

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.3585/M/2017
Assessment Year: 2009-10**

Mr. Ashok Kumar Chhabildas Doshi, 501-502, Ishan Bldg., Jame Jamshedji Rd., Matunga (CR), Mumbai - 400 019 PAN: AECPD 2583B	Vs.	ACIT 20(1), Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Dinkle Hariya, A.R.
Revenue by : Shri Brajendra Kumar, D.R.

Date of Hearing : 24.12.2020
Date of Pronouncement : 13.01.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 23.03.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The assessee has challenged the order of Ld. CIT(A) on jurisdictional issue as well as on merit. The legal issue raised by the assessee is against the order of Ld. CIT(A) upholding the order of AO passed under section 143(3) read with section 148 of the Act.

3. At the outset, the Ld. Counsel of the assessee submitted that the reassessment was framed by the AO is bad, illegal and without jurisdiction for the reason that AO has not disposed of the objections filed by the assessee against reopening of assessment under section 147 of the Act. The Ld. A.R. drew our attention to page No.47 to 51 which is a copy of the objections dated 11.02.2015 filed before the AO. The Ld. A.R. also drew our attention to the written submissions filed before the Ld. CIT(A) a copy of which is filed at page No.151 to 156 and the relevant submissions on page No.152 wherein it has been specifically prayed before the Ld. CIT(A) that the objections filed by the assessee against the reopening of assessment vide letter dated 11.02.2015 were not disposed of by the AO which is in violation of the Apex Court decision in the case of GKN Drive Shaft India Ltd. vs. ITO (2003) 259 ITR 19 (SC). The Ld. A.R. submitted that the Ld. CIT(A) has not decided this issue.

4. In the appellate proceedings, the Ld. A.R. also submitted that in assessee's sister concern case namely Manish K. Ajmera HUF vs. DCIT ITA No.5001/M/2018 A.Y. 2011-12 order dated 08.12.2020, the identical issue has been decided in favour of the assessee by the co-ordinate bench of the Tribunal. The Ld. A.R. therefore prayed that following the said decision of the co-ordinate bench of the Tribunal, the reassessment framed by the AO may kindly be quashed.

5. The Ld. D.R., on the other hand, relied on the order of authorities below and submitted that the assessee had duly appeared before the AO in the assessment proceedings and

never raised this objection. Therefore, the assessee can not be allowed to raise this issue at this stage.

6. After hearing both the parties and perusing the material on record, we observe that the AO has not disposed of the objections dated 11.02.2015 filed by the assessee against the reopening of assessment under section 147 by way of speaking order which in our view is a mandatory condition and such a mistake goes to the root of the assessment and can not be cured. The co-ordinate bench of the Tribunal in the case of Manish K. Ajmera HUF vs. DCIT (supra) which is assessee sister concern has decided under similar facts in favour of the assessee. The operative part is as under:

“11. As could be seen from the above decision of the Hon'ble Bombay High Court even if Assessing Officer disposed off the objections raised by the assessee in the Assessment Order while completing the re-assessment that is not in compliance with the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd., (supra) in other words the Assessing Officer shall pass a separate speaking order disposing off the preliminary objections raised by the assessee in reopening the assessment. In the case on hand before us since Assessing Officer failed to dispose off the preliminary objections of the assessee by way of a separate order, respectfully following the decision of the Hon'ble Bombay High Court in the case of Fomento Resorts & Hotels Ltd. v. ACIT (supra), we quash the re-assessment order passed u/s. 143(3) r.w.s. 147 of the Act for the A.Y. 2011-12. The preliminary ground raised by the assessee is allowed.”

7. Since the facts before us are materially same, therefore, we are inclined to quash the reassessment framed by the AO under section 143(3) read with section 147 of the Act. The legal ground raised by the assessee is allowed.

8. Since we have allowed the appeal of the assessee on legal issue, we are not inclined to go into other grounds and various contentions raised by the assessee on merits as they would become academic.

9. The appeal of the assessee is partly allowed.

Order pronounced in the open court on 13.01.2021.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 13.01.2021.

* Kishore, 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.