<u>आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम</u>

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री एन के चौधरी,न्यायिकसदस्य एवं श्री डि.एस .सुन्दरसिंह, लेखासदस्यकेसमक्ष

BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./**I.T.A.No.704/Viz/2019 to 706/Viz/2019**

(निर्धारणवर्ष/**Assessment Year:2009-10 to 2011-12)**

Smt.Samanthapudi Lavanya D.No.5-1033-1, Vijayawada Road Hanuman Junction, Bapulapadu Mandal Krishna Dist. **[PAN : CNBPS7658N]**	Vs.	Asst.Commissioner of Income Tax Central Circle Vijayawada

आयकरअपीलसं./**I.T.A.No.707/Viz/2019 to 709/Viz/2019**

(निर्धारणवर्ष/**Assessment Year:2009-10 to 2011-12)**

Kanumuri Siva Rama Raju D.No.7-159, Vijayawada Road Hanuman Junction Bapulapadu Mandal Krishna Dist. **[PAN : AEQPK1285B]**	Vs.	Asst.Commissioner of Income Tax Central Circle Vijayawada

आयकरअपीलसं./**I.T.A.No.710/Viz/2019 to 712/Viz/2019**

(निर्धारणवर्ष/**Assessment Year:2009-10 to 2011-12)**

Smt.Kanumuri Krishna Kumari D.No.7-159, Vijayawada Road Hanuman Junction Bapulapadu Mandal Krishna Dist. **[PAN : BLXPK1470R]**	Vs.	Asst.Commissioner of Income Tax Central Circle Vijayawada

आयकरअपीलसं./I.T.A.No.713/Viz/2019 to 715/Viz/2019

(निर्धारणवर्ष/Assessment Year:2009-10 to 2011-12)

Kanumuri Prasad D.No.7-159, Vijayawada Road Hanuman Junction Bapulapadu Mandal Krishna Dist. **[PAN : AQFPK9127R]**	Vs.	Asst.Commissioner of Income Tax Central Circle Vijayawada

आयकरअपीलसं./I.T.A.No.716/Viz/2019 to 718/Viz/2019

(निर्धारणवर्ष/Assessment Year:2009-10 to 2011-12)

Smt.Kanumuri Lakshmi Uma Katyaini D.No.7-159, Vijayawada Road Hanuman Junction Bapulapadu Mandal Krishna Dist. **[PAN : BLXPK1717P]**	Vs.	Asst.Commissioner of Income Tax Central Circle Vijayawada

आयकरअपीलसं./I.T.A.No.719/Viz/2019 to 721/Viz/2019

(निर्धारणवर्ष/Assessment Year:2009-10 to 2011-12)

Samanthapudi Raja Ramesh D.No.11-85, K.Sitaramapuram Hanuman Junction Bapulapadu Mandal Krishna Dist. **[PAN : BBAPS0349J]**	Vs.	Asst.Commissioner of Income Tax Central Circle Vijayawada

आयकरअपीलसं./I.T.A.No.722/Viz/2019 to 724/Viz/2019

(निर्धारणवर्ष/Assessment Year:2009-10 to 2011-12)

Smt.Kanumuri Lakshmi Sirisha D.No.7-159, Vijayawada Road Hanuman Junction Bapulapadu Mandal Krishna Dist. **[PAN : BLXPK1716N]**	Vs.	Asst.Commissioner of Income Tax Central Circle Vijayawada

आयकरअपीलसं./I.T.A.No.725/Viz/2019 to 727/Viz/2019

(निर्धारणवर्ष/Assessment Year:2009-10 to 2011-12)

KanumuriSubba Raju D.No.7-159, Vijayawada Road Hanuman Junction Bapulapadu Mandal Krishna Dist. **[PAN : AZCPS5942C]**	Vs.	Asst.Commissioner of Income Tax Central Circle Vijayawada
(अपीलार्थी/ Appellants)		**(प्रत्यर्थी/ Respondent)**

आयकरअपीलसं./I.T.A.No.73/Viz/2020 to 75/Viz/2020

(निर्धारणवर्ष/Assessment Year:2009-10 to 2011-12)

KanumuriBhaskara Raju D.No.7-159, Vijayawada Road Hanuman Junction Bapulapadu Mandal Krishna Dist. [PAN : AEQPK1314M]		Asst.Commissioner of Income Tax Central Circle Vijayawada

अपीलार्थीकीओरसे/ Appellants by	:	Shri G.V.N.Hari, AR
प्रत्यार्थीकीओरसे / Respondent by	:	Shri D.K.Sonowal, CIT, DR
सुनवाईकीतारीख / Date of Hearing	:	31.03.2021
घोषणाकीतारीख/Date of Pronouncement	:	27.04.2021

आदेश /O R D E R

PerBench :

These appeals are filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-3, Visakhapatnam in

common order dated 31.05.2018 for the Assessment Year (A.Ys.) 2009-10 to 2011-12. Facts of the case are identical in all the appeals, hence all the appeals are clubbed, heard together and disposed off in a common order for the sake of convenience. The facts of the case are extracted from I.T.A. No.725/Viz/2019 and the same are applicable in all the appeals except the change in amounts.

1. Condonation of Delay: These appeals are filed by the assessees with the delay of 492 days and the assessees have filed the condonation petitions stating that the assessees have received the appeal orders from the Ld.CIT(A) on 31.05.2018 and the appeals ought to have been filed on or before 30.07.2018, but the appeals were filed on 31.12.2019 resulting in delay of 492 days. The assessees have filed the petition for condonation of delay along with the affidavits. In their petition for condonation the assessees have stated that the income tax related matters were looked after by Shri A.Murali Mohana Raju, Accountant and he has collected all the necessary papers for filing the appeal from the Advocate and got it signed by the assessees and fell sick for 10 days and later on forgot the issue completely and the assessees were under the bonafide impression that the appeals were filed. The assessees have realized the fact of non-filing of

appeals, only when the department has pressed for payment of the demand. On realizing the mistake the assessees have taken immediate steps for filing the appeals and accordingly appeals were filed with the delay of 492 days and hence, requested to condone the delay. During the appeal hearing, ld.AR submitted that there was no malafide intention and it was the bonafide belief of the assessee that the appeals were filed by the Ld.Accountant. The Ld.A.R relied on the decision of the Hon'ble Supreme Court in the case of Senior Bhosale Estate (HUF) vs Assistant Commissioner of Income tax in civil appeal No.6671 – 6676 of 2010, dated 7thNovember 2019, wherein Hon'ble Supreme Court had condoned the delay of 1754 days on similar conditions.

2. The Ld.DR vehemently objected for condoning the delay.

3. We have heard both the parties and find that the assessees have established their case that due to the mistake of the Ld. Accountant appeals could not be filed which caused the delay. The department has not placed any material to show that the submissions made by the assessees are wrong or malafide. The assessees are not going to get any benefit by delaying the appeal and it is not the case of deliberate attempt or the intention of the assessee to file the appeal belatedly. Hon'ble High Court of

Telangana in the case of Thunuguntla Jagan Mohan Rao vs DCIT, Circle(2)1, Hyderabad, in ITTA No.20 of 2020 dated 13/08/2020 relied upon by the Ld.A.R condoned the delay of 154 days and held that while condoning the delay, the court should be liberal and show utmost consideration to the suitor if the explanation does not smack of malafide or it is not put forth as part of dilatory strategy. The Hon'ble Supreme Court on similar facts of having no knowledge of passing the order, in the case of Senior Bhosale Estate (HUF) (supra) condoned the delay of 1754 days. We extract the relevant part of the order of Hon'ble Apex court in Senior Bhosale Estate (HUF) [2019] 112 taxmann.com 134 (SC) which reads as under:

> ***3.*** *The appellant(s) had asserted that they had no knowledge about passing of order dated 29.12.2003, until they were confronted with the auction notices in June 2008 issued by the competent authority.*
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> ***4.*** *Soon thereafter, the appellant(s) filed appeal(s) accompanied by the subject application(s) on 19.07.2008. Notably, the respondent(s) did not expressly refute the stand taken by the appellant (s) - that they had no knowledge about passing of order dated 29.12.2003 until June, 2008. Unless that fact was to be refuted, the question of disbelieving the stand taken by the appellant(s) on affidavit, cannot arise and for which reason, the High Court should have shown indulgence to the appellant(s) by condoning the delay in filing the concerned appeal(s). This aspect has been glossed over by the High Court.*
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> ***5.*** *Accordingly, these appeals are allowed. We set aside the impugned order of the High Court and relegate the parties before the High Court, by allowing the civil application(s) filed by the appellant(s) for condonation of delay in filing the concerned appeal.*

In the instant case the assessee was under the bonafide impression of having filed the appeal by the Ld.Accountant, but came to know the fact of not having filed the appeal when there was pressure from the department for payment of demand. Therefore, following the orders of the Hon'ble Supreme Court, the Hon'ble High Court of Telangana (supra) and the principles laid by Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji [1987] 167 ITR 471 (SC), we find it justifiable to condone the delay and admit the appeal of the assessee in the interest of justice. Accordingly the appeals are admitted.

4. The assesses are individuals and filed the Returns of income for the A.Ys 2009-10 to 2011-12 as under:

Name of the Appellant	A.Y.2009-10		A.Y.2010-11	A.Y.2011-12	
	Returned income	Date of filing	Returned income (DOF : 30.03.2012)	Returned Income	Date of Filing
K.Subba Raju	8,97,340	31.03.2010	4,22,325	14,52,780	31.03.2012
K.Lakshmii Sirisha	4,93,600		1,84,310	5,65,960	
S.Raja Ramesh	9,33,271		4,03,190	12,11,580	
K.Lakshmi Uma	7,02,539		60,850	5,47,900	
K.Prasad	9,96,109	09.12.2010	2,80,230	13,39,360	30.03.2012
K.Bhaskara Raju	8,82,490	31.03.2010	3,90,710	10,63,700	31.03.2012

K.Siva Rama Raju	9,55,230		4,32,490	11,72,850	
S.Lavanya	5,56,410		2,07,790	6,36,620	
K.Krishna Kumari	6,17,860		2,30,710	7,10,260	

4.1 Subsequently, the assessees have filed the revised returns of income for the A.Y. 2009-10 on 30.03.2012 as per the details given below :

Name of the appellant	AY.2009-10
K.Subba Raju	1,42,270
K.Lakshmii Sirisha	80,260
S.Raja Ramesh	2,02,490
K.Lakshmi Uma	1,49,400
K.Prasad	2,39,992
K.Bhaskara Raju	5,84,880
K.Siva Rama Raju	2,69,050
S.Lavanya	1,09,620
K.Krishna Kumari	1,30,450

4.2 The assessee along with 8 other family members(in short' land owners')have entered into development agreement dated 01.12.2007 with M/s Navya Constructions and Developers (builders/builder) in respect of their land admeasuring 10,345 sq.yards located at Nathayyapalem, Visakhapatnam with sharing ratio of 35% to the land owners and 65% to

the builders. As per the development agreement, the assesses/land owners are entitled for constructed area of 81,890 sft. in the form of 62 flats in lieu of surrender of 6,828.228sq.yards of land given to the developers. The assesses i.e. Mr. K.Subba Raju and 8 others family members have admitted the aggregate sale consideration of Rs.6.99 crores for capital gains purposes as per their respective share holding in the land for the financial years 2008-09 to 2010-11 relevant to the A.Ys.2009-10 to 2011-12 as under :

Financial Year	Asst.Year	Consideration admitted for all 62 flats (Rs.)
2008-09	2009-10	1,27,04,500
2009-10	2010-11	1,63,44,500
2010-11	2011-12	4,09,04,000
Total		6,99,53,000

4.3. A Search and seizure operations u/s 132 of the Income Tax Act, 1961 (in short 'Act') were conducted in the case of 'Navya Constructions Group' (in short 'Navya group'/builders) on 17.12.2013 and the group is engaged in the business of constructions and development of house properties in and around the Visakhapatnam District, since, the year 2005. During the course search proceedings a statement was recorded on oath from Shri

M.VijayaKumar, Managing Director of Navya Constructions u/s 132(4) on 10.04.2014, wherein, he had stated that the firm (builders) had sold 48 flats of land owners share and received the amount of Rs.12,42,15,000/- and out of which a sum of Rs.4,31,27,426/- was retained by the firm and the balance amount of Rs.8,10,87,574/- was paid to the land owners. The Deputy Director of Income Tax(Inv){in short DDIT} during the search proceedings recorded the statement from Shri K.Subba Raju also on 11.04.2014, wherein he has confirmed that the builder had sold 48 flats and the remaining 14 flats were sold by them directly, however has not confirmed the actual amount received from the Builders. During the course of search proceedings, it was stated that the builder had submitted the Joint Receipt dated 21.12.2012 written on Rs.100/- stamp paper to the DDIT(Inv.), as per which Sri K.Subba Raju and others have confirmed the receipt of Rs.8,10,87,574/- from the Navya Group. The DDIT(Inv)has estimated the concealment of income of Rs. 2.65,06,574/- in the hands Shri K.Subba Raju and eight other family members for transfer of land to Navya Constructions for development purposes in the appraisal report. On the basis of the appraisal report received from the DDIT(Inv),the Assessing Officer (AO) has reopened the assessments and issued the notice u/s 148

of the Act on 30.03.2016 to the land owners i.e Shri KanumuriSubba Raju and 8 others calling for the return of income for the A.Y.2009-10 to 2011-12. The assessee has filed a letter on 23.09.2016 requesting to treat the return of income filed on 30.03.2012 as the return in response to the notice issued u/s 148 of the Act.

4.4 Against the admitted sale consideration of Rs.6,99,53,000/- for 62 flats by the land owners, the AO estimated the sale consideration of Rs.9,64,59,574/- as under :

Sale consideration received in respect of 48 flats from the Builders	Rs.8,10,87,574
Less : Sale consideration offered in returns of income by land owners	Rs.6,99,53,000
Difference of sale consideration not offered for taxation(8,10,87,574-6,99,53,000)	Rs.1,11,34,574
Add :Estimated Sale consideration of 14 flats sold by land owners directly	Rs.1,53,72,000
Total sale consideration not offered by the land owners	Rs.2,65,06,574

4.5.Total Sale consideration estimated for 62 flats of land owners:

Amount paid by the builder for 48 flats Rs.8,10,87,574/-

Sale consideration estimated for 14 flats Rs.1,53,72,000/-

Total **Rs.9,64,59,574/-**

Accordingly the AO made the addition of Rs.2,65,06,374/- as undisclosed sale consideration in the hands of the assessee and 8 other family members for the A.Ys 2009-10 to 2011-12 and completed the reassessments u/s 147 r.w.s.143(3) making the addition as per the details given below:

Name of the assessee	Assessment years	Concealment Of income.Rs.
K.Subba Raju	2009-10,2010-11 and 2011-12	36,23,449
K.Lakshmii Sirisha	2009-10,2010-11 and 2011-12	36,23,449
S.Raja Ramesh	2009-10,2010-11 and 2011-12	36,23,449
K.Lakshmi Uma	2009-10,2010-11 and 2011-12	36,23,449
K.Prasad	2009-10,2010-11 and 2011-12	31,35,728
K.Bhaskara Raju	2009-10,2010-11 and 2011-12	24,01,495
K.Siva Rama Raju	2009-10,2010-11 and 2011-12	19,16,425
S.Lavanya	2009-10,2010-11 and 2011-12	24,01,495
K.Krishna Kumari	2009-10,2010-11 and 2011-12	21,57,635

5.0 Against the order of the AO, the assessee went on appeal before the Ld.CIT(A) and challenged assessments on merits as well as on technical

grounds. The Ld.CIT(A),with regard to assessee's objection of completion of assessment without communicating the reasons held that the AO has shown the reasons recorded to the Ld. AR of the assessee during the assessment proceedings and hence viewed that there was no lapse on the part of the AO in communicating the reasons to the assessee and accordingly dismissed the appeal of the assessee and held the reassessment made u/s 147r.w.s. 143(3) is valid.

5.1. With regard to invoking the jurisdiction u/s 147instead of 153C, the Ld.CIT(A) observed that the AO had relied on the information furnished by Shri M.Vijaya Kumar, M.D. of Navya Group on 10.04.2014 in the statement recorded u/s 132(4) and also the statement of Shri K.Subba Raju on 11.04.2014 and came to conclusion that sum of Rs.8,10,87,574/- was received for 47 for flats. The Ld.CIT(A)also viewed that the Joint receipt dated 21/12/2012 was submitted to the DDIT (Inv.) by the builders during the course of post search enquiries but not seized during the search. The Ld.CIT(A) viewed that the evidences collected during the post search enquiries does not disentitle the AO to forgo the powers vested u/s 147 and 148 and thus held that the AO rightly invoked the jurisdiction u/s 147 for reopening the assessment and the case does not fall under the scope of

153C of the Act and hence dismissed the appeal of the assessee on validity of initiation of proceedings u/s 147 instead of 153C of the Act.

5.2. The assessment was also challenged on merits as well for sustaining the addition of Rs.1,11,34,574/- *(i.e. the difference between sale consideration stated to be paid at Rs.8,10,87,574/- and the sum of Rs.6,99,53,000/-)* admitted in the returns of income by the assessee and 8 others for the A.Ys2009-10to 2011-12. The Ld.CIT(A) sustained the addition.

5.3 Against the order of the Ld.CIT(A) the assessees have filed the appeals before this Tribunal and raised the following grounds.

1. The order of the learned Commissioner of income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.

2. The learned Commissioner of Income Tax (Appeals) ought to have quashed - the notice issued by the assessing officer u/s 148 as invalid and consequently ought to have quashed the reassessment proceedings as void ab initio.

3. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) ought to have quashed the reopening as the reasons recorded for reopening were not provided to the appellant

4. Without prejudice to the above, the learned Commissioner of Income Tax - (Appeals) ought to have quashed the assessment made u/s 143(3) r.w.s 147 of the Act in as much as the assessment ought to have been made u/s 143 (3) r.w.s 153C of the Act.

5. Without prejudice to the above, the learned Commissioner of Income Tax 1 (Appeals) is not justified in upholding the action of the assessing officer in re-computing the capital gains at Rs, 927,050 as against Ps. 1,78,185 admitted by the appellant by adopting the sale consideration of flats at Rs.9,64,59,574 as

against the actual consideration of Rs.6,99,53,000 received by the appellant and other co-owners.

6. Any other grounds may be urged at the time of hearing.

6.0 Ground No.1 and 6 are general in nature which does not require specific adjudication.

7.0. Ground No.2 and 3 are related to the completion of assessment without communicating the reasons. The assessee in ground No.2 and 3 challenged the validity of reassessments made u/s 147 r.w.s. 143(3) without communicating the reasons. In the instant case, the AO had issued the notice u/s 148 calling for the return of income and the assessee has filed a letter dated 23.09.2016 to treat the return already filed as return in response to the notice u/s 148. Subsequently the assessee has requested for supply the reasons recorded for reopening the assessment, vide letter dated 21.10.2016. The AO did not furnish the reasons recoded for reopening the assessment as requested by the assessee, however shown the reasons recorded to Shri Rama Chandra Murthy, CA and the Ld.A.R of the assessee during the course of assessment proceedings.

7.1. During the appeal hearing Ld.AR argued that the A.O. has completed the assessments u/s 143(3) r.w.s.147, without furnishing reasons recorded by the assessing officer to the assessee , hence, the same is bad in law. The

Ld.ARfurther submitted that theLd.CIT(A) has rejected the contention of the assessee on the ground that the assessing officer had shown the reasons to the Authorized Representative of the assessee during the assessment proceedings and the assessee was provided with a copy of the reasons during the appellate proceedings therefore viewed that the AO had complied with legal requirement of supplying the reasons. The Ld. A.R further argued that mere showing the reason to the A.R of the assessee during the assessment proceedings is not sufficient compliance and the A.O must supply the reasons recorded to the assessee, once the assessee asks the reasons specifically. The Ld.AR further submitted that the failure to supply the reasons recorded, before the conclusion of the assessment proceedings vitiates the reassessment proceedings and the defect cannot be cured at a later stage. The Ld.AR placed reliance on the decision of Hon'ble Supreme court in GKN Drive Shafts(India) Ltd. Vs. ITO [259 ITR 19] and the decision of this Tribunal in the case of Sri Sarvaraya Sugars Ltd (Order dt.20.12.2017 in ITA Nos.294, 295 & 576/Viz/2014). TheLd.A.R further submitted that the assessing officer has raised objection before the Ld.CIT(A) in the remand report stating that the assessee had requested reasons in only one case for the one assessment year and hence, viewed

the AO is not obliged to furnish the reasons in all cases. In this regard the Ld.AR submitted that the assessee i.e. Shri K.Subba Raju had agreed to bear the tax liability on behalf of all the co-owners and the AO has completed the assessments in all cases on the basis of the statement recorded from Shri K.Subba Raju therefore argued there is no justification to take such stand by the AO.

7.2. On the other hand, the Ld.DR argued that the AO has supplied the reasons by showing the same to the Ld.Authorized representative during the course of assessment proceedings. Therefore, argued that there is no merit in the argument of the Ld.AR that the assessment was completed without communicating the reasons. Since, the AO has communicated the reasons to the assessee, the legal requirement of supplying the reasons was complied with by the AO and hence argued that the Ld.CIT(A) has rightly upheld the validity of the assessment. Therefore, the Ld.DR requested to uphold the order of the Ld.CIT(A) and no interference is called for in the order of the Ld.CIT(A) and dismiss the appeals of the assessee.

8. We have heard both the parties and perused the material placed on record. In the instant case, the assessee has requested for supply of reasons and the AO has not communicated the reasons in writing, however,

shown the reasons recorded to the authorized representative of the assessee during the course of assessment proceedings. The other objection of the AO was that the assessee had requested for reasons only in one case i.e. ShriK.Subba Raju and not other cases and hence viewed that the AO is not obliged in supplying reasons in other cases. There is no dispute that the AO has completed the assessment of all cases on the basis of the statement recorded from Mr. K. Subba Raju and on his assurance that he will take care of the tax matters and bear the taxes of all the family members. There is also no dispute that Mr.Subba Raju has requested for reason recorded for reopening of assessment. When the AO had completed the assessment of the assessee as well as eight others consisting of 25 assessments for 3 different years on the statement taken from Shri K.Subba Raju and on his assurance of taking care of all the income tax issues of himself and his family members, we do not find any justification in the argument of the Ld.AO not to supply the reasons in other cases on the request made by Shri Subba Raju. It is pertinent to note that the AO has not furnished the reasons even in the case of Mr. K.Subba Raju. Therefore, in the facts and circumstances of the case, we are of the considered view that the AO is bound to communicate the reasons in all 25 cases on the request made by

Shri K.Subba Raju and thus, the objection of the AO with regard to non-receipt of request in other cases does not stand on its legs and hence, the same is liable to be rejected.

8.1 In the instant case, the assessee has requested the reasons for reopening of the assessment and the AO did not communicate the reasons in writing. Communication of reasons for reopening of assessment is not a mere formality and it is a legal requirement. When the assessee has requested for reasons, it is mandatory obligation of the AO to communicate the reasons as decided by Hon'ble Supreme Court in the case of GKN Drive Shafts(India) Ltd. Vs. ITO [259 ITR 19]. Hon'ble Supreme Court in the case cited held that on filing the return, the assessee has the right to request for the reasons and the AO is obliged to furnish the reasons recorded to the assessee. On furnishing the reasons, the assessee has right to place the objections for reopening the assessment and the AO is bound to pass speaking order on the objections raised by the assessee. Thus communication of reasons to the assessee has specific purpose to address the issues of reopening the assessment u/s 147. Therefore, once the assessee asks for the reasons specifically, the AO is duty bound to communicate the reasons and non-furnishing the reasons renders the

assessment made u/s 147 r.w.s 143(3) as invalid. This issue was considered by this Tribunal in the case of Sri Sarvaraya Sugars Ltd (Order dt.20.12.2017 in ITA Nos.294, 295 & 576/Viz/2014). The coordinate bench of ITAT held as under .

> *"9. The AO has completed the assessment without communicating the reasons recorded for issue of notice u/s 148, in spite of the specific request made by the assessee for furnishing the reasons. As per the judgement of Hon'ble Supreme Court in the case of M/s GKN Drive Shafts (India) Ltd. Vs. ITO, it is obligatory on the part of AO to communicate the reasons on furnishing the return of income. The assessee in response to the notice issued u/s 148 submitted a letter to the AO to treat the returns filed earlier as returns in response to the notice issued u/s 148. Thus the assessee has complied with the mandate of Hon'ble Supreme Court judgement cited supra but the AO failed to communicate the reasons. The assessee relied on the decision of Hon'ble High Court of Calcutta in the case of Berger Paints India Ltd. Vs. ACIT (Supra), wherein Hon'ble High Court held that the assumption of jurisdiction of assessing officer u/s 147 depends upon existence of reasons followed by communication thereof to theassessee. If the notice served under section 148 is challenged, the AO cannot proceed with the assessment under section 147 unless reasons are communicated. In the instant case, the contention of the assessee is that the assessee has complied with the notice u/s 148 and the AO has not furnished the reasons recorded for issuance of notice u/s 148 despite the request made by the assessee. The Revenue could not place any evidence to controvert the argument of the Ld.AR that the reasons were not communicated. Thus the assessee's case is squarely covered by the decisions in the case of Berger Paints India Ltd. Vs. ACIT (Supra) and CIT vs. Trend Electronics (Supra).*
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> *9.1. The Hon'ble Bombay High Court in the case of CIT vs. Trend Electronics (Supra) following the decision of CIT vs. Videsh Sanchar Nigam Ltd and applying the decision of Apex court in the case of GKN Drive Shafts (India) Ltd. Vs. ITO held as under :*
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> > *"8. We find that the impugned order merely applies the decision of the Apex Court in GKN Driveshafts (India) Ltd. (supra). Further it also follows the decision of this Court in Videsh Sanchar Nigam Ltd. (supra) in holding that an order passed in reassessment proceedings are bad in law in the absence of reasons recorded for issuing a reopening notice under Section 148 of the Act being furnished to the assessee when sought for. It is axiomatic that power to reopen a completed assessment under the Act is an exceptional power and whenever*

> *revenue seeks to exercise such power, they must strictly comply with the prerequisite conditions viz. reopening of reasons to believe that income chargeable to tax has escaped assessment which would warrant the reopening of an assessment. "*
>
> *9.2. In the instant case, the AO had issued notice u/s 148 and theassessee has complied with the notice and requested for reasons. The AO completed the assessment without communicating the reasons. Therefore, the facts of the case are similar to that of the decision of Hon'ble Bombay High Court relied upon by the Ld.AR cited supra. Respectfully following the decision of Hon'ble Bombay High Court, we hold that the assessment made u/s 147 r.w.s. 143(3) without communicating the reasons is bad in law. Accordingly, the orders framed u/s 147 r.w.s. 143(3) are quashed and the appeal of the assessee is allowed. Since, we have quashed the assessment made u/s 143(3), we consider it is not necessary to adjudicate the grounds on merits."*

8.2. The Hon'ble A.P.High court also considered the issue of validity of assessments for non-communication of reasons in Commissioner of Income Tax-III vs Shri N.Surya Prakasha Rao in Income Tax Appellate Tribunal Appeal No.156 of 2014 dated 06/03/2014 relied upon by the Ld.A.R and upheld the order of Tribunal and dismissed the appeal of the revenue. The department did not place any other judgments to controvert the decisions relied upon by the assessee. Similar issue was considered by Hon'ble Karnataka High court in Pr.CIT vs V. Ramaiah in (2019) 103 Taxamann.com 201 and held that non communication of reasons recorded to the assessee is fatal to the assessment and the Hon'ble Supreme court dismissed the SLP filed by the Revenue in [2019] 103 taxmann.com 202 (SC). For the sake of

clarity we reproduce the relevant part of the order of Hon'ble High court which reads as under:

> ***5.*** *Having heard the learned counsels for the parties, we are satisfied that no substantial question of law arises in the present appeal filed by the Revenue in as much as the recording of reasons for reassessment under Section 147/148 of the Income Tax Act or non-communication thereof to the assessee does not amount to a mere procedural lapse. In view of the aforesaid Supreme Court decision in GKN DRIVESHAFT's case, it goes to the root of the matter and renders the reassessment order passed by the assessing authority without recording such reasons and communicating the same to the assessee, as being without jurisdiction.*
>
> *6. The contention raised by the learned counsel for the Revenue that in the order sheet dated 04.11.2011 in the reassessment proceedings were duly noted by the authorised representative appearing on behalf of the assessee and therefore, such assessee should be deemed to have been made aware of the reasons for reopening does not impress us.*
>
> *7. The Tribunal has clearly noted in its order after looking into the record of the case that the reasons which were placed before the learned Tribunal itself only for the first time were never communicated to the assessee during the contemporary period. Mere participation of the assessee or Authorized Representative in the reassessment proceedings does not amount to the assessee being made aware or known of the reasons for such reopening. The reasons now quoted by the learned Tribunal in the impugned order clearly indicates that they are purportedly detailed reasons and had the assessing authority given the said reasons before hand, the assessee could have raised objections before the assessing authority and the assessee could have rebutted the material on the basis of which the impugned reassessment proceedings were undertaken by the assessing authority. The assessee in the present case twice made a request to the assessing authority, but despite the specific requests, the assessing authority did not comply with the said request and supplied the reasons to the assessee. That casts a doubt even on fact of the recording of the reasons in the contemporary period by the assessing authority. The fact that such reasons are supplied before the learned Tribunal only for the first time was enough for by the learned Tribunal to hold that in view of the decision of the Hon'ble Supreme Court, the assessing authority lacked the jurisdiction in invoking the reassessment proceedings and therefore, the impugned reassessment order deserves to be quashed.*
>
> ***8.*** *The decision relied upon by the learned counsel for the Revenue is distinguishable on facts. The order which was to be passed by assessing authority as preliminary objection of assessee, once the assessee has raised the objection to such reassessment proceedings, the meeting of such objections in the main reassessment*

order, could be procedural aspect of the matter, but the recording of the reasons before the initiation of the reassessment proceedings and communication thereof to the assessee is sine qua non, as held by Hon'ble Supreme Court and that goes to the root of the matter and confers or deprives the assessing authority of the jurisdiction to undertake such reassessment proceedings, as the case may be.

9. *In the present case, admittedly, such reasons were not supplied to the assessee during the contemporary period before going ahead with the reassessment proceedings. Therefore, the Tribunal in our opinion was perfectly justified in quashing such reassessment order.*

In view of the foregoing discussion, we hold that completion of assessment u/s 143(3) r.w.s 147 of the Act, without communicating the reasons recorded to the assessee, when specifically requested is unsustainable and liable to be quashed.

9. Now, we take up ground No.4 which relates to the question as to whether in the facts and the circumstances of the case and the law, the AO is right making the assessments u/s 147 instead of invoking the jurisdiction u/s 153C of the Act.

9.1. The Ld.AR argued that in the facts and circumstances of the case, having found the document during the course of search, the AO ought to have made the assessment u/s 153C but not u/s 147 of the act. The Ld.AR taking our attention to the order of the Ld.CIT(A) submitted that in para No.12(f) of the order, the Ld.CIT(A) has given a finding that the AO had

relied on the statement of Shri M.Vijay Kumar, the Managing Director of Navya Group recorded u/s 132(4) and the Joint receipt that was stated to be given by the builders during the post search enquiries and hence, viewed that reassessments made u/s 147 of the act are valid. The Ld.AR submitted that according to the Ld.CIT(A), the assessment was reopened basing on the information already available on record and not on the basis of information collected by the department during the course of search, thus, held that the reassessment made u/sec. 147 is valid. In this regard the Ld.AR has taken our attention to the para No.6 in page no.5 of the assessment order which reads as under :

> *"6. In order to verify these facts, sworn statement of Sri KanumuriSubba Raju was also recorded on 11.04.2014 during the search proceedings, wherein he has confirmed that the builder has sold 48 flats on behalf of the landlords and the remaining 14 flats were sold by them on their own. However, he has not confirmed the amount received from the builders and stated that the relevant information will be submitted soon. However, the landlords have not submitted the information.* ***During the course of search proceedings, the builder has submitted the copy of 'Joint Receipt' dated 21.12.2012 written on stamp paper*** *as per which Sri K.Subba Raju and others have confirmed that they had received an amount of Rs.8,10,87,574/- from M/ s Navya Constructions and Developers."*

The AR also invited our attention to Question No.7 in page No.4 of the assessment order, wherein Shri M. Vijaya Kumar had stated that they have paid the sum Rs.8,10,87,574/- as total sale consideration for sale of 48 flats in the statement given u/s 132(4) of the Act. The Ld.AR asserted that as per

the assessment order, joint receipt was seized during the course of search. The Ld.A.R argued that except the statement recorded u/s 132(4), and the joint receipt that was seized during the course of search no other material is available with the department to believe that either the assessee had under stated the receipts or concealed the income. Thus submitted that, the basis for reopening the assessment was the Joint Receipt that was seized by the department during the course of search and the statement recorded u/s 132(4), hence, argued that the AO ought to have taken action u/s 153C, but not u/s 147 of the Act. The Ld AR further argued that search assessments required to be made u/s 153A or 153C as per the scheme, but not under section u/s 147 of the act. Therefore argued that the assessment made u/s 147 r.w.s. 143(3) is invalid and required to be quashed and the assessee's appeals to be allowed. The Ld.AR relied on the decision of Hon'ble Delhi High Court in the case of Pr.CIT (Central)-3 Vs. Anand Kumar Jain in ITA No.23/2021 dated 12/02/2021 and the decision of this Tribunal in the case of G.Koteswara Rao & others in I.T.A. No.400/Viz/2014 dated 29.10.2015.

9.2. On the other hand, the Ld.DR relied on the order of the Ld.CIT(A) and argued that the Joint Receipt was supplied by the builder during the post

search enquiries to the DDIT but not seized during the search, therefore, argued that the same should not be considered as the incriminating material for invoking the jurisdiction u/s 153C. Similarly,th Ld.DR argued the statement recorded u/s 132(4) was recorded during post search enquiries, hence does not fall under the scope of section 153C, hence, submitted that AO had rightly invoked the jurisdiction 147 of the Act and no interference is called for in the order of the Ld.CIT(A).

10. We have heard rival contentions and perused the material placed on record. It is seen from the order of the AO that the assessment was reopened on the basis of concealment of income estimated by the DDIT(Inv) in the appraisal report and made the additions on the basis of the joint receipt which was found and seized during the course of search and the statement recorded u/s 132(4) on 10.04.2014 from Sri M.Vijaya Kumar, Managing Director of Navya Constructions who was under the search. Though the Ld.CIT(A) stated in his order that the information was already available in the records of the department and joint receipt was supplied by the searched person during post search enquiries, the information available in the assessment order and the remand report shows apparently contradictory facts. The Ld.AR taken our attention to the

assessment order para-No.6, wherein, the AO had mentioned that during the course of search proceedings, the builder had submitted the copy of Joint Receipt dated 21.12.2012 which was seized. Further, the Ld.A.R has taken our attention to the page No.21 of the paper book, wherein the Assistant CIT, Central Circle-I, Vijayawada(AO) stated in the remand report that the Joint Receipt dated 21.12.2012 was seized during the course of search and the same was pertaining to the assessee's business transactions. The Ld.AR also taken our attention to page No.23 of the paper book, which is the forwarding letter of Addl.Commissioner of Income Tax, Central Range, Guntur dated 15.03.2018 to the Ld.CIT(A) who endorsed the report of the AO. As discussed earlier, the entire additions were also based on the statement recorded u/s 132(4) from Shri M. Vjay Kumar, joint receipt, the ledger account copies of the builder and the appraisal report of the DDIT (Inv.). Both the assessment order and the remand report clearly show that the joint receipt was found and seized during the course of search. The department failed to controvert that the said joint receipt was not seized during the course of search and thus, we hold that the joint receipt was the document found and seized during the course of search,

evidencing the payments stated to have been made by the builder to the assessee , which is the foundation for reopening the assessments.

10.1. As per section 153C of the Act, notwithstanding anything contained in section 139, 147, 148, 149, 151 and 153, where the AO is satisfied that any money, bullion, jewellery, valuable article or thing seized or requisitioned belongs to or the books of accounts or documents seized or pertains or pertain to or any other information contained therein relates to a person other than the person referred to in section 153A (searched person), then the AO of the searched person handover the books of accounts, documents or valuable articles or things or documents or the assets to the officer having jurisdiction over such other person and the AO of such other person shall proceed against each such other person and issue notice and assess or reassess the income as per section 153C of the act. As provided in section 153C once the conditions are satisfied for invoking the jurisdiction u/s 153C and the assessment must be made u/s 153C only, but not under section 147 of the Act.

10.2. The issue with regard to the information gathered during the course of statement recorded u/s 132(4) from the searched person by DDIT (Inv) whether to be assessed u/s 153C or u/s 143(3) r.w.s. 147 was considered

by this Tribunal in the case of G.Koteswara Rao and others (supra). This tribunal has taken a view that consequent to the information collected by the DDIT during the search u/s 132 or from the statement recorded from the searched person, the assessments to be made u/s 153C, but not u/s 147 of the act. This Tribunal has considered the decision of special bench in the case of Alcargo Logistics Ltd. and others in 137 ITD 287 (Mumbai). For the sake of clarity and convenience, we extract para No.14 of the order of this Tribunal in the cited case law which reads as under :

> *"14. In the present case on hand, admittedly, the Assessing Officer has reopened the assessment based on a search conducted in a third party case. The AO formed the opinion based on the statement recorded from the assessee, consequent to post search proceedings taken up by the DDIT(Inv), which shows undisclosed income which is the very basis of reopening the assessment. The search is conducted on 22-8-2008 which comes under the assessment year 2009-10. The Assessing Officer reopened the assessment year 2008-09, which is falling within those six assessment years immediately preceding the assessment year in which search is conducted. The assessee case falls within the provisions of section 153C, as the incriminating document seized in the case of search in another case. The Assessing Officer, on satisfying the above condition is under obligation to issue notice to the person requiring him to furnish the return for the six assessment years immediately preceding the assessment year in which search is took place. Thereafter, the Assessing Officer has to assess or reassess the total income of those six assessment years. The word "shall" used in section 153A made it clear that the Assessing Officer has no option, but to issue notice and proceed thereafter to assess or reassess the total income. In the instant case, the Assessing Officer issued notice u/s 148 to reopen the assessment. Therefore, in view of the non-abstante clause begin with section 153A, the Assessing Officer has no jurisdiction to issue notice u/s 148 reopen the assessment of those six assessment year which falls within the exclusive jurisdiction of section 153A. Though, both provisions of the Act empowers the Assessing Officer to assess or reassess the income escaped from assessment, both sections are dealing with different situations. Section 147 comes into operation when, the Assessing Officer believes that there is an escapement of income chargeable to tax, either from the return already filed or through some*

external material evidence came to his knowledge, which shows the escapement of income. Whereas, section 153A comes into operation when there is search u/s 132 or books of accounts, or any other asset or other documents requisitioned u/s 132A. If Assessing Officer justified in proceeding with section 147 to reopen the assessment, then there would be no relevance to section 153A, which was inserted in to the Act to deal exclusively with search cases. The legislators in their wisdom clearly spelt out the provisions of law applicable to search cases by using the word shall to begin with section 153A, made it mandatory that the Assessing Officer bound to issue notice u/s 153A or 153C, thereafter proceed to assess or reassess the total income, where search is conducted u/s 132 or requisition is made u/s 132A. Therefore, in our opinion, the AO is not justified in reopening the assessment u/s 147 and his order is legal and arbitrary."

10.3. In the instant case, there is no dispute that the joint receipt was seized during the course of search as mentioned by the AO in the assessment order as well as the remand report and the assessment was made u/s 147 on the basis of statement recorded u/s 132(4) of the Act, appraisal report and the joint receipt.All of them are directly related to the information found from the searched person consequent to the search u/s 132. Therefore, as provided u/s 153A and 153C, all the search assessments required to be made u/s 153A or 153C, but not u/s 147 of the Act. No fresh information was collected by the AO or no information has come to the notice of the AO in normal course other than the information collected during the course of search from the searched person. Thus, the assessee's case is squarely covered by the decision of this Tribunal in G.Koteswara Rao (supra). The department has not brought any other evidence to

establish that the joint receipt was not seized during the search/s 132. The department also has not brought any other case laws to controvert the decision cited (supra).

10.4 In the light of the aforesaid discussion and on consideration of facts and the law we, hold that the assumption of jurisdiction by the AO u/s 147 is bad in law, hence, we set aside the order of the Ld.CIT(A) and the assessments framed u/s 147 r.w.s. 143(3) are quashed. The appeals of the assesses in ground No. 2 to 4 are allowed.

11. Since we have quashed the assessments passed u/s 147 r.w.s. 143(3) as bad in law and allowed the appeals of the assessee, we consider it is not necessary to adjudicate the appeal of the assessee on merits. Accordingly, appeals of the assesses are allowed.

12. In the result, appeals of the assessees are allowed.

Order pronounced in the open court on 27th April, 2021.

Sd/-	sd/-
(डि.एस .सुन्दरसिंह)	**(एन के चौधरी)**
(D.S.SUNDER SINGH)	**(N.K.CHOUDHRY)**
लेखासदस्य/ACCOUNTANT MEMBER	**न्यायिकसदस्य/ JUDICIAL MEMBER**

Dated :27.04.2021
L.Rama, SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ TheAssessees–
2.राजस्व/The Revenue –
3. ThePr.Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, Visakhapatnam
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam