

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1390, 1391 & 1392/Mum/2021  
(A.YS: 2007-08, 2008-09 & 2009-10)

Ambaji Resources and Credit Pvt Ltd 415, Raheja Chambers, Nariman Point, Mumbai – 400021.	Vs.	ITO – 3(1)(2) Aayakar Bhavan, MK Road, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCA4291L		
Appellant	..	Respondent

Appellant by :	Shri.AK Tibrewal.AR
Respondent by :	Shri.Pramod Nikalje.DR

Date of Hearing	13.06.2022
Date of Pronouncement	28.06.2022

आदेश / O R D E R

**PER BENCH:**

These are the appeals filed by the assessee against the separate orders of the Commissioner of Income Tax (Appeals)-8, Mumbai passed u/s 143(3) r.w.s 147 and 250 of the Act.

1.1 At the time of hearing, the Ld.AR of the assessee submitted that there is a delay in filing the cross appeals before the Hon’ble Tribunal and explained that due to Covid-19 pandemic, the filling was delayed

and relied on the decision of Hon'ble Supreme Court in respect of extension of period of limitation. Contra, the Ld. DR has no specific objections. We found the facts mentioned are reasonable and accordingly we condone the delay and admit the appeals.

1.2 Since the issues in these three appeals are common and identical, hence they are clubbed, heard and consolidated order is passed. For the sake of convenience we shall take the ITA No. 1390/Mum/2021 for the A.Y 2007-08 as lead case and the facts narrated. The assessee has raised the following grounds of appeal:

- 1. That the Ld. Commissioner of Income Tax (Appeals) erred in dismissing the appeal filed by the Appellant Assessee Company against the assessment order dated 21 March 2013 passed under section 143(3) read with section 147 of the Income Tax Act, 1961.*
- 2. That the Ld. Commissioner of Income Tax (Appeals) erred in dismissing the additional ground raised by the Appellant Assessee Company challenging the validity of the reassessment in absence of the basic ingredients required for reopening the assessment under the provisions of section 147 of the Income Tax Act, 1961.*
- 3. That the Ld. Commissioner of Income Tax (Appeals) erred in dismissing the Appeal of the Assessee on legal ground of not communicating the reasons of reopening*

*without bringing the same on record in course of the Appellate proceedings to enable the assessee to raise its objections and defend its case against the reasons recorded u/s 148(2) of the Act.*

4. *That the Ld. Commissioner of Income Tax (Appeals) erred in dismissing the legal ground against the jurisdiction of reopening the assessment when there was nothing recorded in the impugned assessment order that there was reasons to believe of escapement of income but on the other hand the Assessing Officer himself admitted in Para 2 of the assessment order that the case was reopened for examination of the information received from the Office of the ADIT (Inv), Unit -VII(1) and (II) , Mumbai about the source of the share capital allegedly received by the assessee company for giving the accommodation entries.*

5. *That the initiation of reassessment proceedings was without jurisdiction in as much as the same was based on assumption of incorrect facts that the assessee company raised share capital for giving accommodation entries when factually the assessee company neither raised any share capital nor provided any accommodation entries.*

6. *That the Ld. Commissioner of Income Tax (Appeals) erred in dismissing the legal ground when the reopening of the assessment based on assumption of incorrect facts was held to be without jurisdiction by various Courts including Hon'ble Jurisdictional High Court in the case of Ankita A. Choksey VS. Income Tax Officer [2019] 411 ITR 207 (Bom).*

7. *That the Ld. Commissioner of Income Tax (Appeals) erred in confirming the disallowances of Rs.9,17,345*

*made by the Assessing Officer when such disallowance was not the subject matter of the reasons recorded u/s 148(2) of the Act and also when the same was otherwise allowable expenditure.*

*8. That the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.90,000 made by the Assessing Officer u/s 69 of the Act alleging unexplained investment.*

*9. That the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.7,60,200 made by the Assessing Officer u/s 68 of the Income Tax Act, 1961.*

*10. That the Ld. Commissioner of Income Tax (Appeals) erred in confirming the additions/disallowances referred to in Ground Nos. 7 to 9 being unconnected issues, when the Assessing Officer did not find any escapement of income in respect for which reasons were recorded.*

*11. That the impugned order passed by Ld. Commissioner of Income Tax (Appeals) is against law and facts of the case.*

*The appellants crave leave to add to, alter or amend the aforestated grounds of appeal.*

2. The brief facts of the case are that the assessee company is engaged in the business and has filed the return of income for the A.Y 2007-08 on 22.10.2007 with total income of Rs. Nil and the return of income was processed u/s 143(1) of the Act. Subsequently notice u/s 148 and 142(1) of the Act along with questionnaire was issued. In compliance, the Ld. AR

of the assessee appeared from time to time and the case was discussed. The Assessing Officer (AO) has reopened the case based on the letter dated 28.12.2011 received from ADIT(Inv), Mumbai regarding investigation in the case of Shri Arun Dalmia & Shri Harsh Dalmia & their 20 dummy concerns named by CBI. The assessee is a beneficiary having received the accommodation entries from the companies of Shri Arun Dalmia & Shri Harsh Dalmia and the A.O has asked the assessee to explain the sources of transactions.

3. The A.O found that (i) the assessee has claimed some expenses which includes audit fees, bank charges and loss on sale of shares to the extent of Rs.9,17,345/-. Since there was no business activities of the assessee in this previous year, the A.O has treated the expenses as not allowable and the loss on sale of shares claimed was denied as no documentary evidence was produced and is disallowed. The A.O. (ii) on perusal of balance sheet as at 31.03.2007, find that the assessee has disclosed the investments of Rs.8,53,355 and the assessee has filed a letter enclosing ledger account of investments.

Since there is difference in balance sheet figures and the ledger account submitted by the assessee. The A.O has treated Rs.90,000/-as unexplained investment u/s 69 of the Act. Further (iii) the assessee has disclosed the current liabilities on account of M/s Coral Environments Pvt Ltd and Visage Equipments aggregating to Rs.7,60,200/-.The A.O. find that the liabilities are not outstanding liabilities of earlier year and the amounts were not reflected in the bank statement and called for the evidences. The assessee has filed the explanations that the above liabilities are towards the purchase of shares and submitted the ledger account copies. The A.O. was not satisfied with the explanations and observed that the assessee could not prove the genuineness of the transaction and made an addition of Rs. 7,60,200 u/s 68 of the Act. Finally, the A.O. has assessed the total income of Rs.8,50,200/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 21.03.2013.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Before the CIT(A) the assessee has raised the additional ground of appeal

that the reopening of the assessment is bad in law. The CIT(A) has considered the original grounds of appeal, submissions of the assessee, remand report and the findings of the assessing officer. The CIT(A) dealt on the additional ground of appeal on the validity of reassessment proceedings and the merits of the case and dismissed the grounds of appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Tribunal.

5. At the time of hearing, the Ld. AR has restricted his submissions/arguments to the extent of legal ground of validity of the reassessment proceedings.. The Ld. AR submitted that the CIT(A) has erred in not allowing the ground of appeal on the validity of the reassessment as the assessee was not provided with the reasons for reopening of the assessment and basic ingredients are missing for reopening of the assessment. The Ld. AR substantiated the submissions with the paper book and judicial decisions and prayed for allowing the appeal. Contra, the Ld. DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. Prima-facie the assessee has raised the ground of appeal on validity of re assessment proceedings which is a legal issue and has to be decided. The Ld. AR emphasized that the A.O has issued notice u/s 148 of the Act and has not provided the reasons for reopening of at the time of assessment. Further the assessee has raised the additional ground of appeal before the CIT(A) challenging the re assessment proceedings and the requirement that the assessee should be provided reasons for reopening to file the objections and are to be dispose off as per law was not complied by the Assessing officer. The Ld.AR contended that the reopening of the assessee is solely based on the information of the third party and no investigation or enquiry was conducted by the assessing officer. We find the Ld.AR has demonstrated the reasons for reopening at page 1 of the paper book which are provided after the assessment was completed. The Ld. AR referred to the notice u/s 148 of the Act issued dated 30.03.2012 and the notice u/s 143(2) of the Act. The Ld. AR demonstrated the copy of notice

U/sec 142(1) of the Act and in particular (B) S.no.3 were the AO has called for “the certified copies, e-file return of income (full set) for A.Y.2007-08 along with the computation of income”. The assessee has complied with the information vide letter dated 15-10-2012

7. The provisions of Sec. 147 of the Act are applicable in the cases where the income has been escaped the assessment. The A.O has relied on the letter issued by the DGIT (Inv) but prima-facie there was no enquiry was conducted. We find that the assessee should be provided reasons for reopening and in the appellate proceedings before the CIT(A), the assessee has raised the additional ground of appeal which was admitted and heard and the CIT(A) has called for the remand report. The Ld. CIT(A) has dealt on the additional ground of appeal challenging the validity of reassessment proceedings at Para 5.2 of the order read as under:

*5.2 Additional Ground:*

*The additional ground has been raised during the appellate proceedings challenging the validity of reassessment proceedings u/s. 147. It is contended that*

*AO has neither provided copy of reasons recorded for reopening nor reasons were discussed before issuance of notice u/s. 148. According to the appellant company, it is mandatory to provide copy of reasons together with notice u/s.148 and the reassessment proceedings has been conducted without complying with the provisions of the Act. This issue was referred to the AO under remand proceedings.*

*The Remand Report has been submitted, relevant portion of which is quoted below*

*1. Reopening of assessment u/s 147 is bad in law:*

*The notice w/s.148 was issued on 30.03.2012 after recording the reasons for issuance of notice us. 148 of the Act. The AO has vide reasons recorded dated 30.03.2012 was satisfied that income chargeable to tax had escaped assessment. The assessee in response vide letter dated 20.04.2012 responded stating that the regular return filed by it may be treated as return of income filed under the said notice. The same is enclosed as exhibit A.*

*The AO started the reassessment proceedings by issue of notice us. 143(2) & 142(1) dated 09.07.2012.*

*Subsequently the assessee vide letter dated 15.10.2012 and 07.03. 2013 filed details in reasons to notices issued u/s. 142(1).*

*The reassessment proceedings were completed by the AO on 21.03.2013 by passing order u/s. 143(3) u/s 147 of the Act.*

*Now the assessee vide letter dated 30.07.2014 has raised the additional ground that the reasons recorded have not been furnished.*

*On perusal of the assessment records it is observed that the assessee has never requested the AO to furnish the reasons recorded for reopening as mentioned in the facts above.*

*1a. The Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. 259 ITR 19 (SC) has held 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.*

*1b. As the assessee has never desired and requested for furnishing the reasons recorded then raising the ground is not as per the procedure laid down by the Hon'ble Supreme Court. The AO is bound to furnish reasons only when the assessee requests for the same. The hon'ble Supreme Court has not stated that on receipt of the ROI the AO has to furnish the reasons for reopening, but to furnish them only when the assessee specifically requests for the same.*

*In view of the above the additional ground that the reopening of assessment u/s.147 is bad in law may not be accepted."*

*From the Remand Report it is clear that the AO has chronicled the details of reassessment proceedings as per the principles laid down by the Hon'ble Supreme Court in the case of GKN Driveshaft 259 ITR 19 (SC). As and when the notice u/s. 148 is issued for reopening of assessment u/s.147, the assessee has to file the return first and then ask for copy of reasons, which has been recorded for reopening. The copy of reasons has to be provided on request of the assessee company. In this case it is an undisputed fact that the appellant company has not*

*asked for copy of reasons. In the submissions itself, the appellant company has discussed the documents under which the reassessment proceeding was resorted to. Shri Arun Dalmia, Promoter & Director of the appellant company, his son and business premises were subjected to Search & Seizure operation by the Anti Corruption Wing of Central Bureau of Investigation (CBI), Mumbai. It was gathered that the Director, Promoter of the company were indulged in financial manoeuvres with the help of 20 group companies wherein their employees are shown as Directors. The CBI has seized large number of documents from the business premises and residential premises of Mr.Arun Dalmia. On the basis of finding of CBI , the reasons for reopening was recorded by the AO and notice u/s.148 has been issued. Thus, the formation of belief and satisfaction of AO that income has escaped assessment is based on the Search & Seizure operation and conclusion of Anti Corruption Wing of CBI. The information received from a Government agency like CBI certainly constitutes the tangible material for reopening of the assessment proceeding. As submitted by the AO, the returns of income were originally not scrutinized and thus, reopening under the given circumstances cannot be challenged by raising technical Issues of questioning the investigation conducted by the CBI.*

*In comments on the Remand Report, the appellant company has not brought "any additional facts or arguments than what has been put forth before the AO. Certain case laws have been relied, which are distinguishable on facts, rather, the following judgements clearly upholds the reassessment on the basis of information received from a sister Government agency:*

*Reliance is place on the principles of following judgements :*

- i. South Asia FM Ltd. 98 taxmann.com 200 [2018]*
- ii. Pushpak (Bullion) Pvt.Ltd. 85 taxmann.com 84 (Guj)*
- iii. Bhajan Singh [2012] 25 taxmann.com 8 (Chd.)*

*Thus, from the above discussed factual and legal matrix, it is clear that the AO conducted reassessment proceeding following the due process of law and additional grounds of appeal on this issue is dismissed*

8. On perusal of the facts, it seems that the assessee has not made request for reasons recorded for reopening of the assessment and but has complied with the notice u/sec142(1) of the Act diligently. The question arise whether it is mandatory for the A.O to issue the reasons recorded before proceeding. The assessee has complied with the notice u/s 148 of the Act and u/sec 142(1) of the Act and filed the information which cannot be disputed. We are of the view that the assessee has to make a request for reasons and the Assessing officer has to provide the reasons recorded for reopening and the assessee should comply with the subsequent proceedings. The CIT(A) has considered the facts that the assessee was not provided reasons recorded for reopening.

9. We considering the overall facts, circumstances and submissions are of the opinion that the validity of

the assessment in question is challenged by the assessee as illegal cannot be accepted, whereas the assessee can be provided an opportunity based on the decision of the Hon'ble Supreme Court and in such circumstances the matter can be restored to the file of the Assessing officer to consider the assessee's submission under the provisions of 148 of the Act. Further the reasons recorded before the issue of notice is mandatory and the assessing officer has to speak through the reasons and has to communicate. We find the Honble Supreme Court in M/s GKN Drive Shafts (India)Ltd Vs Income Tax Officer 125 Taxman 963(SC) has held:

"There was no justifiable reason to interfere with the order under challenge. However, it is clarified that when the notice under section 148 is issue, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notice. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice 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 had been

disclosed in the proceedings, the assessing Officer had to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment”

Accordingly, we considering the ratio of the judicial decision and principles of natural justice shall provide one more opportunity to the assessee to seek the reasons for issuing of notice and to file objections. Accordingly, we restore the issue to the file of the Assessing officer with the above directions and allow the grounds of appeal for statistical purpose.

Since the legal issue is restored to the file of the Assessing officer and again adjudicating on merits becomes academic. Hence they are also restored to the file of the Assessing officer to adjudicate a fresh on merits.

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

**ITA 1391/Mum/2021 & ITA 1392/Mum/2021 – A.Y. 2008-09 & A.Y.2009-10**

11. As the facts and circumstances in these appeals are identical to ITA No.1390/Mum/2021 (except variance in figures) and the decision rendered in above paragraphs will

apply mutatis mutandis in these appeals also. Accordingly on the similar directions, grounds of appeal are allowed for statistical purpose.

12. In the result, the three appeals filed by the assessee are treated as allowed for statistical purpose.

Order pronounced in the open court on 28.06.2022.

Sd/-  
(GAGAN GOYAL)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 28.06.2022

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

( Asst. Registrar)  
ITAT, Mumbai