

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As No.1458 & 1459/DEL/2020
Assessment Years 2008-09 & 2009-10

Kamal Kumar Godara, 709/2, Kohli Mohalla, Village Mujesar, Faridabad.	v.	ITO, Ward-1(3), Faridabad.
TAN/PAN: AALPG7083L		
(Appellant)		(Respondent)

Appellant by:	Shri Alok Kumar Gupta, CA		
Respondent by:	Shri Anuj Garg, Sr.DR		
Date of hearing:	19	04	2023
Date of pronouncement:	19	04	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeals have been filed by the Assessee against the orders of the Commissioner of Income Tax (Appeals), Faridabad ('CIT(A)' in short) both dated 11.02.2020 arising from the assessment orders both dated 29.03.2016 passed by the Assessing Officer (AO) under Section 143(3) r.w. section 147 of the Income Tax Act, 1961 (the Act) concerning AYs 2008-09 and 2009-10 respectively.

2. In both the captioned appeals, the assessee has challenged the action of the Assessing Officer on merits of the additions as well as lack of jurisdiction assumed under Section 147 of the Act due to non compliance of pre-requisites of Section 147 of the Act.

3. When the matter was called for hearing, the Id. counsel for the assessee at the outset submitted that the assessee had *inter alia* raised objection to the proceedings initiated under Section 147 of the Act and issuance of notice under Section 148 of the Act both vide letter dated 22.06.2015 for Assessment Years 2008-09 and 2009-10. The Assessing Officer however has omitted to take note of the objections raised and completed the re-assessment without meeting the requirement of disposing of the objection and intimation thereto to the assessee. The CIT(A) in the first appeal has also ignored the contentions of the assessee in this regard. It was thus contended that as a consequence of non disposal of the objections so raised, the valuable right of the assessee to seek legal remedy was denied. It was thus contended that the re-assessment order in question passed in infringement of requirement of law is bad in law and thus nullity in the light of the judgment of the Hon'ble Supreme Court in *GKN Driveshaft (I) Ltd. vs. ITO, (2003) 259 ITR 19 (SC)*.

4. The Id. DR for the Revenue, on the other hand, submitted that the matter may be restored to the file of the Assessing Officer for disposal of the objection as per the procedure laid down by the Hon'ble Supreme Court in *GKN Driveshaft (I) Ltd. (supra)* and to cure the procedural irregularity crept in the reassessment proceedings.

5. We have heard the rival submissions and perused the orders of Revenue Authorities.

6. The Hon'ble Supreme Court dismissed the SLP of the assessee in the case of *Home Finders Housing Ltd. vs. ITO (2018) 94 Taxmann.com 84 (SC)* against the judgment of the Hon'ble

Madras High Court rendered in the case of *Home Finders Housing Ltd. vs. (2018) 93 taxmann.com (Madras)*. The Hon'ble Madras High Court had held that non disposal of objection raised by the assessee is a procedural irregularity for violation of a procedural safeguard and thus will not render the re-assessment order *non est per se*. In consonance with judgment so rendered, we deem it expedient to restore the matter back to the file of the Assessing Officer for dealing with objections raised on behalf of the assessee and pass a speaking order thereon. The Assessing Officer shall reframe the re-assessment order *de novo* having regard to the objections so raised and meeting other attendant requirements, if any, in accordance with law.

7. In this view of the matter, we do not consider it necessary to delve into other legal and factual objections raised by the assessee as per its grounds of appeal at this stage. It shall be open to the assessee to raise all such legal and factual objections before the Assessing Officer in the re-assessment proceedings. The order of the CIT(A) is thus set aside and the proceedings are restored to the file of the Assessing Officer for fresh determination of assessed income in accordance with law after giving proper opportunity to the assessee.

8. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 19/04/2023.

Sd/-

[KUL BHARAT]
JUDICIAL MEMBER
DATED: /04/2023

Sd/-

[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER