

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE VIKAS AWASTHY, JUDICIAL MEMBER

आअसं. 7491/मुं/2018 (नि.व. 2007-08)
ITA NO.7491/MUM/2018(A.Y.2007-08)
आअसं. 7492/मुं/2018 (नि.व. 2008-09)
ITA NO.7492/MUM/2018(A.Y.2008-09)
आअसं. 7493/मुं/2018 (नि.व. 2009-10)
ITA NO.7493/MUM/2018(A.Y.2009-10)

Vikas Ganpat Mane,
D-6,303, Gaondevi Nagar,
Shankar Pawse Road,
Kalyan (East) 421 306
PAN:AKKPM4583C

..... अपीलार्थी /Appellant

बनाम Vs.

ITO Ward (3)(2)
IT Office, Rani Mansion,
2nd floor, Kalyan – 421 301

..... प्रतिवादी/Respondent

Assessee by : Shri Subramanian, Advocate
Revenue by : Shri Sushil Mishra

सुनवाई की तिथि/ Date of hearing : 29/12/2020
घोषणा की तिथि/ Date of pronouncement : 25/03/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

These three appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-1, Thane (in short 'the CIT(A)') dated

21/09/2018 common for the assessment years 2007-08, 2008-09 and 2009-10. Since, common issues are involved in all the three appeals, these appeals are taken up together for adjudication and are decided by this composite order.

2. For the sake of convenience, the relevant facts are extracted from appeal in ITA No.7491/Mum/2018 for assessment year 2007-08. During the search proceedings in the case of M/s. Mahasagar Securities Pvt. Ltd. belonging to Mukesh Chokshi group, the name of assessee was found in the entries of bogus share transactions. The assessee was identified as one of the beneficiary from bogus share transactions. Consequently, assessment in the case of the assessee for assessment year 2007-08 was reopened.

3. Shri Subramanian appearing on behalf of the assessee submitted that notice under section 148 of the Income Tax Act, 1961 (in short 'the Act') for assessment year 2007-08 was issued to the assessee on 28/03/2013. The assessee vide letter dated 16/04/2013 requested the Assessing Officer to treat the return filed on 07/11/2007 as return filed in pursuance to the notice issued under section 148 of the Act. Thereafter, the assessee vide letter dated 19/04/2013 filed in the office of Income Tax Officer on 30/04/2013, requested for supplying copy of reasons recorded for reopening. The Assessing Officer without providing copy of reasons for reopening issued notice under section 143(2) to the assessee on 09/07/2013. Thereafter, the Assessing Officer in violation of the law laid down by Hon'ble Supreme Court of India in the case of GKN Drive Shaft (India) Ltd. vs. ITO, 259 ITR 19 (SC) proceeded to complete the assessment and passed the assessment order dated 25/03/2014 under section 143(3) r.w.s. 147 of the Act making addition of Rs.61,479/- on account of unexplained investment in shares.

Aggrieved by the assessment order, the assessee filed appeal before the CIT(A) challenging the validity of reassessment proceedings, as well as, addition on merits. The assessee filed written submissions before the CIT(A) on 20/03/2018 categorically stating that the reassessment proceedings have been completed without furnishing copy of reasons for reopening. The CIT(A) while dismissing assessee's ground challenging reopening of assessment, failed to take note of the specific objection raised by the assessee against non-furnishing of reasons for reopening. The Id. Counsel for the assessee submitted that non-furnishing of reasons for reopening has jeopardised assessee's right to file objections against reopening of assessment. The Assessing Officer completed reassessment in total violation of law laid down by the Hon'ble Apex Court. The Id. Counsel for the assessee in support of his submissions placed reliance on the following decisions:

- (i) CIT vs. Videsh Sanchar Nigam Ltd., 340 ITR 66 (Bom)
- (ii) New Era Shipping Ltd. vs. CIT, 430 ITR 431(Bom)
- (iii) CIT vs. Fomento Resorts & Hotels Ltd., Income Tax Appeal No.71 of 2006 decided on 27/11/2006(Bom-Goa Bench)

4. Per contra Shri Sushil Mishra representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. Departmental Representative submitted that CIT(A) has dismissed the grounds raised by the assessee challenging reopening of assessment after considering all the submissions of assessee including alleged non-furnishing of reasons for reopening. The Id. Departmental Representative submitted that the assessment for assessment year 2007-08 was reopened after recording reasons and seeking approval of the range head. The assessee never objected to reopening of assessment and has participated in the assessment proceedings.

5. Both sides heard. Orders of authorities below examined and the decisions on which Id. Counsel for the assessee has placed reliance considered. The assessee in appeal has raised eight grounds. In ground No.1 to 6 of the appeal, the assessee has assailed reopening of assessment. The assessee is challenging reopening primarily on the ground that reasons recorded for reopening were never furnished to the assessee, inspite of specific request made to the Assessing Officer after receiving notice under section 148 of the Act. The Id. Counsel for the assessee has drawn attention of the Bench to the request for providing copy of reasons recorded for reopening dated 19/04/2013 at page-6 of the Paper Book. A perusal of the same show that the said letter bears the acknowledgement stamp from the office of ITO-Ward 3(2), Kalyan dated 30/04/2013. Ostensibly, the reasons for reopening were never furnished to the assessee and the assessment under section 143(3) r.w.s. 147 of the Act was completed. During first appellate proceedings the assessee raised objection and filed written submissions before the CIT(A) raising specific plea that the reasons recorded for reopening were not furnished to the assessee. No material has been placed on record by the Revenue to rebut the contentions of the assessee. A perusal of the impugned order shows that the CIT(A) has made a remark in para -6 of his order that necessary reasons were recorded, however, the assessee has not objected. It is not emanating from the impugned order that the reasons recorded for reopening were furnished to the assessee at any stage. The CIT(A) has scuttled from commenting on the specific objection raised by the assessee against non-furnishing of reasons recorded for reopening. No evidence has been furnished by the Revenue before the Tribunal either to substantiate that “reasons for reopening” were ever provided to the assessee before passing assessment order.

6. The Hon'ble Supreme Court of India in the case of GKN Drive Shaft India Ltd vs. ITO (supra) in an unambiguous manner laid down the procedure with regard to

furnishing reasons recorded for reopening to the assessee and the right of the assessee to raise objections on such reasons. The Hon'ble Supreme Court has further directed that the Assessing Officer is bound to dispose of the objections raised by the assessee by passing a speaking order. By not furnishing reasons for reopening to the assessee, the Assessing Officer has usurped assessee's valuable right to raise objections against reopening of assessment. The Hon'ble High Courts have time and again held that non-furnishing of reasons recorded for reopening to the assessee by the Assessing Officer vitiates reopening proceeding, hence, are liable to be quashed.

7. In the case of CIT vs. Videsh Sanchar Nigam Ltd. (supra) the Hon'ble Jurisdictional High Court held that where reasons recorded for reopening of assessment were repeatedly asked by the assessee and were furnished only after completion of assessment, the reassessment proceeding are liable to be quashed. In the case of Fomento Resorts and Hotels Ltd. (supra) the Hon'ble High Court held that it is mandatory for the Assessing Officer to follow the procedure laid in GKN Drive Shaft (India) Ltd.(supra). Failure to follow procedure renders the assumption of jurisdiction by the Assessing Officer ultra – vires. Similar view has been taken by the Hon'ble Jurisdictional High Court in the case of Bayer Material Science Pvt. Ltd. vs DCIT reported as 382 ITR 333 (Bom.) and in the case of KSS Petron Pvt. Ltd. vs. Asst. CIT in Income Tax Appeal No. 224 of 2014 decided on 03/10/2016.

8. In the present case, I find that the assessee after receipt of notice under section 148 has duly complied with the directions and furnished return of income in response to the said notice. Thereafter, the assessee asked the Assessing Officer for furnishing reasons recorded for reopening. This fact has not been rebutted by the Department either before the CIT(A) or before the Tribunal. Since, the Assessing Officer failed to furnish reasons recorded for reopening and completed the

assessment in violation of the procedure laid down by the Hon'ble Apex Court, the assessment order is without jurisdiction and hence, is liable to be quashed. Subsequent proceedings arising from the assessment order are vitiated. Consequently, the impugned order is set-aside and ground no. 1 to 6 of appeal are allowed.

9. Since, assessment order has been set aside, ground No.7 raised in appeal on merits of the addition has become academic, therefore, is not deliberated upon.

10. In ground No.8 of appeal, the assessee has assailed charging of interest under section 234A,234B and 234C of the Act. As assessment order has been quashed, the assessee succeeds on ground No.8, as well.

11. In the result, appeal for assessment year 2007-08 is allowed.

ITA NO.7492 & 7493/Mum/2018: AYs.2008-09 and 2009-10:

12. Both sides are unanimous in stating that the facts in assessment year 2008-09 and 2009-10 are pari-materia to facts in assessment year 2007-08. The assessee in both these appeals has assailed reopening of assessment on identical set of grounds. In both the impugned assessment years, the assessee has requested for providing copy of reasons recorded for reopening and the Assessing Officer has failed to provide the same to the assessee. The CIT(A) vide common order for all the three assessment years has rejected the specific ground raised by the assessee challenging reopening of assessment in similar manner. The findings given while adjudicating ITA No.7491/Mum/2018 would *mutatis mutandis* apply to the legal issue raised in

assessment years 2008-09 and 2009-10. Consequently, both these appeals filed by the assessee are allowed.

13. To sum up, the appeals of assessee for assessment years 2007-08, 2008-09 and 2009-10 are allowed.

Order pronounced in the open court on Thursday the 25th day of March, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 25/03/2021

Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai