



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT  
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.193/LKW/2020  
Assessment Year: 2011-12

L.H. Sugar Factories Ltd. Civil Lines Pilibhit	v.	The Dy. CIT Circle II Bareilly
TAN/PAN:LKNL05038F		
(Appellant)		(Respondent)

Appellant by:	Shri Ajay Kumar Gupta, C.A.		
Respondent by:	Smt. Sheela Chopra, CIT (DR)		
Date of hearing:	01	06	2022
Date of pronouncement:	07	06	2022

**ORDER**

**PER A.D. JAIN, V.P.:**

This is assessee's appeal for Assessment Year 2011-120 against the order of the ld. CIT(A), Bareilly, dated 26.2.2020, taking the following grounds:-

1. *The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the assumption of jurisdiction by the learned AO u/s 147 read with section 148 of the income Tax Act, 1961:*
  - a. *Because the issues raised in the reasons recorded were already considered and adjudicated during the assessment proceedings u/s 143 (3) of the Act and reasons recorded are mere change of opinion.*
  - b. *Because the reason to believe recorded by the learned AO is not the view of the AO himself but based on the view of the revenue audit party.*

*c. Because the sanction of the competent authority, i.e. JCIT was not obtained as prescribed in section 151 of the Income Tax Act, 1961.*

*2. The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the assessment proceedings and assessment order without appreciating that the learned AO did not dispose the objections raised by the assessee against the proceeding u/s 147/148 of the Act by a speaking order.*

*3. The learned Commissioner of Income tax (Appeals) erred in law and on facts in confirming the addition of Rs.1,67,22,261/- on account of revaluation of Keyman Insurance Policies without appreciating the fact that the amount was neither received nor receivable during the year.*

*4. Such other relief as may crave in and deem appropriate by the Hon'ble Tribunal during the appellate proceedings.*

2. The Id. Counsel for the assessee has pointed out, referring to pages 9 to 16 of the paper book, that a letter dated 17.6.2016 was filed before the Assessing Officer and also before the Id. CIT(A), wherein, specific objections against the reasons recorded had been raised; and that however, in violation of 'GKN Driveshafts Pvt. Ltd. vs. ITO and Others', 259 ITR 19 (SC), the Assessing Officer not only failed to decide the objections raised by the assessee by a separate speaking order before entering upon the assessment proceedings, he did not pass any order on the objections at all, which is not as per the law laid down in 'GKN Driveshafts Pvt. Ltd. vs. ITO and Others' (supra).

3. On perusal of the assessment record, we find that the assessee had filed a letter dated 7.6.2012 raising specific objections against the reasons recorded by the Assessing Officer; and that however, the Assessing Officer did not pass any order disposing of the objections raised by the assessee.

4. The Id. D.R., however, has placed reliance on the order of the Assessing Officer.

5. Heard. A perusal of the aforesaid letter/reply dated 17.6.2016 [APB: 9 to 16] shows that therein, the assessee has dealt with the questions raised by the Assessing Officer, and has specifically raised objections against the reasons recorded by the Assessing Officer for formation of belief of escapement of income. The following relevant portion of the letter evinces so:

*4. With reference to deduction of Rs.1,67,22,261/- in respect of surrender value of key man insurance policies in the computation of income we submit as under:*

*(i) In this respect also the reasons have been recorded on the behest of audit objections raised by revenue auditors and the reason recorded are not independent opinion of the Assessing Officer on its own. This is not permissible in the law as narrated in the Para 2 aforesaid.*

*(ii) The specific query raised in this respect during the assessment proceedings and a detailed reply was submitted on 17.02.2014 (copy of our submission during assessment proceedings is attached.). After' considering the said reply the claim of the assessee regarding non taxability of Key-Man surrender value was accepted.*

*(iii) In view of aforesaid, it is clear that the issue of deduction of Rs.11,67,22,261/- has been duly considered during the assessment proceedings and now there is no new material or information in your possession to form a belief other than that in the assessment order. This is a clear Change of Opinion on the same facts on record. This is not permissible in the law as held in various judicial decisions including by Honble Supreme Court in CIT Vs Kelvinator of India Ltd. (2010) 320 ITR 561(SC).”*

6. In ‘GKN Driveshafts Pvt. Ltd. vs. ITO and Others’ (supra) (relied on by the Id. A.R. of the assessee), on receipt of the reasons recorded by the Assessing Officer for forming a belief of escapement of income, the noticee is entitled to file objections to

the issuance of the notice for re-assessment, which objections the Assessing Officer is bound to dispose of by passing a separate speaking order before proceeding with the assessment.

7. No decision contrary to “GKN Driveshafts” (supra), has been cited before this Bench.

8. Respectfully following “GKN Driveshafts” (supra), the reasons recorded and the re-assessment notice dated 29.3.2016 are quashed. Accordingly, the assessment order passed by the Assessing Officer is reversed as null and void in the absence of a separate specific order disposing of the assessee’s objections against the reasons recorded.

9. Nothing further hence survives for adjudication and as such, the other Grounds raised by the assessee are not required to be gone into, nor was anything else argued before us.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 07/06/2022.

Sd/-  
[T. S. KAPOOR]  
ACCOUNTANT MEMBER

Sd/-  
[A. D. JAIN]  
VICE PRESIDENT

DATED:07/06/2022

JJ:

Copy forwarded to:

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

By order

Assistant Registrar