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IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 304/Bang/2018
Assessment year: 2009-10

Sri Venkataramanappa, Kanminike Village, Kengeri Hobli, Bangalore South Taluk, Bangalore – 560 039. PAN: BBAPV 2308C	Vs.	The Income Tax Officer, Ward 3(2)(3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravi Shankar, Advocate
Respondent by	:	Smt. H. Kabila, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	27.08.2021
Date of Pronouncement	:	17.09.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order dated 01.12.2017 of the CIT(Appeals)-3, Bengaluru for the assessment year 2009-10 on the following grounds:-

- “1. The orders of the authorities below in so far as it is against the appellant is opposed to law, equity and weight of evidence probabilities, facts and circumstances of the case.
2. The appellant denies himself liable to be assessed to a total income of Rs. 1,62,50,800 / - being long term capital gains as against the total income returned by the appellant of Rs. NIL for

the impugned assessment year 2009-10 on the facts and circumstances of the case.

3. Grounds in respect of reopening of assessment

k) The appellant denies himself to be assessed to tax as the mandatory conditions for assumption of jurisdiction under section 148 of the Act did not exist or have not been complied and consequently the order of assessment is bad in law and liable to be cancelled on the facts and circumstance of the case.

l) The assessment is also bad in law as no notice under 148 has been served on the appellant and consequently the order of assessment is bad in law.

m) The assessment is also bad in law as no proper sanction under section 151 of the Act as contemplated in law has been obtained and consequently the order of assessment is bad in law and liable to be cancelled on the facts and circumstance of the case.

n) The assessment order is further bad in law as the objections to the reasons under section 148 have not been disposed of by a speaking order and hence contrary to law and on this count also the assessment is liable to be cancelled on the facts and circumstance of the case.

4. Grounds on asset being agricultural land and not capital asset

a) The assessing officer and the CIT (A) are not justified in law in treating the property sold as a capital asset and not as agricultural land on the facts and circumstance of the case.

b) The authorities below have failed to take into consideration the evidence placed before them regarding the distance and the location of the property and hence the question of treating the same as capital asset does not arise on the facts and circumstance of the case.

c) The authorities below have failed to take into consideration the evidence placed before them regarding the distance and the location of the property and hence the question of treating the same as capital asset does not arise on the facts and circumstance of the case.

d) The authorities below erroneously relied upon the letter from the Tashildhar wherein it has been stated that the Property is 8 KMS from Kengeri Municipality, when Kengeri Municipality is not enumerated in the notification of the central Government on the facts and circumstances of the case.

e) The learned authorities below, erred in holding that the property is within 8 Kms of BBMP on the date of sale of land without any factual basis on the facts and circumstance of the case.

f) The assessing officer and the commissioner failed to appreciate that the land situated in Panchyat by no stretch of imagination can be treated as capital Asset on the facts and circumstance of the case.

g) The assessing officer and the commissioner erred in law in not appreciating that Panchayat and Municipalities are different as per our constitution and no land which is part of Panchayat can be treated as capital asset on the facts and circumstance of the case.

h) The learned assessing officer has relied on notifications by urban development department of the state government which are all issued subsequent to the date of the agreement or sale deed and thus not relevant for the year under assessment on the facts and circumstance of the case.

i) The learned Assessing Officer was not justified, in not accepting that the Circular of 2009 of forming BBMP, was beyond the date of sale of the land, and hence not relevant to the facts of the present case. The AO, further, took a diametrically opposite view in other assessee's case on the facts and circumstances of the case.

5. Grounds on computation of capital gains:

a) The authorities below were not justified in considering the guideline value on the date of registration of the property as full value of consideration on the facts and circumstance of the case.

b) The authorities below were not justified in not adopting the appellants share of the amount shown in the sale deed at Rs

10,50,000/- as the full value of consideration for the purpose of computing capital gains on the facts and circumstance of the case.

c) The authorities below failed to appreciate that the section 50C is not applicable to the facts of the case as the land sold is not a capital asset but agricultural land on the facts of the case.

d) Without prejudice the authorities below ought to have referred to the valuation officer to determine the full value of consideration as per Section 50 of the Act on the facts and circumstance of the case.

e) The authorities below failed to appreciate that the proviso to section 50 C has been held to be clarificatory and hence the value on the date of the agreement alone should have been considered as full value of consideration for the purpose of computing capital gains on the facts and circumstance of the case.

f) Without prejudice the Learned assessing officer was not justified in computing the entire capital gains in the hands of the appellant when five persons are party to the sale deed and thus assessing in excess of 1/5th is bad in law on the facts and circumstance of the case.

6. Without Prejudice the assessing officer ought not to have taxed the individual as the property is ancestral and ought to have been taxed in the status of HUF and thus this assessment is totally contrary to law and liable to be cancelled on the facts and circumstance of the case.

7. The learned assessing officer erred in law in not granting deduction under section 54 B on the facts and circumstance of the case.

8. Without prejudice the learned assessing officer is not justified in assessing the capital gains for the assessment year 2009-10 which is impermissible in law on the facts and circumstance of the case.

9. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies

itself liable to be charged to interest under section 234 A & 234 B of the Income Tax Act under the facts and circumstances of the case. Further the levy of interest under section 234 A & 234 B of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernable and are wrong on the facts of the case.

10. The appellant denies the liability to pay interest under section 234A, of Rs 32,05,866/ - and 234B of Rs 33,92,253/ - in view of the fact that there is no liability to additional tax as determined by the learned assessing officer. Without prejudice the rate, period and on what quantum the interest has been levied are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.

11. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

12. In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed and appropriate relief be granted in the and equity.”

2. The assessee is a resident individual and sold the asset situated at Kaniminike Village, which is beyond 8 Kms. on the BBMP/Kengeri Municipality vide Sale Deed dated 28.12.2005 and registered on 24.9.2008. The guidance value of the said property was Rs.1.6 crores as against the consideration shown in the sale agreement at Rs.10.5 lakhs. On these reasons, the assessment was reopened by recording the reasons and issued notice u/s. 148 on 29.3.2016. The assessee filed objections for reopening of the assessment vide his submissions dated 24.10.2016.

3. Now the contention of the Id. AR is that the assessee duly filed objections for reopening the assessment on 24.10.2016. These objections were not disposed by passing a speaking order. According to the Id. AR, the AO is bound to dispose of the objections filed by the assessee prior to proceeding with the assessment. When the AO failed to pass such order,

the assessment order is liable to be quashed. He relied on the following judgments:-

1.	Deepak Extrusions(p)Ltd[2017]80 Taxmann.com 77(Kar)
2.	Jayanthi Natarajan[2018]401 ITR 215 (Madras)
3.	Pentafour Employees welfare Foundation [2020] 312 CTR 35 (Madras)
4.	Khoday Distilleries [2019] 262 Taxman 279 (SC)
5.	Kunhayammed [2000] 113 Taxman 470 (SC)
6.	Lakshmana ITA No.382/ Bang/2018 (Bangalore Tribunal)

4. The Id. DR supported the findings of the CIT(Appeals) and further relied on the judgment of the Hon'ble Supreme Court in the case of *Home Finders Housing Ltd. v. ITO, 94 taxmann.com 84 / 256 Taxman 59 (SC)* and submitted that the assessment order cannot be quashed.

5. We have heard both the parties and perused the material on record. In this case, assessment was reopened by issuing notice u/s. 148 dated 29.3.2016 served on the assessee on 30.3.2016. Later there was change of incumbent of AO, so process was continued vide letter dated 26.7.2016 and followed by one more letter dated 3.8.2016 and assessee vide letters dated 24.10.2016 and 23.12.2016 objected to reopening the assessment as follows:-

“i) That the land sold is not a capital asset within the meaning of section 2(14) of the I.T.Act, 1961 the reason that it is an agricultural land situated in an area with population of less than 10000 (i.e. Kanminike Village with a population of 2408 only as per census of 2011) and also beyond 8 kilometers from the local limits to the BMP (Bangalore Mahanagara Palike). It is also pertinent to note that the BBMP was notified in January 2007; however the sale agreement was executed on 28.12.2005 (much before BBMP was notified and areas of earlier Bangalore Mahanagara Palike was far less than present BBMP). Though the

sale deed was registered on 24.09.2008, the sale agreement was executed on 28.12.2005 and contended that the transfer had already taken place on 28.12.2005 and the execution of registered sale deed on 24.09.2008 was merely a formality to confirm the legal ownership of the purchaser and accordingly requested to close the issue placing reliance on the decision of Hon'ble ITAT Ahmedabad in the case ACIT Dharamshibhai Soriani in ITA NO.1237 1 AHD 12013 for the A. Y.2008-09.

iii) The assessee further contended the sale consideration paid for all the- five co-owners was of Rs.10,50,0001 - and the one fifth share of the assessee amounts to Rs.2,10,0001- only and requested to drop the proceedings initiated u/s.148.”

6. Now the contention of the Id. AR is that the objection of the assessee for reopening of assessment was not disposed by the AO by separate speaking order. For this he relied on the judgment in the case of *Lakshman in ITA No.382/Bang/2018 dated 8.2.2018* wherein it was held as follows:-

“8. Aggrieved by the aforesaid decision of the CIT(A), the assessee has raised ground No. 3 n) before the Tribunal. We have heard the rival submissions. Learned Counsel for the assessee brought to our notice the decision of the Hon'ble Karnataka High Court rendered in the case of *Deepak Extrusions (P.) Ltd. v DCIT (2017) 80 taxmann.com 77 (Karn)* wherein the Hon'ble Karnataka High Court took the view that if the AO does not dispose off the objections regarding the validity of proceedings under section 147 of the Act as laid down by the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Ltd. (supra)*, then the order of assessment passed cannot be sustained. The Hon'ble Court held that if the assessee desires to seek the reasons for issuing the notice, the Assessing Officer is bound to furnish the reasons and upon the receipt of such reasons, the assessee is entitled to file the objections to the issuing of the notice and the Assessing Officer thereafter is bound to dispose of the same by passing a speaking order. If the AO does not dispose off the objections prior to proceedings with the assessment and passes an order of assessment, such order of assessment cannot be sustained and is liable to be quashed. Learned DR however

placed reliance on the order of the CIT(A) from the decision referred to in the order of CIT(A). Learned Counsel for the assessee however brought to our notice that Hon'ble Madras High Court has taken a contrary view to the view taken in the case referred to by the CIT(A) in the impugned order and in this regard referred to the decision of Hon'ble Madras High Court in the case of Jayanthi Natarajan 401 ITR 215 and Pentafor Employees' Welfare Foundation 312 CTR 35 (Madras).

9. We have given a careful consideration to the rival submissions. The facts are undisputed that the assessee raised objections with regard to validity of initiation of proceedings under section 147 of the Act by his letters dated 03.10.2016 and 24.10.2016 after filing the return of income. The admitted position is the AO has not disposed off the objections by a speaking order. Under the circumstances, it is clear that the mandatory procedure of disposal of objection by the AO before proceeding with the assessment has not been followed and therefore the order of assessment cannot be sustained and has to be quashed. The decision of the Hon'ble Karnataka High Court which is the jurisdictional High Court as far as this Tribunal is concerned in the case of Deepak Extrusions Pvt. Ltd., (supra) supports the case of the assessee. The other decisions of the Hon'ble Gujarat High Court and the Hon'ble Madras High Court referred to in the order of the CIT(A) being the decisions of the non-jurisdictional High Courts, are not binding in the light of the decision of the Hon'ble jurisdictional High Court. Consequently, we uphold the grievances projected by the assessee in ground No.3 n) and hold that the order of assessment passed is vitiated and liable to be annulled. In view of the above conclusion, we are of the view that the other issue raised by the assessee in its appeal does not require examination."

7. Contrary to this, the Id. DR submitted that in view of the judgment of the Hon'ble Supreme Court in in SLP in the case of *Home Finders Housing Ltd. v. ITO, 256 Taxman 59 (SC)*, non-disposing of the objection raised by the assessee against the reopening of assessment by separate and speaking order is only a procedural matter and it does not make the

assessment bad in law and he submitted that on this reasoning, assessment order cannot be quashed.

8. In reply, the Id. AR submitted that in view of the judgment of the *Khoday Distilleries Ltd. v. Mahadeshwara Sahakara Sakkare Karkhane Ltd.*, 262 Taxman 279 (SC) wherein SLP was dismissed in limine without giving any reason may not be *ratio decendi* and according to him, the judgment of Karnataka High Court in the case of *Deepak Extrusions Pvt. Ltd.*, 80 taxmann.com 77 (Kar) wherein it was held that if the AO does not dispose of the objection regarding validity of the proceedings u/s 147 of the Act as laid down by the Supreme Court in *GKN Driveshafts (India) Ltd.* 251 ITR 19 (SC), then the order of assessment passed cannot be sustained. It was held that if the assessee decides to seek reasons for issuing notice, the AO is bound to furnish the reasons and upon receipt of such reasons, the assessee is entitled to file objections to the issuing of notice and the AO thereafter is bound to dispose of the same by passing a speaking order. If the AO does not dispose of the objections prior to proceedings of assessment and passes an order of assessment, such order of assessment cannot be sustained and liable to be quashed.

9. The main contention of the Id. AR is that the AO has to dispose of the objections raised by the assessee for reopening the assessment by a separate speaking order and thereafter he has to frame the assessment order. For this purpose, he relied on the judgment of Supreme Court in *GKN Driveshafts (India) Ltd. (supra)*. There are divergent views of different High Courts on this issue as to whether the matter is required to be reconsidered at the AO's level for deciding the objections by a separate speaking order or the assessment order is liable to be quashed for want of separate and speaking order of the AO. The contention of the Id. DR is that if the objections of the assessee for reopening the assessment were not disposed by a separate speaking order by the AO, it would not be

nullity so as to quash the assessment order; rather the issue may be remitted to the file of the AO for deciding the objections first and then, if required, pass a fresh assessment order in accordance with law.

10. We come across few decisions of the coordinate Bench on this issue which are as follows:-

- (i) The Delhi Bench of the Tribunal in *ACIT v. Mukut Mahal Pvt. Ltd.*, ITA No.226/Del/2012 dated 23.11.2012 has analysed the legal proposition in paras 6 & 7 as under:-

“6. We have heard both the parties and have gone through the facts of the case. As is apparent from the facts of the case, the Id. CIT(A) quashed the reassessment proceedings merely because the AO failed to dispose of the objections raised by the assessee in their letter dated 5.11.2009. There is no material before us, suggesting that the assessee raised any objections against issuance of notice u/s 148 of the Act immediately on receipt of notice dated 27.3.2009 issued by the AO or on receipt of a copy of the reasons on 9.9.2009. In terms of decision of Hon'ble Supreme Court in the case of *GKN Shaft (India) Ltd. Vs. CIT*, 259 ITR 19(SC), if the AO did not dispose of the objections raised by the assessee in his letter dated 5.11.2009, the matter at best could be restored to the file of the AO for doing the needful. The approach of the Id. CIT(A) in quashing the assessment is not in accordance with law. In *GKN Driveshafts*(supra), the Hon'ble Apex laid down an elaborate procedure as to the manner of dealing with objections raised against a notice u/s 148 of the Act, in the following words:

““However, we clarify that when a notice under section 148 of the Income-tax Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the

instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."

6.1 In a subsequent decision in the case of Garden Finance Ltd. v. CIT (Asst.) [2004] 268 ITR 48 (Guj), the effect of the Supreme Court decision in the case of GKN Driveshafts [2003] 259 ITR 19 came up for consideration and by a majority opinion it was laid down by the Hon'ble Court:

"What the Supreme Court has now done in the GKN Driveshafts (India) Ltd.'s case [2003] 259 ITR 19 is not to whittle down the principle laid down by the Constitution Bench of the apex court in Calcutta Discount Co. Ltd. case [1961] 41 ITR 191 but to require the assessee first to lodge preliminary objection before the Assessing Officer who is bound to decide the preliminary objections to issuance of the reassessment notice by passing a speaking order and, therefore, if such order on the preliminary objections is still against the assessee, the assessee will get an opportunity to challenge the same by filing a writ petition so that he does not have to wait till completion of the reassessment proceedings which would have entailed the liability to pay tax and interest on reassessment and also to go through the gamut of appeal, the second appeal before Income-tax Appellate Tribunal and then reference/tax appeal to the High Court.

Viewed in this light, it appears to me that the rigour of availing of the alternative remedy before the Assessing Officer for objecting to the reassessment notice under section 148 has been considerably softened by the apex court in GKN Driveshafts (India) Ltd.'s case [2003] 259 ITR 19 in the year 2003. In my view, therefore, the GKN Driveshafts (India) Ltd. 's case [2003] 259 ITR 19 does not run counter to the Calcutta Discount Co. Ltd. case [1961] 41 ITR 191 (SC) but it merely provides for challenge to the reassessment notice in two stages, that is,

(i) raising preliminary objections before the Assessing Officer and in case of failure before the Assessing Officer;

(ii) challenging the speaking order of the Assessing Officer under section 148 of the Act." 6.2 Hon'ble Gujrat High Court in the case of Arvind Mills Ltd. vs. ACWT [2004] 270 ITR 469 (Guj) while following the aforesaid decision concluded that once the Supreme Court stated that the AO was bound to dispose of the objections by passing a speaking order, it was not open to the authorities to contend that in the absence of any provision in the Act, the authorities could not have passed a speaking order. Hon'ble Delhi High Court in the case of Delhi Tourism & Transport Development Corporation Ltd. vs. ACIT [2004] 141 Taxman 361 (Delhi), while relying upon the aforesaid decision of the Hon'ble Apex Court in GKN Driveshafts (India) Ltd.(supra) directed to follow the procedure laid down by the Hon'ble Apex Court and pass a speaking order before passing the assessment order.

6.3 While adjudicating a similar issue, Hon'ble Gujrat High Court in the case of MGM Exports vs. DCIT [2010] 23 DTR 356 (Guj) observed as under:-

“Applying the aforesaid settled legal position to the facts of the case it is apparent that the action of the respondent authority in framing the reassessment order, without first disposing of the preliminary objections raised by the petitioner, cannot be sustained. Accordingly, the reassessment order dated December 16, 2008 is hereby quashed and set aside and the respondent authority shall dispose of the preliminary objections by passing a speaking order and only thereafter proceed with the reassessment proceedings in accordance with law. Considering the fact that the normal period of limitation, for framing reassessment pursuant to notice dated March 3, 2008, issued under section 148 of the Act, has already expired on December 31, 2008, in the peculiar facts and circumstances of the case it would serve the ends of justice if the respondent authority is directed to abide by the following schedule :

(i) The respondent authority shall dispose of the preliminary objections raised by the petitioner within a period of 4 (four) weeks from by passing a speaking order in accordance with law;

(ii) Thereafter, the respondent authority shall undertake reassessment proceedings, if necessary, and shall complete the same within a period of 4 (four) weeks thereafter, i.e., the date of disposal of the preliminary objections;

(iii) No extension of time shall be sought for by either side in the fact situation of the present case;

(iv) The aforesaid schedule shall not preclude the rights of the petitioner to challenge the order disposing of the preliminary objections, if the said order is required to be so challenged.”

6.4 Recently, Hon'ble jurisdictional High Court in their decision dated 16.2.2012 in Sak Industries Pvt. Ltd. in W.P.(C) 7933/2010 restored the matter to the file of the AO, the reassessment proceedings having been completed with undesirable haste and hurry, in violation of principles of natural justice and contrary to the procedure mandated.

6.5 The position in law is thus well settled. In the instant case, the reasons were recorded before issuance of notice u/s 148 of the Act on 27.3.2009. There is no dispute that the notice was served on the assessee. There is also no dispute that the reasons recorded by the AO were supplied to the assessee on 9.9.2009. These reasons, indisputably, were the same as were recorded by the AO. After a notice for reassessment has been issued, an assessee is required to file the return and seek reasons for issuance of such notice. The AO is then bound to supply the reasons within a reasonable time. On receipt of reasons, the assessee is entitled to file preliminary objections to issuance of notice and the AO is under a mandate to dispose of such preliminary objections by passing a speaking order, before proceeding with the assessment in respect of the assessment year for which such notice has been issued.

7. In view of above settled legal position, we consider it fair and appropriate to vacate the findings of the Id. CIT(A) as also set aside the reassessment order and remit the matter to the file of the AO with the directions to follow the procedure laid down by the Hon'ble Apex Court reiterated by the Hon'ble jurisdictional High Court. The AO shall dispose of the preliminary objections by

passing a speaking order and only thereafter proceed with the reassessment in accordance with law. With these observations, ground nos.1& 2 in the appeal are disposed of. As a corollary, the other ground nos. 3 & 4 raised in the appeal do not survive for adjudication at this stage and are , therefore, treated as infructuous.”

- (ii) Similar view has been taken by the coordinate Bench of this Tribunal in the case of *Hajee Hammed v. DCIT, ITA No.511 to 516 & 552 to 557/Bang/2011 dated 28.9.2011* in paras 11 & 12 as under:

“11. We have considered the rival submissions of both the parties and have carefully gone through the material available on record. In the present case, it appears that when the AO issued notice u/s. 148 of the Act for reopening the assessment, the assessee filed objections and those objections were not disposed of by the AO. This fact has also been admitted by the Id. CIT(A), who observed that he was not inclined to agree with the assessee that merely because the AO had not considered his objection to the notice u/s. 148, the entire assessment becomes bad in law. On a similar issue, Their Lordships of the Hon’ble Supreme Court in the case of *GKN Driveshafts India Ltd. v. ITO & Ors. (2003) (supra)* at page 20 held as under:

“.... The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years.”

12. In the present case also, although the AO recorded the reasons and supplied the same to the assessee, but he had not disposed of the objections raised by the assessee by passing a speaking order. We therefore deem it appropriate to set aside the impugned order

of the Id. CIT(Appeals) and remand the case back to the file of the AO to dispose of the objections filed by the assessee in respect of reopening by issuing notice u/s. 148 first and thereafter to decide the case afresh in accordance with the law, after providing due and reasonable opportunity of being heard to the assessee. Since we have remanded the case to the file of AO, we do not consider it fit and appropriate to go into the other grounds raised by the assessee on merits of the case.”

- (iii) In the case of *ACIT v. M.R. Seetharam (Indl.)*, ITA No.1220/Bang/2015 dated 27.10.2017 in para 6 of the order, it was held as under:-

“6. Having regard to the peculiar facts and circumstances of this case that the assessee filed the objection against the Notice under Section 148 only on 28.3.2013 and the Assessing Officer was left with no option but to finalise the assessment before the expiry of limitation for completing the assessment on 31.3.2013. Therefore the Assessing Officer has completed the assessment vide order dt.28.3.2013 whereby the objections of the assessee were also disposed off. Accordingly, we find that decisions relied upon by the Id. DR on this point are applicable in the facts of the present case and therefrom, we set aside the impugned order of the CIT (Appeals) as well as the assessment order and remit the matter to the record of the Assessing Officer for deciding the objections of the assessee by a separate speaking order and in case the objections of the assessee are rejected then after allowing the assessee a period of four weeks the Assessing Officer may pass the assessment order.”

11. In the present case, the AO issued notice u/s. 148 dated 29.3.2016 served on the assessee on 30.3.2016. There was change in the incumbent of office of AO and the proceedings continued vide letter dated 26.7.2016 and by one more letter dated 3.8.2016. The assessee sought reasons for reopening of assessment on 3.10.2016 which was furnished to the assessee on 24.10.2016. The AO dealt with the objections raised by the assessee in his assessment order itself, though not by a separate order

and completed the assessment on 30.12.2016. Now the grievance of the assessee is that the objections of the assessee was not disposed by the AO by a separate order. The AO duly considered the objections and disposed the same by discussing it in his assessment order itself. In our opinion, he should have disposed it by a separate speaking order, however, it would not lead to nullity of the order. The case laws relied on by the Id. DR on this point are applicable to the facts of the present case. Accordingly, in the interest of justice, we vacate the orders of the lower authorities and remit this legal issue back to the file of the Assessing Officer for deciding the objections of assessee for reopening the assessment by a separate and speaking order, and in case the objections of the assessee is rejected, then the AO is required to pass a fresh assessment order, after adequate opportunity of being heard to the assessee. Ordered accordingly.

12. Since we have set aside the orders of the lower authorities on the legal issue to the file of the Assessing Officer, we refrain from going into the other grounds on merits at this stage.

13. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Pronounced in the open court on this 17th day of September, 2021.

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

Bangalore,

Dated, the 17th September, 2021.

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.