 31.01.2020.

Sd/-
(Saktijit Dey)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 31.01.2020.

RS, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.