

आयकर अपीलीय अधिकरण  
कोलकाता 'ए' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य

एवं

श्री संजय शर्मा, न्यायिक सदस्य

के समक्ष

**Before**

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**&**

**SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 525/KOL/2022**

**Assessment Year: 2012-13**

***Arpan Nayak.....Appellant***  
***[PAN: AEOPN 1085 N]***

***Vs.***

***ITO, Ward-2(2), Burdwan.....Respondent***

**Appearances by:**

*Sh. Somnath Ghosh, Adv., appeared on behalf of the Assessee.*

*Smt. Ranu Biswas, Addl. CIT, Sr. DR, appeared on behalf of the Revenue.*

Date of concluding the hearing : June 28<sup>th</sup>, 2023

Date of pronouncing the order : July 13<sup>th</sup>, 2023

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The assessee is in appeal before the Tribunal against the order of Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short ld. 'CIT(A)'] dated 08.09.2022 passed under section 250 of the Income Tax Act, 1961 (in short the 'Act') for A.Y. 2012-13. The issue raised in ground nos. 1 & 2 are against the order of

Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short ld. 'CIT(A)'] upholding the reopening order passed u/s 143(3) r.w. Section 147 of the Act dated 26.12.2019 which is *ab-initio void, ultravires and null & void*.

2. The facts in brief of the case are that the return of income was filed on 26.03.2013 declaring total income at Rs. 4,56,450/- which was processed u/s 143(1) of the Act on 29.03.2014. Subsequently, the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 28.03.2019. The said notice was complied with by filing the return of income on 04.06.2019 declaring income at Rs. 4,56,450/-. Thereafter, the assessee requested the Assessing Officer (in short ld. 'AO') to supply a copy of reasons recorded u/s 148(2) of the Act so that objections could be filed against the reopening assessment, however, on the basis of records before us, we find that no such reasons were supplied to the assessee.

3. Finally, the assessment was framed u/s 143(3) r.w. Section 147 of the Act vide order dated 26.12.2019. Ld. A/R vehemently submitted before the Bench that assessment framed by Ld. AO u/s 143(3)/147 of the Act dated 26.12.2019 is void and nullity in the eyes of law as the same has been framed without supplying the copy of reasons recorded u/s 148(2) of the Act despite specific request made by the assessee vide letter addressed to the ITO, Ward-2(2), Burdwan. Ld. A/R submitted that assessment framed by Ld. AO made kindly be squashed as being framed without supplying the reasons for reopening to the assessee which is in violation of the principles of natural justice and is a defect which

is not curable and goes to the root of the matter. Ld. A/R argued that a defect is also not curable by provisions of Section 292(B) of the Act for the reasons that the assessee has participated in the assessment proceedings without raising any objection to non-issuance of reasons recorded u/s 148(2) of the Act.

4. In defence of this argument, Ld. A/R relied on the decision of Coordinate Benches in the case of *ITO Vs. M/s. Pallavi Vijen Jhaveri* in *ITA No. 5998/MUM/2017* order dated 17.12.2019 and *Prannay Sureka Vs. ACIT* in *ITA No. 497/KOL/2021* order dated 16.03.2022 wherein similar issue has been decided in favour of the assessee.

5. The Ld. D/R on the other hand, though admitting that the reasons recorded u/s 148(2) of the Act were not supplied to the assessee however, stressed upon the fact that the assessee was very much informed and in the know of the fact that no reasons were supplied to him but despite that he pursued the assessment proceedings and so much so this issue was not referred even before the appellate authority.

6. Ld. D/R therefore, prayed that the issue raised by the assessee as to the jurisdiction of Ld. AO to frame the assessment without supplying the reasons recorded u/s 148(2) of the Act may kindly be dismissed.

7. We have heard rival contentions and perused the material on record. Admittedly the assessee has not been supplied the copy of reasons recorded u/s 148(2) of the Act despite specific request made by the assessee by a letter filed 04.06.2019 after filing return of income in response to the notice issued u/s 148 of the Act on

28.03.2019. In our opinion the supplying of reasons recorded to the assessee is a mandatory requirement under the Act as propounded by various decisions and is incurable defect which goes to the root of the matter. By not supplying the copy of reasons by the AO, the assessee is deprived from filing its objections to the reopening of assessment. Considering these facts, in our view the assessment so framed by Ld. AO is bad in law. The case of the assessee is squarely covered by various decisions of Hon'ble Apex Court and Hon'ble High Courts namely:

- i) GKN Driveshafsts (India) Ltd. vs. DCIT (2003) 2591TR 19 (SC)*
- ii) CIT vs. Videsh Sanchar Nigam Ltd. reported in (2012) 340 1TR 66 (Bom HC)*
- iii) CIT v.v. Janak Shantilal Mehta reported in (2021) 124 taxmann.com 516 (Mad HC)*
- iv) CIT vs. National Organic Chemical Industries Ltd. (2020) 115 taxmann.com 244 (Bom)*

8. These decisions have been followed by the Coordinate Benches while passing the order in the cases of *M/s. Pallavi Vijen Jhaveri (supra)* and *Prannay Sureka (supra)*. The relevant part in the case of *Prannay Sureka (supra)* is extracted below for the sake of ready reference:

*“7. We have heard both the parties and perused the material available on record as placed before us. The undisputed facts are that the assessment was reopened u/s 147 of the Act by issuing notice dated 02.05.2017 which was complied with by filing return of income on 14.12.2017. The AO did not provide copy of the reasons recorded to the assessee and consequently the assessee could not file objections against the reopening of assessment. We also observe from copy of written submissions as filed before Id CIT(A) that the assessee has challenged this issue of non-providing the reasons recorded to the assessee during assessment proceedings before the Ld. CIT(A)*

however the Ld. CIT(A) has not adjudicated the same and dismissed the appeal in a cryptic manner. When the Ld. D.R was specifically put to the issue of non-supplying the copy of reasons recorded u/s 148(2) of the Act to the assessee, the Ld. D.R simply relied on the order of the authorities below. Under these circumstances, we have no choice but to proceed on the assumption that the reasons were never supplied to the assessee. It is trite law that the assessment framed without supplying copy of reasons to the assessee 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. DC IT (supra) 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 provided the reasons despite the assessee having filed return of income and having requested the AO to provide reasons which has deprived the assessee from filing the objections to the re-opening of assessment and against issuance of notice u/s 148 of the Act. The case of the assessee is also covered by the decision of Hon'ble Bombay High Court in the case of CITVs Videsh Sanchar Nigam Ltd. (supra.) wherein the Hon'ble Court has held that the reasons recorded for re-opening the assessment were not furnished to the assessee till the completion of assessment, the reassessment order cannot be upheld. Similar ratio has been laid down in the case of CIT Vs National Organic Chemical Industries Ltd. by the Hon'ble Bombay High Court by following the decision of Co-ordinate Bench in the case of CIT vs. Videsh Sanchar Nigam Ltd. (supra).

8. Considering the facts of the case in the light of ratio laid down by the juridical forums as discussed hereinabove. we set aside the order of Id CIT(A) and hold that the assessment framed u/s 143(3) is not valid and is accordingly quashed. The legal grounds raised by the assessee are allowed.

9. Since the appeal of the assessee has been allowed on legal issue, the other grounds raised by the assessee on merits are not being adjudicated and left open to be decided at later stage if the need arises for the same.

10. In the result, the appeal of the assessee is allowed.”

9. Considering the facts of the case in light of the ratio laid down in the above decisions, we are inclined to hold that the assessment framed by Ld. AO is invalid and nullity and is hereby quashed. The legal grounds raised by the assessee are allowed.

10. Since the appeal of the assessee is allowed on the legal issue, the other grounds raised by the assessee on merit are not being adjudicated and left open to be decided at a later stage if the need arises for the same.

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

***Kolkata, the 13<sup>th</sup> July, 2023.***

*Sd/-*

[Sonjoy Sarma]  
Judicial Member

*Sd/-*

[Rajesh Kumar]  
Accountant Member

Dated: 13.07.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Arpan Nayak, C/o. S.N. Ghosh & Associates, Advocates Sagar Mansion, 2, Garstin Place, 2<sup>nd</sup> Floor, Suite Nos. 202 & 203, Hare Street, Kolkata-700 001.**
- 2. ITO, Ward-2(2), Burdwan.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata