

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.82/PUN/2014
निर्धारण वर्ष / Assessment Year : 2005-06

V. N. Jahagirdar,
105/106, Kumar Paritosh,
Karve Nagar,
Pune – 411052

PAN : AATPJ8641F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 6(1), Pune

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.129/PUN/2014
निर्धारण वर्ष / Assessment Year : 2005-06

Jahagirdar – Desai (AOP),
105/106, Kumar Paritosh,
Karve Nagar,
Pune – 411052

PAN : AAAAJ8803H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 3(4), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 11-02-2020

घोषणा की तारीख / Date of Pronouncement : 11-02-2020

आदेश / ORDER**PER GEORGE MATHAN, JM :**

ITA No. 82/PUN/2014 is an appeal filed by the assessee V.N. Jahagirdar against the order of the ld. CIT(A)-III, Pune in Appeal No. PN/CIT(A)-III/ITO, Wd-6(1)/535/2011-12/434 dated 08-10-2013 for the A.Y. 2005-06. ITA No. 129/PUN/2014 is an appeal filed by the assessee Jahagirdar – Desai (AOP) against the order of the ld. CIT(A)-II, Pune in Appeal No. PN/CIT(A)-II/ITO, Wd-3(4), Pn/148/2012-13 dated 05-09-2013 for the A.Y. 2005-06.

2. As the issues in both the appeals are identical, both the appeals are disposed of by this common order.

3. Shri Kishor Phadke represented on behalf of the assessee and Shri S.P. Walimbe represented on behalf of the Revenue.

4. It was submitted by the ld. AR that in respect of both the appeals the assessee has challenged the action of AO in assuming jurisdiction u/s. 147 of the Act. It was the submission that the assessee has challenged the same through additional grounds filed on 19-06-2018. It was the submission that these are purely legal grounds and in view of the principles laid down by the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax reported in 229 ITR 383 (SC), the Tribunal should consider the question of law arising in the assessment proceedings although not raised earlier. It was further the submission that the AO at the outset has recorded the reasons without application of mind and on the basis of information received from Central

Excise Department with respect to verification of some other persons and it did not demonstrate any escapement of income of the appellant. It was the submission that the assessee also did not have the opportunity to raise objection to reopening before the AO as the assessee was also defending themselves against criminal proceedings. At this point it was specifically put up by the ld. AR that in view of decision of Hon'ble Supreme Court in the case of GKN Drive Shaft (India) Ltd. Vs. Income Tax Officer reported as 259 ITR 19 (SC) it was mandatory that the AO has to consider the objections of assessee in respect of reopening and only then he could proceed with the assessment. Thus, being so, if the assessee was to raise objection for the first time against the reopening, then it would mandatorily be required for the issue to be restored to the file of AO for adjudication in line with the principles laid down by the Hon'ble Supreme Court in the case of GKN Drive Shaft (India) Ltd. Vs. Income Tax Officer (supra).

5. In reply, the ld. AR submitted that he has no objection if the issue was restored to the file of AO for granting the assessee an opportunity to raise objections in respect of reopening and for adjudicating on the same in line of the decision of Hon'ble Supreme Court in the case of GKN Drive Shaft (India) Ltd. Vs. Income Tax Officer (supra). This was put to the ld. DR. The ld. DR submitted that criminal proceedings were also pending. It was the submission that however the Revenue has no objection if the issue was restored to the file of AO for adjudication. It was also submitted that the assessee has raised the issue on non-issuing of notice u/s. 143(2) of the Act. It was submitted that it is an admitted fact that the notice u/s. 143(2) has not been issued in the case of V. N. Jahagirdar in ITA No. 82/PUN/2014. It was further the submission that the assessee had not responded to the notice issued u/s. 148 and consequently, it was not a

requirement for the Revenue to issue notice u/s. 143(2) as there was no return of income filed by the assessee in response to the notice issued u/s. 148 of the Act. For this proposition, the ld. DR placed reliance on the decision of Hon'ble High Court of Jammu and Kashmir in the case of Principal Commissioner of Income Tax Vs. Broadway Shoe Co. reported in (2018) 99 taxmann.com 83 (J&K) wherein it has been held that where no return was filed in pursuance to notice issued u/s. 148, issue of notice 143(2) was not required for making assessment. It was further submitted that as the issue was being restored for re-adjudication and granting opportunity to the assessee to file objection to reopening of assessment and for following the principles laid down by the Hon'ble Supreme Court in the case of GKN Drive Shaft (India) Ltd. Vs. Income Tax Officer (supra), the issue of notice u/s. 143(2) would not require any specific adjudication, as in such a situation assessment would be required to be completed u/s. 144 of the Act.

6. We have considered the rival submissions. A perusal of additional grounds raised by the assessee shows that the assessee has challenged the reopening of assessment and the reasons recorded. Challenging of reopening is a legal issue and admittedly is liable to be admitted in line of the principles laid down in the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax (supra). Consequently, the additional grounds filed by the assessee in both the appeals stand admitted. The assessee has challenged the reopening on the ground that it is a borrowed satisfaction and that the reasons recorded did not demonstrate any escapement of income of the appellant. Admittedly, the challenge has not been made before the AO. It has been claimed by the assessee that as the assessee was also preoccupied in

criminal proceedings, the assessee could not raise the objections before the AO at the relevant point of time. The reasons raised by the assessee appear reasonable. Consequently, considering the principles of natural justice, the assessment order passed is set aside and the issues are restored to the file of AO for de-novo adjudication. The AO shall grant adequate opportunity to assessee to file objections in response to notice issued u/s. 148 of the Act and after complying with the principles laid down by the Hon'ble Supreme Court in the case of GKN Drive Shaft (India) Ltd. Vs. Income Tax Officer (supra), re-adjudicate the issues raised before the completion of assessment.

7. In the result, appeals of both the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 11th February, 2020.

Sd/-
(Anil Chaturvedi)
ACCOUNTANT MEMBER

Sd/-
(George Mathan)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 11th February, 2020

RK

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

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

//सत्यापित प्रति// True copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune