

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C": NEW DELHI  
BEFORE Shri C.M. Garg, Judicial Member  
AND  
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 2770/Del/2019  
(Assessment Year: 2010-11)

Girdhari Finlease Pvt. Ltd, C/o. Kapil Goel, Adv, F-26/124, Sector-7, Rohini, Delhi-110085 (Appellant)	Vs. ITO, Ward-12(4), New Delhi  (Respondent)
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**PAN: AAACG4842M**

Assessee by :	Sh. Ruchesh Sinha, Adv
Revenue by:	Sh. Anuj Garg, Sr. DR

Date of Hearing	15/02/2023
Date of pronouncement	08/05/2023

**ORDER**

**PER C. M. GARG, J. M.:**

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-22, New Delhi dated 13.02.2019 for AY 2010-11.
2. Ground No. 1 and 1.1 of the assessee reads as under:-

*"1. That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld 40 ws 147/143(3) without appreciating that assumption of jurisdiction w/s 148 was by Ld AO was in violation of mandatory jurisdictional conditions stipulated under the Act;*

*1.1 That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that as highlighted in our detailed submissions reproduced in order of Id. CIT-A from pages 9 onwards that assessee is never supplied with complete reasons to believe if any recorded by Ld AO as glaring from the fact that only a leaf is loosely communicated to assessee by Ld 40 for supporting assumption of jurisdiction w/s 148 of the Act which invalid communication of incomplete and vague reasons is fatal to entire reopening and thus orders of Ld 40 and Ld CIT-A may please be quashed on this short count itself."*

3. Apropos this ground, the Id counsel for the assessee submitted that the assessee was not provided complete copy of reasons recorded by the AO for initiation of reassessment proceedings u/s 147 of the Act and issuance of notice u/s 148 of the Act to the assessee. The Id counsel submitted that in view of the various judgments of the Hon'ble Jurisdictional High court and order of ITAT Delhi Benches in the case of Wimco Seedlings Ltd Vs. JCIT in ITA No. 2755 to 2757/Del/2022 dated 22.06.2022, if the complete copy of reasons recorded by the AO are not provided to the assessee then the reassessment proceedings and consequent reassessment order is vitiated.

4. Replying to the above the Id Sr. DR strongly supported the orders of the authorities below and submitted that the assessee was provided copy of reasons recorded by the AO and therefore, ground No. 1 and 1.1 of the assessee may kindly be dismissed.

5. On careful consideration of the above submission first of all we note that undisputedly rather admittedly the assessee was provided one page copy of reasons recorded by the AO available at page No. 1 of assessee's paper book. The Id Sr. DR was asked to submit reassessment records including copy of the reasons recorded by the AO which was submitted for perusal of the bench. The copy of the reasons recorded by the AO available at page No. 16 to 19 of the assessee's paper book reveals that the AO recorded reasons spread over four pages whereas the copy of the reasons provided to the assessee as noted above which is available at page 1 of the assessee's paper book is of only 1 page. On comparison we find that the copy of the reasons provided to the assessee was part of reasons starting from table to end at page No. 18-19 of assessee's PB. Therefore, we safely presume that the assessee was not provided complete copy of the reasons recorded by the AO for initiation of reassessment proceedings u/s 147 and issuance of notice u/s 148 of the Act. Under identical facts and circumstances of the case ITAT Delhi bench in case of Wimco Seedlings Ltd (supra) held that while initiating reassessment proceedings the AO is supposed to provide complete details

of reasons recorded and not merely few extract of the said reasons so that the assessee can prepare it itself effectively against proposed action of reopening of assessment initiated by the AO. On careful perusal of this order we noted that the Tribunal has relied on various judgments including judgment of jurisdictional High Court of Delhi in the case of Haryana Acrylic Manufacturing Co V Commissioner of Income tax 308 ITR 38 (Delhi) wherein, their lordship speaking for Hon'ble Jurisdictional High Court, under identical facts and circumstances adjudicating the similar legal ground of assessee held as follows:-

*"30. The matter, however, does not end here. We have mentioned above that the stand taken by the respondents in their counter-affidavit before this court is that the " actual" reasons recorded are those recorded in the Form for recording reasons, a copy of which has been filed as annexure A to the said counter- affidavit. It was urged on behalf of the respondents that the " reasons for the belief that income has escaped assessment" at serial No. 11 of the said form clearly carries the allegation that " there was failure on the part of the assessee to disclose fully and truly all material facts relating to accommodation entries" . This being the case, it was submitted, the bar of taking action within four years would not apply and, consequently, the notice under section 148 was valid.*

*31. This argument suffers from several infirmities. First of all, the respondents cannot be permitted to gloss over the fact that the reasons which were supplied to the petitioner were different from the reasons purportedly recorded in the said form on which they now seek to rely. If the reasons in the said form were the " actual" reasons, why were they not communicated to the petitioner ? Why was nothing said about these reasons (noted in the form) when the petitioner filed its objections to the reasons which were supplied to it ? It must be remembered that in its objections, the petitioner took the specific plea that in the absence of any allegation that the petitioner had failed to disclose fully and truly all material facts necessary for assessment, the Assessing Officer had no jurisdiction to issue the notice under section 148 and initiate action under section 147 after four years from the end of the relevant assessment year. Despite this precise objection, there is no mention of the reasons noted in the said form in the impugned order dated March 2, 2005. If the respondents had regarded the reasons noted in the said form to be the " actual" reasons, it would have been very easy for the Assessing Officer to have countered this objection by simply referring to the reasons noted in the form and saying that the allegation of failure to disclose is very much there. It is obvious that the reasons noted in the said form were never regarded as the reasons for initiating action under section 147 of the said Act. Thus, the respondents cannot now be permitted to fall back on those purported reasons noted in the said form.*

32. Secondly, let us assume for the sake of argument that the " actual" reasons were those as noted in the said form. Then why did the Assessing Officer communicate a different set of reasons to the petitioner ? Did he think that the supplying of reasons and the inviting of objections were mere charades ? Did he think that it was a mere pretence or a formality which had to be gotten over with ? At this point, it would be well to remember that the Supreme Court in *G. K. N. Driveshafts [2003] 259 ITR 19* had specifically directed that when a notice under section 148 of the said Act is issued and the noticee files a return and seeks reasons for the issuance of the notice, the Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of the reasons, the noticee is entitled to file objections to the issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. These are specific directions given by the Supreme Court in all cases where notices under section 148 of the said Act are issued. Surely, the Assessing Officer could not have construed these specific directions to be a mere empty formalities or dead letters ? There is a strong logic and purpose behind the directions issued by the Supreme Court and that is to prevent high-handedness on the part of Assessing Officers and to temper any action contemplated under section 147 of the said Act by reason and substance. In fact, even section 148(2) stipulates that the Assessing Officer shall, before issuing any notice under the said section, record his reasons for doing so. The Supreme Court has only carried forward this mandatory requirement by directing that the reasons which are recorded be communicated to the assessee within a reasonable period of time so that at that stage itself the assessee may point out any objections that he may have with regard to the initiation of action under section 147 of the said Act. The requirement of recording the reasons, communicating the same to the assessee, enabling the assessee to file objections and the requirement of passing a speaking order are all designed to ensure that the Assessing Officer does not reopen assessments which have been finalized on his mere whim or fancy and that he does so only on the basis of lawful reasons. These steps are also designed to ensure complete transparency and adherence to the principles of natural justice. Thus, a deviation from these directions would entail the nullifying of the proceedings. Assuming as we have done that the " actual" reasons were those as noted in the said form, it is obvious that the reasons were never communicated to the petitioner and it is only for the first time in the course of the present writ petition that those " reasons" have surfaced. Therefore, if he proceeded on the assumption that the " actual" reasons were those as noted in the said form, the proper course of action as directed by the Supreme Court in *G. K. N. Driveshafts [2003] 259 ITR 19*, has not been followed. It would mean that the reasons which were supplied to the petitioner were not the actual reasons and the objections which were taken by the petitioner were not to the actual reasons and the speaking order dated March 2, 2005, which was passed was also neither on the basis of the actual reasons nor the objections to the actual reasons. The entire process would be a sham and would amount to making a mockery of the law as settled by the Supreme Court. Therefore, for this reason also, the notice under section 148 as well as all proceedings subsequent thereto as also the order dated March 2, 2005, are liable to be quashed."

6. When we legally analyze the factual position of the present case then we clearly found that the AO provided some part of extract of reasons recorded by the AO which was of only 1 page whereas actually the AO recorded reasons which is spread over 4 pages and complete copy of reasons recorded was not provided to the assessee. It is pertinent to mention that only when the Id DR placed written submission on behalf of the revenue and placed reassessment folder / filed for perusal of the bench then only the assessee could get copy of the reasons recorded by the AO spread over 4 pages. In view of the aforesaid legal position and respectively following the judgment Hon'ble Delhi High Court in the case of Haryana Acrylic Manufacturing Co (supra) and order of coordinate bench of ITAT in the case of Wimco Seedlings Ltd (supra) u/s 147 of the act, issuing notice u/s 148 of the Act and consequent reassessment order dated 29.12.2016 is liable to be quashed being invalid and bad in law. Accordingly, legal ground 1 and 1.1 of assessee are allowed.

7. Since we have granted relief to the assessee by allowing legal ground No. 1 and 1.1 therefore, others grounds of appeal are not adjudicated upon and are left open.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 08/05/2023.

-Sd/-  
**(B. R. R. Kumar)**  
**ACCOUNTANT MEMBER**

-Sd/-  
**(C. M. GARG)**  
**JUDICIAL MEMBER**

Dated: 08/05/2023  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi