

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri Rajpal Yadav, Vice-President(KZ) & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 497/Kol/2021
Assessment Year : 2013-14

Prannay Sureka (PAN: ASTPS 8646 P)	Vs.	ACIT, Circle-61, Kolkata
Appellant		Respondent

Date of Hearing	08.03.2022
Date of Pronouncement	16.03.2022
For the Appellant	Shri S.K. Tulsiyan, Advocate Smt. Puja Somani, Advocate
For the Respondent	Shri P.P. Barman (Sr. DR)

ORDER

Per Shri Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [hereinafter referred to as ‘CIT(A)’] dated 28.09.2021 for the assessment year 2013-14.

2. The assessee has assailed the order of Ld. CIT(A) on legal issue as well on merits. The legal issue raised by the assessee is that the Ld. CIT(A) has erred in upholding the order AO despite the fact that the AO has failed to supply the copy of the reasons recorded u/s 148(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act) to the assessee during assessment proceedings and framed the assessment as such thereby rendering the assessment so framed as nullity and invalid in the eyes of law.

3. The facts in brief are that the return of income was filed by the assessee on 03.08.2013 declaring total income of Rs. 44,28,590/-. The AO received information from DDIT(Investigation) Unit-1 Lucknow vide letter dated 2.8.2016 that M/s Programme Support Unit Foundation was receiving donations from different

persons/entities which were bogus in nature. The AO noted that the assessee has given bogus donation of Rs. 55,00,000/- to M/s Programme Support Unit Foundation during the year. The AO also noted that the assessee has claimed deduction of Rs. 65,00,000/- u/s 80GGA of the Act from the total income. In view of these facts, the AO reopened the assessment u/s 147 of the Act by issuing notice u/s 148 of the Act dated 02.05.2017 by recording the reasons that income of the assessee has escaped assessment. The said notice was complied with by the assessee by filing the return of income on 14.12.2017 declaring the same income as was returned in the original return. Thereafter the statutory notices were issued and served upon the assessee. During the assessment proceedings, the AO called upon the assessee to furnish various documents to prove the genuineness of the claim and finally the assessment u/s 143(3)/147 of the Act was framed by making two additions namely one of Rs. 65,00,000/- in respect of claim u/s 80GGA of the Act and second of Rs. 37,05,896/- on account of income from undisclosed sources by rejecting the contentions as made by the assessee.

4. The assessee challenged the order of AO before the Ld. CIT(A). However, the Ld. CIT(A) dismissed the appeal on the jurisdictional issue by passing a cryptic order despite the fact that assessee has specifically raised the issue of non-supply of reasons to the assessee during assessment proceedings before the Ld. CIT(A).

4. The Ld. A.R submitted before the bench that the Ld. CIT(A) has erred in law and on facts by upholding the assessment order passed by the AO which is an invalid order as Ld. CIT(A) has completely failed to address the issue of non supply of reasons recorded during assessment proceedings to the assessee. The Ld. A.R vehemently submitted before the Bench that notice u/s 148 of the Act was issued to the assessee on 02.05.2017 which was complied with by the assessee by filing return of income on 14.12.2017 and simultaneously requesting the AO to provide/supply the copy of the reasons recorded vide letter dated 14.12.2017. The Ld. A.R drew the attention to the Bench to the said communication dated 14.12.2017 and pointed out that the assessee has subsequently requested the AO to provide the copy of the reasons

recorded for issuing notice u/s 148 of the Act. The Ld. A.R. submitted that despite assessee's request the AO did not supply the copy of the reasons recorded and proceeded to frame assessment which is invalid and nullity as the mandatory requirement supplying the reasons to the assessee has not been fulfilled as it has deprived the assessee of filing objections against the reopening of assessment. The Ld. A.R submitted that the notice u/s 143(2) was issued on 11.09.2018 and subsequently notice u/s 142(1) of the Act along with questionnaire was issued on 08.12.2018 by calling upon the assessee to furnish the complete details of deduction claimed on account of donations which was replied by the assessee vide written submission dated 26.10.2018. Thereafter, the AO issued show cause notice on 10.12.2018 to the assessee wherein the reason recorded were reproduced for the first time. The Ld. A.R stated that though the AO has mentioned in the assessment order that the reasons were provided to the assessee however as a matter of fact these were never supplied. The Ld. A.R. contended that the assessment framed without supplying the reasons to the assessee is invalid and has to be quashed. In defense of the arguments the Ld. A.R relied on the series of decisions namely:

i) GKN Driveshafsts (India) Ltd. vs. DCIT (2003) 259 ITR 19 (SC)

ii) CIT vs. Videsh Sanchar Nigam Ltd. reported in (2012) 340 ITR 66 (Bom HC)

iii) CIT vs. Janak Shantilal Mehta reported in (2021) 124 taxmann.com 516 (Mad HC)

iv) CIT vs. National Organic Chemical Industries Ltd. (2020) 115 taxmann.com 244 (Bom)

Finally the Ld. A.R. prayed before the bench that assessment order so framed by the AO may kindly be quashed by setting aside the order of Ld. CIT(A).

5. The Ld. D.R on the other hand strongly opposed to the contentions of the Ld. A.R by submitting that the said issue was never raised before the Ld. CIT(A) by referring to Form No. 35 and grounds raised by the assessee before the Id CIT(A) and submitted that the assessee cannot be allowed to rake up this issue at this stage. The

Ld. D.R therefore submitted that the legal ground raised by the assessee may kindly be dismissed.

6. In the rejoinder, the Ld. A.R. took the Bench through the written submissions filed before the Ld. CIT(A) and ground no. 1 taken wherein the assessee has assailed the assessment order passed u/s 143(3) read with Section 147 of the Act as void ab-initio. The Ld. A.R also took the bench through the various contentions, including non-supply of reasons recorded u/s 148 of the Act to the assessee, despite specifically being requested by the assessee. The Ld. D.R. was confronted with the same however he could not give any plausible answers and simply relied on the order of the Ld. CIT(A).

7. We have heard both the parties and perused the material available on record as placed before us. The undisputed facts are that the assessment was reopened u/s 147 of the Act by issuing notice dated 02.05.2017 which was complied with by filing return of income on 14.12.2017. The AO did not provide copy of the reasons recorded to the assessee and consequently the assessee could not file objections against the re-opening of assessment. We also observe from copy of written submissions as filed before Ld CIT(A) that the assessee has challenged this issue of non providing the reasons recorded to the assessee during assessment proceedings before the Ld. CIT(A) however the Ld. CIT(A) has not adjudicated the same and dismissed the appeal in a cryptic manner. When the Ld. D.R was specifically put to the issue of non-supplying the copy of reasons recorded u/s 148(2) of the Act to the assessee, the Ld. D.R simply relied on the order of the authorities below. Under these circumstances, we have no choice but to proceed on the assumption that the reasons were never supplied to the assessee. It is trite law that the assessment framed without supplying copy of reasons to the assessee is not a valid assessment and cannot not be sustained. The case of the assessee finds support from the decision of the *GKN Driveshafsts (India) Ltd. vs. DCIT* (supra) wherein the Hon'ble Apex Court has held that when a notice u/s 148 of the Act is issued and the assessee has filed its return of income and sought the reasons for issuance of notice u/s 148 of the Act, the AO is bound to furnish the copy

of reasons within the reasonable time and assessee on receipt of the reasons is entitled to file objections to issuance of notice. The Hon'ble Apex Court held that the AO is bound to dispose of the objections filed by the assessee by passing a speaking order. However in the instant case before us, the AO has not provided the reasons despite the assessee having filed return of income and having requested the AO to provide reasons which has deprived the assessee from filing the objections to the re-opening of assessment and against issuance of notice u/s 148 of the Act. The case of the assessee is also covered by the decision of Hon'ble Bombay High Court in the case of *CIT Vs Videsh Sanchar Nigam Ltd. (supra)* wherein the Hon'ble Court has held that the reasons recorded for re-opening the assessment were not furnished to the assessee till the completion of assessment, the reassessment order cannot be upheld. Similar ratio has been laid down in the case of *CIT Vs National Organic Chemical Industries Ltd.* by the Hon'ble Bombay High Court by following the decision of Co-ordinate Bench in the case of *CIT vs. Videsh Sanchar Nigam Ltd. (supra)*.

8. Considering the facts of the case in the light of ratio laid down by the juridical forums as discussed hereinabove, we set aside the order of Id CIT(A) and hold that the assessment framed u/s 143(3) is not valid and is accordingly quashed. The legal grounds raised by the assessee are allowed.

9. Since the appeal of the assessee has been allowed on legal issue, the other grounds raised by the assessee on merits are not being adjudicated and left open to be decided at later stage if the need arises for the same.

10. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 16th March, 2022

Sd/-

(Rajpal Yadav)
Vice-President

Sd/-

(Rajesh Kumar)
Accountant Member

Dated: 16th March, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Prannay Sureka, Godrej Platinum Tower, Insignia 1, Flat No. 503, 21A, Burdwan Road, Kolkata-700027.
2. Respondent – ACIT, Circle-61, Kolkata
3. The CIT(A)-National Faceless Appeal Centre (NFAC)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata