

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1896/Kol/2019
Assessment Year: 2014-15

ACIT, Circle-23(1), Hooghly	Vs.	Mondal Construction Co. Ltd. (PAN: AAECM 1125 F)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	22.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	04.01.2023
For the Appellant/ निर्धारिती की ओर से	Shri Promit Majumdar, Advocate
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-6 Kolkata [hereinafter referred to as ‘CIT(A)’] dated 21.05.2019 for the assessment year 2014-15.

2. The revenue has challenged the order of Ld. CIT(A) on legal issue as well on merits. The legal issue raised by the revenue is that the Ld. CIT(A) has erred in quashing the order AO on the ground that the AO has not disposed off the objections

filed by the assessee against the re-opening of assessment. First of all we shall adjudicate the legal issue.

3. The facts in brief are that the return of income was filed by the assessee on 21.03.2015 declaring total income of Rs. 1,12,83,821/-. The case of the assessee was selected for scrutiny under CASS and assessment was framed u/s 143(3) of the Act vide order dated 29.12.2016. Thereafter the AO reopened the assessment u/s 147 of the Act by issuing notice u/s 148 of the Act dated 15.11.2017 after recording the reasons that income of the assessee has escaped assessment. The said notice was complied with by the assessee by submitting vide letter dated 23.10.2018 that the assessee is unable to file the return. The assessee was supplied the reasons for re-opening and also filed objections against the re-opening of assessment which according to the Id AR were not disposed off by the AO. Finally the assessment u/s 143(3)/147 of the Act was framed vide order dated 26.10.2018 by making additions u/s 2,96,09,946/- u/s 43CA and Rs. 3,63,000/- on account of undisclosed sales.

4. The assessee challenged the order of AO before the Ld. CIT(A) and the Id CIT(A) allowed the appeal of the assessee on legal issue by quashing the assessment on the ground that mandatory requirement of disposing the objections filed by the assessee against the re-opening has not been complied with by the AO by observing and holding as under:

“5. I have carefully considered the arguments of the A/R of the appellant and the relevant issue in light of the materials placed before me. The short point for my consideration is whether the action of the AO in non disposal of the objection will lead to invalidation of the proceedings or not. Having gone through the above cited decisions regarding the manner in which the AO is to dispose of the objections raised against his jurisdiction for issuance of notice under sec. 148 of the Act, I find that the ratios laid down in this regard by the Hon'ble Supreme Court in the case of G.K.N. Drive Shaft (India) Ltd. vs. ITO (supra) along with other decisions have been discussed by the Hon'ble Gujarat High Court in the case of General Motors India (P) Ltd. vs. DCIT (supra) and the Hon'ble High Court after detailed deliberation has come to the following conclusions: -

“23. From the aforesaid decision, we are of the considered opinion that writ petition wider Article 226 of the Constitution of India is maintainable where no order has been passed by the Assessing Officer deciding objection filed by the assessee under sec. 148 of the Act and assessment order has been passed or the order deciding an objection under sec. 148 of the Act has not been communicated to the assessee and assessment Order has been passed or the

objection filed under sec. 148 has been decided along with the assessment Order. If the objection under sec. 148 has been rejected without there being any tangible material available with the Assessing Officer to form an opinion that there is escapement of income from assessment and in absence of reasons having direct link with the formation of the belief the writ petition filed by the petitioner is maintainable. The Assessing Officer is mandated to decide the objection to the notice under sec. 148 and supply or communicate it to the assessee. The assessee gets an opportunity to challenge the order in a writ petition. Thereafter the Assessing Officer may pass the reassessment order. We hold that it was not open to the Assessing Officer to decide the' objection to notice under sec. 148 by a composite assessment order. The Assessing Officer was required to, first decide the objection of the assessee filed under sec. 148 and serve a copy of the order on assessee. And after giving some reasonable time to the assessee for challenging his order, it was open to him to pass an assessment order. This was not done by the Assessing Officer, therefore, the order on the objection to the notice under sec. 148 and the assessment order passed under the Act deserves to be quashed."

5.1 *I also find that the Hon'ble Income Tax Appellate Tribunal, Kolkata "SMC" Bench in the case of Bimal Kumar Singh vs. ITO (ITA No.1005/Kol/18 Dated 16.01.2019) has observed as under :-*

"3. After hearing rival contentions, I am of the opinion that the assessment has to be quashed for the reason of non-disposal of objections for the re-opening of assessment by the Assessing Officer. A similar view was taken by the Hon'ble High Gujarat High Court in the case Arvind Mills Ltd. vs. Assistant Commissioner Of Wealth 2004 270 ITR 469 Guj and in the case of Bayer Material Science Pvt. Ltd. vs. DCIT, W.P. No. 2502 of 2015; judgment dated 27/01/2016 (Bom. H.C)

3.1. Consistent with the view taken therein, I quash the assessment as bad in law."

6. *In view of the above decisions, I find that the AO is mandated to decide the objection to the notice under sec. 148 of the Act and supply or communicate it to ' the appellant. Thereafter, the appellant gets an opportunity to challenge the order in a writ petition. Thereafter, the AO may pass the reassessment order. It is not open to the AO to decide the objection raised against notice under sec. 148 by a composite assessment order. In other words, the AO was required to first decide the objection of the appellant filed under sec. 148 and serve a copy of the order on him. And after giving some reasonable time to the appellant for challenging his order, it is open to him to pass an assessment order. Since such compliance has not been made by the AO in the present instance, accordingly, it is held that the impugned assessment order dated 26.10.2018 as not valid and the same is held as void ab initio.*

7. *Since the assessment itself has been quashed, the other grounds of appeal which are against the addition made in the order of reassessment do not survive for adjudication.*

5. We have heard both the parties and perused the material available on record as placed before us. The undisputed facts are that the AO has not disposed off the objection filed by the assessee against the re-opening before framing the assessment which in our opinion is a substantive defect which goes to the root of the matter. We have carefully perused the order of Id CIT(A) and find no infirmity therein as the Id CIT(A) allowed the appeal of the assessee on this legal issue by following various decisions as discussed in the appellate order. It is trite law that the assessment framed

without disposing of objections filed by the assessee against the re-opening of assessment is not a valid assessment and cannot not be sustained. The case of the assessee finds support from the decision of the *GKN Driveshafts (India) Ltd. vs. DCIT (2003) 259 ITR 19 (SC)* 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 disposed off the objections filed by the assessee.

6. Considering the facts of the case in the light of ratio laid as discussed hereinabove, we uphold the order of Id CIT(A) by dismissing the appeal of the revenue. The legal ground raised by the revenue is dismissed.

7. Since the appeal of the revenue has been dismissed on legal issue, the ground raised by the revenue on merits are not being adjudicated and left open to be decided at later stage if the need arises for the same.

8. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 4th January, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 4th January, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ACIT, Circle-23(1), Hooghly
2. Respondent – Mondal Construction Co. Ltd., Uttarayan, Chinsurah Station Road, P.O. Chinsurah RS, P.S. Chinsurah, Dist. Hooghly-712102
3. The CIT(A)-6, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata