

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.2818/Chny/2017
निर्धारण वर्ष/Assessment Year: 2009-10

The Assistant Commissioner of
Income Tax, Non Corporate Circle 11,
2nd Floor, BSNL Building, Tower II, 16
Greaves Road, Chennai 600 006.

Vs. M/s. Muktha Shantiniketan Properties,
New No. 122, 1st Floor, Broadway,
Chennai 600 108.

[PAN:AALFM9626R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri AR V Sreenivasan, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by : Shri T. Banusekar, C.A.
सुनवाई की तारीख/ Date of hearing : 10.05.2022
घोषणा की तारीख /Date of Pronouncement : 08.06.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) 13, Chennai, dated 18.09.2017 relevant to the assessment year 2009-10.

2. Facts, are in brief, that the assessee filed its return of income for the assessment year 2009-10 declaring total income at ₹.97,97,71,660/-. The case was selected for scrutiny and the assessment was completed under section 143(3) of the Income Tax

Act, 1961 ["Act" in short] dated 23.12.2011 assessing income at ₹.98,02,21,680/-. Thereafter, the Assessing Officer issued notice under section 148 of the Act on the ground that there is an escapement of income and the assessment was reopened and completed under section 143(3) r.w.s. 147 dated 21.12.2016. Against the reassessment order passed by the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) by challenging the reopening on two counts, viz., (1) reopening notice was issued beyond 4 years and the Assessing Officer has not established that there is a failure on the part of the assessee to disclose fully and truly all material facts to complete the assessment in the absence of any fresh tangible material and (2) the assessee raised objection for reopening and the Assessing Officer without considering the objection raised by the assessee and also not disposed the objection raised by the assessee by passing speaking order, the reassessment order is invalid. After considering the submissions of the assessee and considering various case law, while holding that the reopening of assessment under section 148 of the Act is bad in law, the Id. CIT(A) has held that the additions made in the reassessment proceedings is clearly a change of opinion and allowed the appeal of the assessee.

3. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR has submitted that as per the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO [2003] 259 ITR 19, the issue of objection raised by the assessee for reopening of assessment against which the Assessing Officer has not passed any order, the matter may be remitted back to the Assessing Officer.

4. On the other hand, the Id. Counsel for the assessee strongly supported the order passed by the Id. CIT(A).

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. It is an undisputed fact that the assessee has raised objection for reopening of assessment and the Assessing Officer has not passed any speaking order in respect of the objections raised by the assessee. It is contrary to the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO (supra), wherein, the Hon'ble Supreme Court has directed as under:

“..... 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 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 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 above said five assessment years”.

6. Respectfully following the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO (supra), we set aside the order passed by the Id. CIT(A) and remit the matter back to the file of the Assessing Officer directing to consider the objections raised by the assessee in respect of reopening of assessment and pass speaking order. Thus, the appeal filed by the Revenue is allowed for statistical purposes.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on 08th June, 2022 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 08.06.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.