

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, KOLKATA
[Before Shri A. T. Varkey, JM]**I.T.A. No. 97/Kol/2020**
Assessment Year: 2013-14

Income-tax Officer, Wd-1(3), Siliguri	Vs	Glitter Suppliers Private Limited (PAN: AADCG3756D)
Appellant	.	Respondent

&

C.O. No. 12/Kol/2021
Assessment Year: 2013-14

Glitter Suppliers Private Limited	Vs	Income-tax Officer, Wd-1(3), Siliguri
Cross Objector	.	Respondent

Date of Hearing	15.03.2022
Date of Pronouncement	15.03.2022
For the Assessee/Cross Objector	Shri Sujoy Sen, AR
For the Revenue	Shri Nicholas Murmu, Addl. CIT

ORDER

The appeal of revenue and the Cross Objection of assessee are against the order of Ld. CIT(A), Siliguri dated 04.11.2019 for AY 2013-14.

2. The main grievance of the revenue is against the action of the Ld. CIT(A) in deleting the addition of Rs.15,00,000/- made by the AO on account of capital gain of share transaction

3. Brief facts of the case are that the AO noted that the assessee had filed its return of income on 27.09.2013 declaring total loss of Rs.23,201/-. Later on, the AO noticed that he was in receipt of information from the ADIT (Inv.) Unit-4(1), Kolkata dated 09.03.2018 from which it transpired that the assessee company had entered into transaction to the tune of Rs.15,00,000/- through accommodation entry in the form of bogus share capital/share premium/bogus commodity profits/LTCG/STCG, unsecured loan etc through jamakharchi/shell companies. According to AO, the assessee

company falls under category of beneficiary's client, therefore, he proposed to reopen the assessment u/s. 147 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") so he issued statutory notice u/s. 148 of the Act and thereafter, hearing the assessee he was pleased to make an addition of Rs. 15,00,000/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to delete the addition by allowing the legal ground raised by the assessee in the light of the decision of Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. Vs. ITO 259 ITR 19 (SC), by taking note that in this case the re-assessment (after reopening) was completed on 27.12.2018 despite the assessee requesting for the "reasons recorded for reopening" and undisputedly the same was given to the assessee after two months after reassessment order was passed on 27.12.2018 i.e. on 28.02.2019. Aggrieved by the decision of the Ld. CIT(A), the revenue has preferred this appeal and the assessee has supported the order of the Ld. CIT(A) by preferring the Cross Objection wherein they have raised few grounds which has not been adjudicated by the Ld. CIT(A) while cancelling the action of AO to reopen itself.

4. Assailing the action of the Ld. CIT(A) the Ld. Sr, DR Shri Nicholas Murmu has submitted that mere procedural irregularity like furnishing of reasons recorded to the assessee makes no difference and what matters is the final order which should be adjudicated by the Ld. CIT(A) on its own merit, rather than on mere technicalities. For that he relies on the decision of the Hon'ble Supreme Court in the case of Home Finders Housing Ltd. Vs. ITO (2018) 256 Taxman 59 (SC). Therefore, according to the Ld. DR, the action of the Ld. CIT(A) cannot be sustained and he wants me to reverse the order of the Ld. CIT(A) and uphold the action of the AO.

5. Per contra, the Ld. AR of the assessee Shri Sujoy Sen brought to our notice that even in the grounds of appeal raised by the revenue they have not assailed the action of the Ld. CIT(A) allowing the appeal on the ground that the omission on the part of the AO to furnish the reasons recorded before completion of re-assessment order dated 27.12.2018 is against the binding decision of the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. (supra). According to him, the direction/decision of the Hon'ble Supreme Court is binding on all courts and authorities of the Union of India as well as the State Govt. as per Article 141 of the Constitution of India and, therefore,

according to him, when there is a clear declaration of law/direction that in cases where reopening is resorted to by the AO, the AO on requisition of the assessee has to give a copy of the “reasons recorded” for reopening the assessment. According to him, the reasons recorded postulates foundation based on information and belief based on reason. According to him, even if there is a foundation based on information still there must be some reason warrant holding of a belief that income chargeable to tax has escaped assessment. According to the Ld. AR, since reasons recorded is *sine qua non* for reopening the assessment which is a jurisdictional requirement of law and when the action of AO to have reopened is challenged, the reason recorded needs to be looked into to analyze whether the AO had requisite jurisdiction to reopen the assessment (judicial review). Since the reasons recorded by AO has not been given to assessee even after there was request for it from the assessee, the omission on the part of AO not to furnish the same to assessee is in direct conflict with the decision of the Hon’ble Supreme court in GKN Driveshafts (India) Ltd. (supra) and, therefore, the order of the Ld. CIT(A) cannot be faulted and, therefore, it may be upheld. So, he prays that this Tribunal should not interfere in the order passed by the Ld. CIT(A).

6. Heard the rival parties and perused the material available on records. From a perusal of the grounds of appeal raised by the revenue it is noted that there is no whisper against the impugned action of the Ld. CIT(A) finding fault with the action of the AO not furnishing the “reasons recorded” for reopening the assessment. And it is not disputed that the Hon’ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra) has given clear declaration of law that in case if the assessee’s case is reopened u/s. 147 of the act and if the assessee requests for a copy of the reasons recorded for reopening the assessment, then the AO is bound to furnish a copy of reasons recorded and thereafter, if the assessee objects to the reopening, then the AO has to dispose of the objection in accordance to law. It should be borne in mind that the direction of the Hon’ble Supreme Court is binding on all courts/authorities of the Unions as well as the States under Article 141 of the Constitution of India. Therefore, the AO was bound to give a copy of the reasons recorded when it was sought by the assessee and that too at any rate before completion of the assessment. It is noted that on 11.06.2018 the assessee had requested for the copy of the reasons recorded and on

27.12.2018 the reassessment u/s. 143(3)/147 was framed by the AO and only on 28.02.2019 (after two months) the reasons recorded were furnished to the assessee. This action of AO smacks of arbitrariness and is whimsical in nature, so is bad in law and is ex-facie violative of the Articles 14 and 21 of the Constitution. The decision cited by the Ld. CIT, DR in the case of Home Finders Housing Ltd. supra does not come to the rescue of the revenue because this omission of AO not to furnish a copy of reasons recorded cannot be termed as a mere procedural irregularity. It should be borne in mind that the reasons recorded enables the AO to reopen the assessment which is a jurisdictional requirement of law, failure to give when sought by assessee therefore, goes into the root of the reassessment itself/reopening itself because it can be even contended that before re-opening the assessment there was no 'reasons recorded' and, therefore, in the facts and circumstances discussed, the contention of the Ld. CIT DR cannot be acceded to. Therefore, the action of the AO cannot be sustained in the eyes of law and, therefore, I uphold the order of the Ld. CIT(A) and dismiss this appeal of the revenue.

7. The Cross Objection has become academic and so stands dismissed.
8. In the result, both the appeal of the revenue and the Cross Objection of the assessee are dismissed.

Order is pronounced in the open court.

Sd/- (A. T. Varkey)
Judicial Member

Date : 15th March, 2022
JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ITO, Ward-1(3), Siliguri
2. Respondent – M/s. Glitter Suppliers Private Limited, C/o Shyam sundar Agarwal, Nirmala Apartment, Nehru Road, Khalpara, Siliguri-734005..
3. CIT(A), Siliguri.
4. CIT , siliguri
5. DR, ITAT, Kolkata. (sent through e-mal)

/True Copy,

By order,
Assistant Registrar