

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "S.M.C." NEW DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER,
S.M.C.

आ.अ.सं./I.T.A No. 439/Del/2023
निर्धारणवर्ष/Assessment Year : 2015-16

Sharda Nigam, C-4, Takshila Apartments, 57 - I. P. Extension, Delhi - 110 092.	बनाम Vs.	Income Tax Officer, Ward : 59 (2), N. Delhi. National Faceless Assessment Centre, Delhi.
PAN No. ADSPN7886Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे / Assessee by :	Shri Krishan Kant Ahluwalia; C. A.
राजस्वकीओरसे / Department by:	Shri Om Parkash, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing:	11.07.2023
उद्घोषणाकीतारीख/ Pronouncement on:	11.08.2023

आदेश / ORDER

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the order of the ld. Commissioner of Income Tax (Appeals) [hereinafter referred

to CIT (Appeals)]/National Faceless Appeal Centre (NFAC) dated 5.01.2023 for assessment year 2015-16.

2. The assessee has challenged the order of the NFAC on various grounds.

3. The Ld. Counsel for the assessee, at the outset, submits that ground No. 4 of grounds of appeal by the assessee challenging the order of the Ld. CIT (Appeals) upholding the assessment of the Assessing Officer without following the procedure prescribed by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO [(2003) 259 ITR 19 (SC)] as the Assessing Officer failed to supply the proper reasons and the reasons supplied by the Assessing Officer are totally illegible and it is as good as non-supply of reasons. The Ld. Counsel for the assessee referring to Page Nos. 42 to 49 of the paper book submits that the un-readable reasons were furnished after five months i.e. on 28.07.2021 on the request of the assessee made on 27.02.2021 and a reminder on 02nd July, 2021. The Ld. Counsel for the assessee further submits that the assessee filed the objection to issue of notice under section 148 of the Act on 28.09.2021 and this objection was not disposed of by speaking order before the completion of assessment before proceeding with the assessment which is in violation of judgement of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO (supra). Therefore, he submits that the assessment made under section 148 of the Act is bad in law and without jurisdiction.

4. On the other hand, Ld. DR placed reliance on the orders of the authorities below.

5. Heard on this preliminary jurisdictional issue. The assessee on receiving notice under section 148 of the Act vide letter dated 27.02.2021 which is placed at page 34 of the paper book requested the Assessing Officer to provide a copy of reason to believe income escaped which prompted the Assessing Officer to issue notice under section 148 of the Act and also requested to provide/furnish approval from higher authorities to issue notice under section 148 of the Act. Subsequently on 02nd July, 2021 the assessee once again requested the Assessing Officer to provide copy of approval of JCIT and copy of reason to believe escapement of income on the basis of which notice under section 148 was issued. Assessee also stated that this information is important to file reply to notice issued under section 148 of the Act and also to file objection against reason to believe i.e. re-opening of assessment. On 28.07.2021 the Assessing Officer provided information in respect of re-opening to the assessee. The assessee on receipt of the reasons which were not at all legible/ un-readable once again on 31st July, 2021 requested the Assessing Officer stating that the attached documents are not at all readable the attached documents defeat the purpose of opportunity of being heard and, therefore, requested either resend the readable documents on the basis of which case was re-opened or provide an opportunity to the authorized representative of the assessee to collect the documents in person so that proper objections could be filed for the reason to believe that the income escaped assessment. The assessee filed its objection for re-opening

of assessment under section 148 of the Act on 28.09.2021 stating that the document supplied purportedly to be the reasons for re-opening of assessment were not legible at all. Therefore, the assessee could not exercise the right to file objection against the reasons formed to issue notice under section 148 of the Act. The assessee also stated in its objection that he has already requested to either give reasons either by hand or provide legible/readable documents so that he can exercise right to file objection. It is noticed that without supplying the legible reasons the Assessing Officer passed draft assessment order on 26.09.2021 proposing addition of Rs.27,23,150/- under section 69C of the Act.

6. On appeal the Id. CIT (Appeals) addressed the issue stating that the Assessing Officer has recorded that the information was provided by the Assessing Officer once again on 28.07.2021 and again on 28.09.2021 and the documents requested for supply physically is not possible because of faceless assessment. The CIT (Appeals), therefore, was of the view that the detailed reply/submission filed by the appellant before the Assessing Officer denying the payment of any cash to CCPL for purchase of some commercial space in Red Mall, Ghaziabad, which shows that the issue of re-opening was very much in the knowledge of the appellant. Even before me the Revenue could not produce the signed legible / readable reasons, which was provided to the assessee. On perusal of the draft / final assessment order the CIT (Appeals)'s order it is noticed that the reasons said to have been recorded for re-opening of assessment were neither legible nor readable. It is also noticed that in spite of several requests the

Revenue did not provide legible and reasonable reasons to the assessee to file rebuttal. The procedure laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO (supra) have not been followed strictly making the reassessment bad in law. The reasons said to have been supplied to the assessee if it is neither legible nor readable it is as good as non-supply of the reasons to the assessee. The assessee filed return on 26.02.2021 and requested for reasons on 28.02.2021. Reminder was sent on 2.07.2021. The reasons said to have been furnished on 28.07.2021 and again on 20.08.2021. The assessee filed objections on 28.09.2021 making it clear that in the absence of legible and readable reasons for reopening the assessment the assessee is not in a position to file its objections for reopening the assessment. Immediately on 29.09.2021 the assessment was completed under section 143(3)/147/144B of the Act. It is not in dispute before me that the reasons said to have been supplied by the Revenue are neither legible nor readable. In the circumstances the reasons said to have been furnished are as good as no reasons furnished at all. Thus respectfully following the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO (supra) and the decision of the jurisdictional High Court in the case of PCIT Vs. Tupperware India Pvt. Ltd. [(2016) 236 taxmann.com 494] the reassessment order is quashed as bad in law. Since the assessment is quashed on the legal ground, I am not inclined to go into other legal grounds and also the grounds taken on merits as it would be of only academic at this stage.

7. In the result, the appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on : 11/08/2023.

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 11/08/2023.

MEHTA

Copy forwarded to :

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	07.08.2023
Date on which the typed draft is placed before the dictating member	09.08.2023
Date on which the typed draft is placed before the other member	11.08.2023
Date on which the approved draft comes to the Sr. PS/ PS	11.08.2023
Date on which the fair order is placed before the dictating member for pronouncement	11.08.2023
Date on which the fair order comes back to the Sr. PS/ PS	11.08.2023
Date on which the final order is uploaded on the website	11.08.2023
Date on which the file goes to the Bench Clerk	11.08.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	