

ITA No.329/CTK/2023
Assessment year: 2012-2013

INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, 'SMC' CUTTACK

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.329/CTK/2023
Assessment year: 2012-2013

Biswajit Behera, 10, Janpath Satya Nagar, Bhubaneswar.	Vs.	Income Tax Officer, Ward-4(2), Bhubaneswar
Appellant		Respondent
PAN No.AEPPB 7779 G		

Assessee by : Shri S.K.Agarwalla, CA
Revenue by : Shri S.C.Mohanty, Sr DR

Date of hearing: 4.1.2024
Date of pronouncement: 4.1.2024

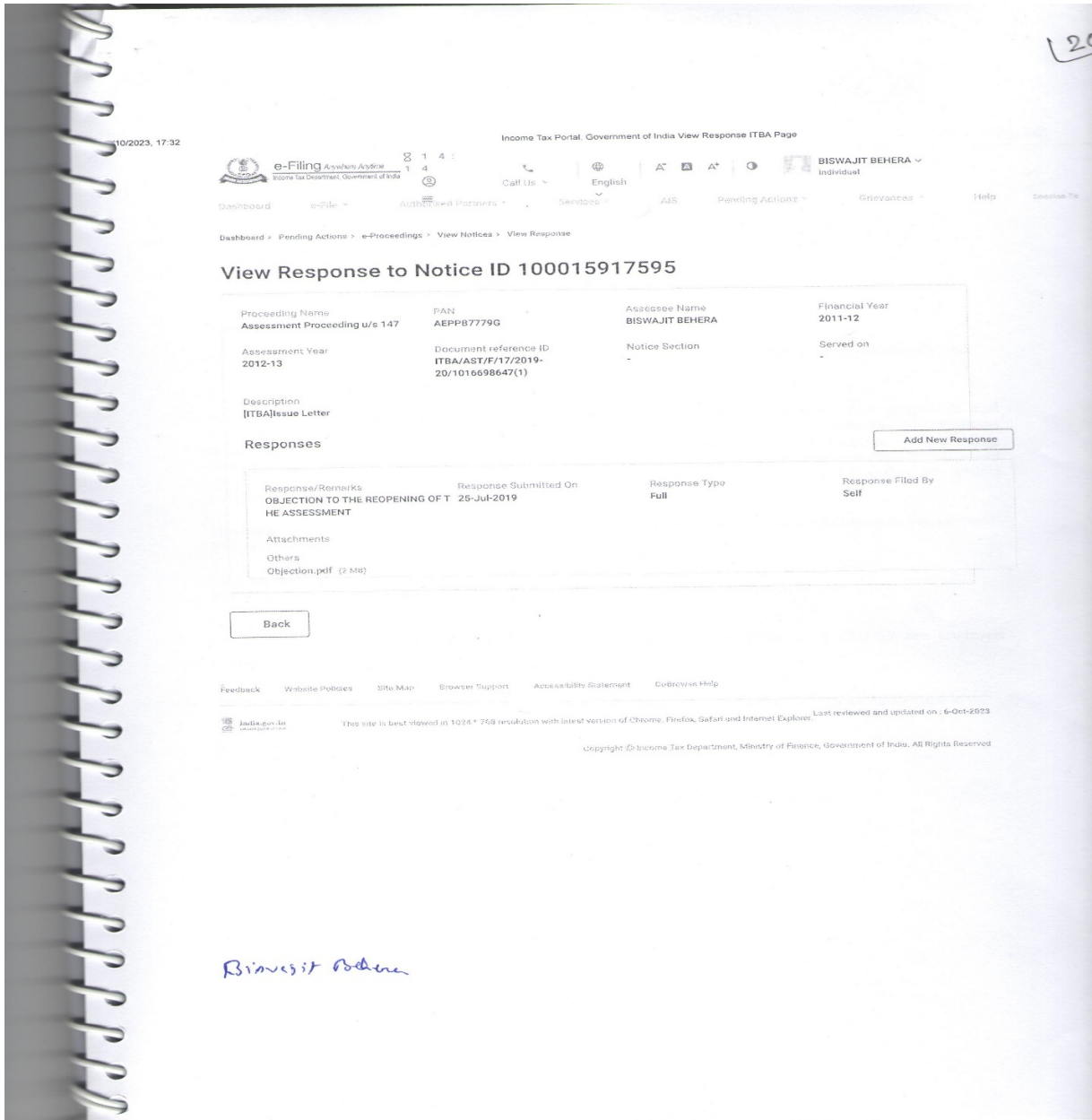
ORDER

This is an appeal filed by the assessee against the order dated 21.9.2023 of the Id CIT(A), NFAC, Delhi in Appeal No.CIT(A), Bhubaneswar-2/10248/2019-20 for the assessment yer 2012-13.

2. Shri S.K.Agarwalla, Id AR appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the return filed by the assessee for the assessment year 2012-13 came to be processed u/s.143(1) of the Act. Subsequently, on 29.3.2019, beyond the period of four years, notice u/s.148 of the Act came to be issued on the assessee stating that the long term capital gain disclosed by the assessee in respect of purchase and sale of sales of BSR Finance and Constructions Ltd., was sham transaction. It was the submission that the assessee had filed objection

to the notice issued u/s.148 on 25.7.2019. The copy of the online objection filed by the assessee was shown at page 20 of PB, which reads as follows:



4. It was the submission that the Assessing Officer without considering the objection of the assessee and without disposing the said objection completed the assessment u/s.143(3)/147 of the Act on 13.12.2019 denying the assessee the claim of deduction u/s.10(38) of the Act in respect of long term capital gains derived on the purchase and sale of shares of BSR Finance & Constructions Ltd. It was the submission that on appeal, the Id CIT(A) at page 42 para 7.5 of his order mentions that the assessee has not disputed the recording of the reasons by the Assessing Officer and there was no evidence available to substantiate the claim that the assessee had raised objection against the reopening. It was the submission that the assessee having raised the objection and the same having not been disposed off, the assessment is liable to be quashed. It was the further submission that in the objection raised, the assessee has claimed that the satisfaction recorded is a borrowed satisfaction and there was no live link between the satisfaction recorded and the issue which has been raised by the Assessing Officer. It was also the submission that in the reasons recorded, there is no mention of failure on the part of the assessee to disclose truly and fully all the materials facts which were required for assessment. It was the submission that consequently there was violation of proviso of section 147, which also leads to quashing of the assessment order.

5. In reply, Id Sr DR submitted that the fact that the assessee has now submitted the evidence that he has filed objection to the reasons recorded shows that the same requires to be restored to the file of the Assessing Officer for disposal of the reasons

recorded in view of the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd., [2003] **259 ITR 19 (SC)**. It was the submission that admittedly, the Assessing Officer has not recorded anything in the assessment order to show that the assessee has filed any objection.

6. I have considered the rival submissions. A perusal of the facts in the present case clearly shows that the assessee has filed objection to the reopening of assessment on 25.7.2019. The assessment has been completed only on 13.12.2019. The Assessing Officer has not disposed of the objection filed by the assessee on 25.7.2019. Hence, an irregularity has taken place at the point where the Assessing Officer has proceeded with the assessment without disposing the objection raised by the assessee. This being so, in view of the principles laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd (supra), the issues in this appeal are restored to the file of the Assessing Officer for re-adjudication after disposing the objection raised by the assessee against reopening. Liberty is granted to the assessee to raise any further objection he may have in the course of set aside assessment proceedings.

7. In the result, appeal of the assessee stands partly allowed for statistical purposes.

Sd/-
(GEORGE MATHAN)
JUDICIAL MEMBER

Dated 4.1.2024
B.K.Parida, Sr. PS (OS)

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Copy forwarded to:

1. Appellant: Biswajit Behera, 10, Janpath Satya Nagar, Bhubaneswar
2. Respondent: ITO, Ward-4(2), Bhubaneswar.
3. CIT(A), NFAC, Delhi
4. Pr. CIT, Bhubaneswar.
5. DR, ITAT
6. Guard file.

Sr. Pvt. Secretary,
ITAT, Cuttack