

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "A", BANGALORE**

**Before Shri George George K, JM & Shri B.R.Baskaran, AM**

ITA No.2397/Bang/2018 : Asst.Year 2009-2010

ITA No.2398/Bang/2018 : Asst.Year 2010-2011

ITA No.2399/Bang/2018 : Asst.Year 2011-2012

The Deputy Commissioner of Income-tax, Circle 6(2)(1) Bangalore.	v.	Sri C Gangadhara Murthy No.322, 3 <sup>rd</sup> A Cross, 2 <sup>nd</sup> Block 3 <sup>rd</sup> Stage, Basaveshwaranagar Bangalore – 560 079 <b>PAN : AGIPG2668N.</b>
(Appellant)		(Respondent)

Appellant by : Sri.V.Chandrasekhar, Advocate  
Respondent by : Sri.Sumer Singh Meena, CIT-DR

<b>Date of Hearing : 25.11.2021</b>	<b>Date of Pronouncement : 30.11.2021</b>
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**ORDER**

**Per George George K, JM:**

These appeals at the instance of the Revenue are directed against three orders of the CIT(A), all dated 26.04.2018. The relevant assessment years are 2009-2010 to 2011-2012.

2. Common issue is raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order.

3. Identical grounds are raised in all the appeal. They read as follows: -

*“1. The order of the CIT(Appeals) is opposed to law and the facts and circumstances of the case.*

*2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the assessment order*

*to be unsustainable for the reason that the AO failed to pass a separate order disposing the objection of the appellant for assumption of jurisdiction u/s 147.*

3. *For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.*

4. *The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.”*

4. The brief facts of the case pertaining to assessment year 2009-2010 reads as follows:

The assessee an individual is an investor in mining firm as well as urban properties. The department had certain information regarding cash deposits made by the assessee during the relevant assessment year. It was seen that the assessee had not filed his return of income. On account of verification of the stop filer status of the assessee, the assessee filed a letter dated 05.11.2013 enclosing a copy of the return filed. The return filed was beyond the time prescribed. Since the return of income filed by the assessee needed to be regularized and also for the reason that the source for cash deposits made by the assessee needed to be verified, a notice u/s 148 of the I.T.Act dated 08.01.2014 was issued. In response to the same, the assessee filed letter dated 11.02.2014 enclosing the copy of the return filed earlier. The assessee also sought for the reasons recorded for issuance of notice u/s 148 of the I.T.Act. The A.O. provided the reasons recorded for issuance of notice u/s 148 of the I.T.Act to the assessee on 06.03.2014. The assessee filed objections to the reasons recorded by letter dated 16.09.2014. However, according to the assessee, the A.O. without disposing of the

objections raised to the reasons recorded, passed an assessment order dated 03.11.2014 u/s 144 r.w.s. 147 of the I.T.Act.

5. Aggrieved, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority the assessee raised legal grounds with regard to the validity of reassessment and also on merits. As regards the legal ground that the A.O. did not dispose of the objections filed by the assessee and hence, the reassessment order is bad in law, the CIT(A) decided the issue in favour of the assessee. The CIT(A) placed reliance on the judgment of the Hon'ble jurisdictional High Court in the case of Deepak Extrusion Pvt. Ltd. v. DCIT reported in (2017) 80 taxmann.com 77. The relevant finding of the CIT(A) in this regard reads as follow:-

*“7. It is noted that in his Written Submission the appellant has raised the issue of legality of assessment order passed by AO without first disposing off appellant’s objections. Therefore, the first issue for adjudication is whether the AO ought to have pass a separate speaking order to meet objections raised by appellant with regard to Reasons Recorded and the legality of assumption of jurisdiction based on such Reasons Recorded.*

*8. It is seen from the following judicial pronouncements, relied upon by the appellant, that it is perforce necessary for an AO to pass a separate order meeting objections raised:-*

*(i) Allana Cold Storage Ltd vs ITO &Ors 287 ITR 1 (Bombay High Court);*

*(ii) Asian Paints Ltd vs Dy.CIT 296 ITR 96 (Bombay High Court);*

*(iii) IOT infrastructure & Engg services vs ACIT 329 ITR 547 (Bombay High Court);*

*(iv) KSS Petron Pvt Ltd vs ACIT in ITA No. 224 of 2014 (Bombay High Court);*

9. It is seen from the above orders that the decisions made therein are all arising out of the law laid down by the Hon'ble Supreme Court in the land mark case of *G.K.N. Drive Shafts (India)Ltd vs Income Tax Officer &Ors (2003)*'1 SCC 72, 259 ITR 19 in which the Hon'ble Supreme Court laid down the complete guidelines as to how an assessment ought to be made u/s 147 of the Act which is reproduced below:

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

10. The appellant has also placed on record two binding judgements of the Jurisdictional High Court of Karnataka in which the Hon'ble High Court has set aside assessment orders holding the same to be unsustainable in law in view of the fact that the AO proceeded with assessment order without following the mandatory procedure of disposing objections raised in respect of reasons recorded. The decisions are :-

(i) In Writ Appeal NO.1725/2017, in the case of *Deepak Extrusions Pvt Ltd vs DCIT*, Order dated 15th March 2017;

(ii) In WP No.4679/2018 in the case of *Mis Vvarthyhully.Estates Ltd vs ITO & Addl CIT*, Order dated 21st March 2018.

11. In the instant appeal, it may be noted that the AO had not pass a separate order to meet the objections for assumption of jurisdiction u/s 147, which is mandatory in view of the decision of the Apex Court in the case of *GKN Drive Shaft*. Furthermore, in the light of the above judicial decisions of Hon'ble jurisdictional High Court of Karnataka cited in para 10supra, i.e In Writ Appeal NO.1725/2017, in the case of *Deepak Extrusions Pvt Ltd vs DCIT*, Order dated 15th March 2017 & In WP No.4679/2018 in the case of *MIs Warthyhully Estates Ltd vs ITO & Addl CIT*, Order dated 21st March 2018 which are squarely applicable in the instant appeal, and in view of the fact that the decisions are binding, and since judicial discipline requires that wisdom of higher authorities prevail, and in view of the fact that AO failed to pass a separate order disposing objections of appellant, one is constrained to hold the assessment order passed u/s 143(3) r.w.s. 147 for AY 2009-10 as unsustainable."

6. Aggrieved by the order of the CIT(A), the Revenue has filed this appeal before the Tribunal. The learned Departmental Representative contended that the A.O. has disposed of the objections raised by the assessee as against the reasons recorded for reopening the assessment on 16.09.2014 (the very same day the assessee filed his objections). Therefore, it was submitted that the A.O. has acted in accordance with the dictum laid down by the Hon'ble Apex Court in the case of *GKN Drive Shafts (India) Ltd. v. ITO & Ors. reported in (2003) 259 ITR 19 (SC)*. Hence, it was stated that the CIT(A) has erred in quashing the assessment order for the sole reason that the A.O. has not disposed of the assessee's objections against the reasons recorded for reopening the assessment.

6.1 The learned AR, on the other hand, submitted that the A.O. has not passed a speaking order disposing of the assessee's objections. It was stated that the A.O. has merely intimated disposal of objections in annexure to the notice u/s 142(1) of the I.T.Act. It was contended that mere intimation of disposal of objection is not sufficient compliance to the directions laid down by the Hon'ble Supreme Court judgment in the case of *GKN Drive Shafts (India) Ltd. v. ITO & Ors. (supra)*. It was further stated that if the above issue is decided against the assessee, the matter needs to be restored to the Income Tax Authorities for adjudication on merits. It was submitted that in the event the case is to be restored, it may be restored to the files of the A.O., since the assessee was not provided with adequate opportunity to present his case and the assessments were completed in a tearing hurry u/s 144 of

the I.T.Act. Lastly, it was submitted that for assessment year 2011-12, the tax effect is below Rs.50 lakh, hence, the appeal for assessment year 2011-2012 needs to be dismissed on account of low tax effect in view of Board Circular No.17/2019 dated 08.08.2019 read with Circular No.3/2018 dated 11.07.2018.

6.2 In the rejoinder, the learned Departmental Representative submitted that the CIT(A) has not adjudicated the issue on merits. Therefore, the appeal of the Revenue will not be governed by the low tax effect Circular. It was submitted that the CIT(A) has power of enhancement and since the CIT(A) has not decided the issue on merits, one more opportunity may be granted to the CIT(A) to adjudicate the issue on merits.

7. We have heard rival submissions and perused the material on record. For the assessment years 2009-2010 and 2010-2011, the only issue to be adjudicated is whether the assessee's objections to the reasons recorded for reopening of the assessment has been disposed of by the A.O. by a speaking order before proceeding with the assessments. For assessment year 2011-2012, apart from the above issue, we have to examine also whether the Department's appeal is to be dismissed on account of low tax effect. Since the first issue is common for all the three years, we shall first adjudicate this issue. The dictum laid down by the Hon'ble Apex Court in the case of *GKN Drive Shafts (India) Ltd. v. ITO & Ors. (supra)*, reads as follows:-

*“We see no justifiable reason to interfere with the order under challenge. 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.”*

7.1 Keeping in view the above dictum laid down by the Hon’ble Apex Court, let us examine the facts of this case for the assessment year 2009-2010. A notice u/s 148 of the I.T.Act was issued to the assessee on 08.01.2014 after duly recording the reasons for reopening the assessment. The assessee sought for the reasons recorded for reopening the assessment vide his letter dated 11.02.2014, which was furnished to the assessee on 06.03.2014. The assessee filed objections to the reasons recorded for reopening the assessment vide his letter dated 16.09.2014. The objections filed by the assessee reads as follows:-

*“Now w.r.t the notice u/s 148 it is humbly submitted that I have collected a copy of the reasons recorded while issuing the notice u/s 148 from your office on 06.03.2014, After perusal of the same it becomes clear that the very assumption of jurisdiction u/s 147 is bad in law, since the Reasons Recorded while issuing notice u/s 148 by your office, are only Reasons to Suspect, but they are not reasons to believe that the income has escaped assessment within the meaning of that section, Reliance is placed on the decision of the Hon’ble Apex Court in the case of Ganga Saran & Sons (P) Ltd. v. ITO& Others, reported in 130 ITR 1.”*

7.2 The above objections of the assessee are not specific nor clear. On the contrary, the same is very vague. However, the objection of the assessee was disposed by the Assessing Officer on 16.09.2014 itself. The A.O. annexed the copy of the order disposing of the assessee's objection along with the notice issued u/s 142(1) of the I.T.Act. The assessee does not have a case that the order disposing of the assessee's objections annexed along with notice u/s 142(1) of the I.T.Act dated 16.09.2014 has not been served on him. At this juncture, it is necessary to reproduce the entire order of the Assessing Officer disposing of the assessee's objections to the reasons recorded and the same reads as follows:-

*"1, The undersigned is in receipt of written submissions dt.16.09.2014 in response' notice dt.05.09.2014. As a part of the reply filed, you have also questioned the very assumption of jurisdiction u/s.147 and has claimed that the issue of notice u/s.148 bad in law claiming that the reasons recorded are only reasons to suspect and not reasons to believe that the income has escaped assessment. In this regard, the reasons recorded for issue of notice u/s.148 are reproduced as under.*

*"The assessee Sri C Gangadhar Murthy filed a letter dated 5.11.2013 in the office of the undersigned enclosing a copy of a manual return along with particulars as below:*

A.Y.	Income from house property	Income from business	Income from other sources	Gross total income declared	Total income declared	Agricultural income declared
2009-10	12,37,558	3,12,000	56,17,321	71,66,871	70,66,088	8,40,000

*2. The manual copy of the return of income filed is time barred and is filed. As per the AIR and CIB information base, it is also seen that the assessee has deposited a total cash of Rs.2,32,34,755 in the Savings Bank Accounts maintained by him. The details of such cash deposits and the incomes there from are not declared in the letter/return copy filed by the assessee.*

3. Considering the income declared by the assessee as per letter dated 5-11-2012 as above and on the facts and the circumstances of the case, I have reasons to believe that the taxable income of the assessee has escaped assessment. Issue notice u/s.148 to initiate assessment proceedings, since I have reason to believe that income of the assessee has escaped assessment within the meaning and scope of section 147."

2. A copy of the reasons recorded had already been given to you on 06.03.2014. It is seen that you had not objected to the reasons recorded till now. Only after the passing of asst.order for asst.year 2008-09 dt.20.08.2014 you have now objected to thereas.ons recorded. Similar reasons had been recorded for asst.year 2008-09 also. The reasons recorded and the possible objections to the same have been dealt in detail during the course of the assessment order passed for asst.year 2008-09. You may kindly refer to the same also.

3. It is clearly brought out in the reasons recorded that you had deposited a total cash of Rs.2,32,34,755 in the Saving bank accounts maintained. This information had been received from the AIR and CIB information base. It is seen that you are in receipt of gross total income of Rs.71 ,66,871 and agricultural income of Rs.8,40,000. As per the return filed, the gross incomes received by you were as under.

Gross receipts from house property	Rs.1,07,09.451
Gross Income from other sources	Rs.60,79,275

It is seen that even these incomes were received into bank account by means of Accounted cheque transactions. The business transactions had been conducted out of current accounts and you have not declared any corresponding net incomes under the head "Income from Business and Profession". You have also claimed interest expenses which cannot be allowed under the head "Income from Other Sources".

4. As per the cash flow statement and balance sheets filed, you have now claimed that you had received cash advances from various persons. The list of such persons is given as under.

#### Schedule 6

<b>Current liabilities</b>	<b>Amount</b>
Amex Credit Card 51007	46,638.98
Amex Credit Card 92009	(0.88)
Peter utal	1,93,00,000.00

Reddy veeranna	90,96,802.75
Santhyanarayan	20,00,000.00
Devanam Constructions	2,28,00,000.00
Ikon Projects	49,94,988.20
R Kusuma	6,87,45,478.70
Service tax	18,61,675.10
Shivashakti Enterprises	53,75,000.00

<b>Land Advances received</b>	<b>Amount</b>
Bhairava	6,50,000.00
Beemanna	8,00,000.00
Bhoranna	5,50,000.00
Bore-Gowda	8,80,000.00
Channaveerappa	6,40,000.00
Cheluvaraj	8,50,000.00
Devraj	7,00,000.00
Janardhan	8,80,000.00
Jayachandra	5,50,000.00
Jayanna	9,30,000.00
Kannappa	8,40,000.00
Kantharaju	5,60,000.00
Karibasava	7,80,000.00
Kariyappa	8,60,000.00
Kempegowda	6,20,000.00
Kemppanna	3,50,000.00
Keshav Murthy	7,40,000.00
Kiran Kumar	6,80,000.00
Krishnamurthy	8,30,000.00
Krishnnappa	7,50,000.00
Lakshmisha	5,40,000.00
Lingappa	8,60,000.00
Mallanna	9,30,000.00
Motappa	7,80,000.00
Mune Gowda	8,50,000.00
Muniyappa	5,60,000.00
Nagaraj	7,40,000.00
Nanjaiah	6,80,000.00
Nanjunda	4,50,000.00
Narasappa	3,70,000.00
Total.	15,54,20,582.85

5. It is seen from the above, that you have claimed receipt of more than Rs.2.30 crores in cash from various persons who are not assessed to tax. Similar, claims made for asst.year 2008-09 have been discussed in detail and disallowed on account of unsubstantiated claims and unsupported credit entries. You have made similar claims now for asst.year 2009-10. It is also seen that amounts claimed received as land advances were claimed repaid in cash only without any land transaction ever taking place. This also goes to show that the claim of cash advances for land purchases is a bogus one intended to concocted to explain the cash deposits

*in the Savings bank account. In any case, the unaccounted cash introductions are much more than the gross incomes declared for the year and offered to tax.*

*6. It is also noted here that the return for the asst.year 2009-10 was filed through a covering letter dt.5.11.2013. The return is belated and had to be lodged. The proceedings under section 147 of the I T Act had to be necessarily be initiated to regularize the incomes claimed by you as per letter dt. 5.11.2013 amounting to a taxable income of Rs.70,66,879. Even this belated return had been filed by you in response to series of enquiries conducted as per notices dt.1.11.2013 and 5.11.2013 initiating proceedings u/s.271 F of the I T Act.*

*7. Considering the totality reasons as above, the assessing officer is within his jurisdiction to have come to the conclusion that taxable incomes have escaped from taxation. Considering the same, the objections filed by you cannot be entertained. You may seek legal recourse in accordance with the Supreme Court directions contained in the case of M/s.GKN Drive Shafts at your convenience. Necessary time of 15 days has been given for the same.* (emphasis supplied)

7.3 The above order of the Assessing Officer is a detailed speaking order and was passed prior to the passing of the assessment order (i.e. on the very same day the assessee filed his objections). In the above order of the Assessing Officer, it is clearly enumerated that the reasons recorded for reopening the assessment. The reasons recorded are not reasons to suspect but reason to believe that substantial income has escaped assessment for the subject assessment year. Further, the Assessing Officer in clear terms has intimated the assessee (refer para 7 of the AO's order) that his objections are disposed of in terms of Hon'ble Supreme Court directions contained in the case of *GKN Drive Shafts (India) Ltd. v. ITO & Ors. (supra)* and if the assessee so desires to seek legal recourse, fifteen days time was granted. In the light of the above order of the Assessing Officer, it is clear that he has complied with the directions of the Hon'ble Apex Court.

Therefore, we hold that the CIT(A) has erred in quashing the assessment order for the reason that the Assessing Officer has not disposed of the assessee's objections to the reasons recorded for reopening of the assessment before completion of the assessment order. Hence, the CIT(A)'s order is set aside. Since the assessment has been completed u/s 144 of the I.T.Act, we deem it appropriate to restore all the issue to the files of the A.O. for *de novo* consideration.

7.4 For assessment year 2011-2012, the assessee has raised the plea that the appeal of the Revenue is not maintainable on account of low tax effect. By virtue of CBDT Circular No.3/2018 dated 11.07.2018 read with Circular No.17/2019 dated 08.08.2019, an appeal of the Revenue, which is pending before the Tribunal having a tax effect less than Rs.50 lakh, is to be withdrawn. The DR's plea is that the CIT(A) has not decided the case on merits, hence, the CBDT Instruction on monetary limit does not have any application. The term "tax effect" has been explained in para 4 of the CBDT Circular No.3/2018 dated 11.07.2018 and the same reads as follows:-

*"4. For this purpose, 'tax effect' means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as 'disputed issues') Further, 'tax effect' shall be tax including applicable surcharge and cess....."*

*(emphasis supplied)*

7.5 Let us examine in this case, what is the 'disputed issue' before the Tribunal and the 'tax effect' on the same. The ground raised by the Revenue is regarding quashing of

assessment by the CIT(A) for the sole reason that assessee's objection to reopening of assessment has not disposed of prior to completion of assessment. Therefore, admittedly on the 'disputed issue' raised before the Tribunal there is no 'tax effect'. In such a scenario, the Board Circular No.3/2018 dated 11.07.2018 at para 11 clearly states that in cases where the 'tax effect' is not quantified or not involved, filing of the appeal shall not be governed by the monetary limits specified and decision to file appeals in such cases may be taken on merits of a particular case. The relevant portion of the Board Circular reads as follows:-

*“11.....Further, in cases where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A / 12AA of the IT Act, 1961 etc., filing of appeal shall not be governed by the limits specified in para 3 above and decision to file appeals in such cases may be taken on merits of a particular case.”*

7.6 Mentioning of “registration u/s 12A/12AA” in para 11 of Board Circular is not exhaustive enumeration of situation, where tax effect is not quantifiable or not involved, but only illustrative. In the instant case, the 'disputed issue' before the Tribunal does give rise to any 'tax effect'. Therefore, monetary limit specified in para 3 of Circular does not have any application. Hence, the contention of the learned AR that appeal of Revenue for assessment year 2011-2012 is to be dismissed on low tax effect is rejected.

7.7 The facts and issue involved for assessment years 2010-2011 and 2011-2012 are identical to the assessment year 2009-2010. Therefore, for our reasoning mentioned in para 7

to 7.3, we set aside the CIT(A)'s orders for A.Ys. 2010-2011 and 2011-2012 and restore the entire assessment for *de novo* consideration to A.O. It is ordered accordingly.

8. In the result, the appeals filed by the Revenue for assessment years 2009-2010, 2010-2011 and 2011-2012 are allowed for statistical purposes.

Order pronounced on this 30<sup>th</sup> day of November, 2021.

**Sd/-**  
**(B.R.Baskaran)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 30<sup>th</sup> November, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-6, Bangalore.
4. The Pr.CIT-6, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore