

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "A" CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No.1171/CHANDI/2019
निर्धारण वर्ष / Assessment Year : 2011-12

G.J. Holding Pvt. Ltd. C/o G.S. Auto International Limited, G.S. Estate, G.T. Road, Ludhiana.	बनाम	ACIT, Central Circle-II, Ludhiana
स्थायी लेखा सं. / PAN NO: AAACG6664K		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.K. Goel & Sunil Arora, C.As
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 18.12.2023
उद्घोषणा की तारीख/Date of Pronouncement : 30.01.2024

आदेश/ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 04.07.2019 of the Commissioner of Income Tax (Appeals)-5, Ludhiana[hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. That the Ld. CIT(A) while sustaining addition of

Rs.2,00,90,000 /- has grossly erred on facts and in law by ignoring the fact that the reopening of assessment U/s 148 by the Ld.A.O. is bad in law.

2. That the Ld. CKT(A) has erred both on facts and in law in not adjudicating the grounds No.2, 4 and 5 of the appeal filed before him by the appellant company while confirming the addition made by the Ld. A.O.

3. That the Ld. CIT(A) has erred both in law and on facts in confirming the addition made by the Ld. A.O. by ignoring the fact that the Ld. A.O. has completed the assessment proceedings) without fully disposing off all the objections filed by the appellant company against the reopening of assessment in utter violation of law as laid down by the Hon'ble Supreme Court in GKN Driveshaft (India) Limited Vs. ITO (2003) 259 ITR 19 and various other judicial pronouncements.

4. That the Ld. CITA) has erred both in law and on facts in sustaining addition by ignoring the documents/various judicial pronouncements submitted by the appellant which proved the identity and creditworthiness of the investors and genuineness of the transactions required under law.

5. That each ground of appeal is a separate ground and without prejudice to each other.

6. That the appellant craves permission to add/alter or to take fresh grounds of appeal either before or during the course of hearing.”

3. A perusal of the above grounds of appeal would reveal that the assessee apart from challenging the addition of Rs.2,00,90,000/- of share application money treated by the Assessing Officer as unexplained income of the assessee, has also assailed the validity of the reopening of the assessment on the ground that the Assessing Officer has not disposed of the objections filed by the assessee against

the reopening of the assessment.

4. The Id. Counsel for the assessee has addressed his arguments mainly on Ground No.3 relating to the validity of the reopening of the assessment framed u/s 147 r.w.s 148 of the Act.

5. Before proceeding further, it will be relevant here to reproduce the reasons recorded by the Assessing Officer for reopening of the assessment as under:

“1. As per departmental E-filing portal the assessee has filed return U/s139 of I.T. Act for the A.Y. 2011-12 on 30.09.2011 showing a loss of Rs.2,918/-. The return, was processed U/s143(1) of IT. Act.

2. A search & seizure operation U/s132 of Income Tax Act, 1961 was conducted on the G. S. Group including its promoters/directors on 03.12.2014. One of the allegations against the group was that this group is engaged in layering and placement of unaccounted money in the form of share capital and share premium by using paper entities specifically floated for this purpose.

3. A survey U/s 133A of the I.T. Act, 1961 was conducted on 03.12.2014 at the registered office of M/s G.J. Holding Pvt. Ltd. i.e. 1304, Padma Tower-1, Rajendra Place, New Delhi. Many of the companies share a common address i.e. 1304, Padma Tower-1, Rajendra Place, New Delhi. The group company M/s G.J. Holding Pvt. Ltd. has changed four registered offices from 2006-07 to 2013 i.e. E-235, G.K-1, New Delhi, 1304, Padma Tower-1, New Delhi, C-31, Vikas Puri, New Delhi and presently A-22, Tagore Market, Kirti Nagar, New Delhi. At the above mentioned address Sh. Satish Monga, C.A. is running a firm M/s Satish Monga & Associates. His statement was recorded u/s 133A of IT. Act, 1961. Sh. Satish Monga is admitted handling the business of placement and layering of unaccounted income of G.S. Group companies and re-introduction the same in

the group companies. These transactions are in the nature of accommodation entries through dummy companies undertaken by Sh. Satish Monga at the instance of Sh. Neeraj Tuli, CFO of G.S. Auto Group. The group company i.e. M/s G.J Holding Private Limited was found; to be received investments from paper companies having doubtful creditworthiness and genuineness, thereby giving indication that these investments are nothing but its unaccounted incomes. It has been revealed that the from the following paper entities/persons the assessee has received back its own unaccounted money in the garb of share Capital and share premium during the Financial Year 2010-11 relevant to the assessment year 2011-12.

<i>Sl. No.</i>	<i>Name of the paper entities</i>	<i>Amounts received A. Y. 2011-12</i>
<i>1</i>	<i>Jasbir Singh Ryait</i>	<i>58.50 Lac.</i>
<i>2</i>	<i>Ritu Mercantile Pvt. Ltd, A-147, Defence</i>	<i>110.90 Lac.</i>
<i>3</i>	<i>Sambhavan Commercial</i>	<i>10.00 Lac</i>
<i>4</i>	<i>Sharman Estate Pvt. Ltd. 307, 5, Pusa Road, Karol Bagh, New Delh</i>	<i>80.00 Lac.</i>
	<i>Total</i>	<i>259.40 Lac.</i>

Investigation made by the Investigation Wing of the Department has found that assessee is a beneficiary of taking the aforesaid accommodation entries.

4. I have also perused various materials and report from Investigation Wing and on that basis it is observed that the assessee company has introduced its own unaccounted money in it bank account. by way of above accommodation entries. On perusal of the documents on record as well as the information received in the case of Assessee Company

the income amounting to Rs. 259.40 Lacs has escaped assessment. The escapement of income has been clearly on account of failure on the part of the assessee company to truly and fully de furnish the all materials facts necessary for assessment. Thus, it is fit case for initiating for proceedings U/s 147 of the Income Tax Act, 1961.

5. The perusal of the Balance Sheet available with the Department, reflects that the authorized capital of the assessee company is Rs. 5 Cr. for F.Y. ending 31.03.2011 relevant to A:Y. 2011-12, out of which Issued, Subscribed and Paid up capital is Rs. 55,25,780/- only. In the case, it has been noticed there is no trading transaction that is of purchase and sale, no accumulated profits in the capital reserved to justify such huge share application money. It is also noticed the said share application increased to Rs. 5,57,26,000/- during the F.Y. 2010-11 relevant to A.Y. 2011-12 and no allotment of shares were made neither during F.Y. 2009-10 nor F.Y. 2010-11:

6. I have reasons to believe that unaccounted money of Rs. 2,59,40,000/- has been introduced under the garb of share application money in the books of account of the assessee company which has been passed on to various companies of G.S Auto Group as unearthed during the course of search and seizure operation in G.S Group of companies.

On the basis of the facts as stated above. I have reasons to believe that income chargeable to tax amounting to Rs. 2,59,40,000/- has escaped assessment. Hence, a notice U/s 148 read with section 147 for reopening of assessment is required to be issued in his case.

8. In this case a return of income was filed for the year under consideration but no scrutiny assessment U/s 143(3) of the Act was made. Accordingly, in this case, the only requirement, to initiate proceedings U/s147 is reason to believe which has been recorded above.

9. It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated U/s 2(40) of the Act was made and the return of income was only processed U/s143(1) of the Act. In view of the above,

provisions of clause (b) of explanation 2 to Section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

10. In this case more than four years have lapsed from the end of assessment year under consideration. Hence, necessary sanction to issue notice U/s 148 has been obtained separately from the Principal Commissioner of Income Tax as per the provisions of section 151 of the Act."

6. The assessee filed the following objections agitating against the reopening of the assessment as under:

"Ref. No. PGSKA/2018-2019/

Dated: 23.10.2018

*The Asstt. Commissioner of Income Tax
Central Circle - II
Kitchlu Nagar Market,
Ludhiana*

Sub: - Reply to notice U/s 142(1) and Objection regarding reopening of assessment U/s 147/148 of the Income Tax Act, 1961 on the basis of Reasons recorded for the same for the Asstt. Year 2011-2012 - M/s G.J. Holdings Private Limited, A-22, Tagore Market, Kirti Nagar, New Delhi - PAN : AAACG6664K.

Sir,

Kindly refer to your notice U/s 142(1) dated 15.10.2018. In this connection, It is respectfully submitted that the reasons to believe recorded by the then Ld. Assessing officer are factually incorrect and merely based on conjectures and surmises. There is no cogent material on record to form the belief that any income had escaped assessment.

The then Ld. A.O. has mentioned at Sr. No. 4 of the reasons recorded that

"I have also perused various materials and report from Investigation Wing and on that basis it is observed that the

assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries".

From the above, it is evident that the then Ld. A.O. has not made any independent enquiry/investigation to form the belief that income had escaped assessment but relied upon the alleged investigation made by the Investigation wing.

From the perusal of the above reasons recorded, it is clear that it is borrowed belief/satisfaction exclusively based upon the alleged investigation report/material which is not permissible under section 148.

There are serious factual errors inasmuch as Sh. Jasbir Singh Ryait, who is promoter/director of the company and are being assessed to Income Tax under your jurisdiction and who also made an application U/s 245C before Settlement Commission for the Asstt. Years 2009-2010 to 2015-2016 is described as paper entity having doubtful, creditworthiness and genuineness in the reasons recorded.

The then Ld. Assessing officer has mentioned in the reasons recorded that Rs. 259.40 Lacs has been received by way of share application money whereas actual amount of share application money received is Rs. 264.40 Lacs.

Further, as per reasons recorded by the then Ld. A.O., it has been mentioned that there are no accumulated profits to justify huge application money whereas as per Audited Balance Sheet, Accumulated profits (Reserve & Surplus) were Rs. 1,73,36,525/- as on 31.03.2010 and Rs. 1,73,33,607/- as on 31.03.2011. Further, the assessee company is an investment company and earns income by way of dividend and during the year ended 31.3.2010 and 31.3.2011, dividend income was Rs.533500/- and Rs. 1,27,895/- resp. as per audited profit and loss account and hence to form belief that income had escaped assessment on the basis of no trading transactions i.e. purchase and sale as mentioned in reasons recorded is wrong and factually incorrect. The assessee company has allotted shares of face value of Rs. 30,76,200/- (30,76,200 Shares @ Rs. 10/- each) during the FY 2009-2010 as per audited

balance sheet whereas as per reasons recorded no allotment of shares was made during the financial year 2009-2010 and 2010-2011 which is again wrong and contrary to the records.

Moreover, the assessee has truly disclosed the receipt of share application money as well as share allotment in its balance sheet and also fully and truly disclosed all material facts and nothing has been concealed and hence there is no valid basis for reasons to believe that income has escaped assessment and hence notice issued U/s 148 on the basis of such vague reasons / borrowed satisfaction may be withdrawn.

Hence, in view of the above, it is requested that proceedings as initiated may kindly be dropped.

Thanking you”

7. However, the Assessing Officer rejected the aforesaid objections of the assessee vide order dated 20.11.2018, the contents of the order refuting the objections raised by the assessee, are reproduced as under:

“The assessee company is an investment company and earn income by the way of dividend income. The copy of reasons for reopening the case was provided to the assessee by letter dated 31.08.2018. The assessee filed written objections against the reopening of the case vide his letter dated 23.10.2018

The assessee has raised following objections:

1. As per Assessee, the Ld. A.O has not made any independent enquiry/investigation to form the belief that income had escaped assessment but relied upon the alleged investigation made by the Investigation wing.

2. "There are serious factual errors in as much as Sh. Jasbir Singh Ryait, who is promoter/director of the company and is being assessed to income Tax under your jurisdiction and who also made an application U/s 245C

before Settlement Commission for the Asst, Years 2009-2010 to 2015-2016 is described as paper entity having doubtful, creditworthiness and genuineness in the reasons recorded."

3. The assessee has pointed out that the then Ld, Assessing officer has mentioned in the reason recorded that Rs 259.40 Lacs has been received by way of share application money whereas actual amount of share application money received is Rs. 264.40 Lacs.

4. Further the assessee has pointed out that in the reasons recorded by the then Ld. A.O., it has been mentioned that there are no accumulated profits to justify huge application money whereas as per Audited Balance Sheet, Accumulated Profits (Reserve & Surplus) were Rs. 1,73,36,525/- as on 31.03.2010 and Rs. 1,73,33,607/- as on 31.03.2011. "The assessee Company is an investment company and earn income by way of dividend and during the year ended 31.3.2010 and 31.3.2011, dividend income was Rs. 533500/- and Rs. 127895/- resp. as per audited profit and loss account and hence to form belief that income had escaped assessment on the basis of no trading transactions i.e. purchase and sale was mentioned in reasons recorded is wrong and factually incorrect. The assessee company has allotted shares of face value of Rs. 3076200/- (307620 shares @ Rs. 10/- each) during the F.Y 2009-2010 as per audited balance sheet whereas as per reasons recorded no allotment of shares was made during the financial year 2009-2010 and 2010-.2011 which is again wrong and contrary to records"

5. The objections raised by the assessee have been perused and the claims made by the assessee in the objections filed have been checked from the record.

a) regarding the objection of the assessee at Sr No 1, it is submitted that the A.O thoroughly checked the record and moreover in this case specific information was available from the investigation wing. So objection raised by the assessee is not tenable.

b) Regarding the objection of the assessee at Sr. No 2,3 and 4, All these are the facts and would be checked during

the re assessment proceedings after giving opportunity to the assessee. The reopening is based on the tangible material on record provided by investigation wing, thus the information and enquiry from record are prima facie sufficient to reopen the case. Moreover reliance is placed on following case laws.

"The judgment of Hon'ble Supreme Court- Raymond Woollen Mills Lid. v ITO(1999) 236 ITR 34 (SC)

"in determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.

ii. The judgment of Hon'ble Supreme Court - ACIT vs. Rajesh Jhaveri Stock Brokers(P) Ltd. (2007) reported in 291 ITR 500

"As per the decision rendered by the Hon'ble Supreme Court in this case at the stage of initiation of reassessment proceedings under section 147 of the Act, it is not required to be conclusively proven that income has actually escaped assessment. The only requirement is that whether there was any relevant material on which a reasonable person can form belief that taxable income has escaped assessment."

iii. The decision of jurisdiction High Court of Punjab and Haryana in the case of Arun Kumar Goyal Vs. CIT (2013) 81 DTR 123 (P & H).

"Once there are reasons for the assessing officer to believe, whether such reasons originate out of the record already scrutinized or otherwise, he shall be within his competence to initiate the re-assessment proceedings. The formation of belief by the assessing officer must always be tentative and not a firm or final conclusion as the latter will negate the very object of giving an opportunity of hearing to the assessee. Reassessment based on agreement to sell which was signed by both parties is held to be valid."

iv. The decision of Hon'ble Supreme Court in the case of ITO v Selected BalurbandCoal Co. Pvt. Ltd. (1996) 217 ITR 597 (SC).

"A letter was written by the Chief Mining Officer to the Income-tax Officer informing him that inspection of assessee's colliery showed, that there was under-reporting of raising figures to the extent indicated in the letter, Held: The Income-tax Officer could form a belief on the basis of the letter that income had been under-assessed or had escaped assessment. Hence the notice issued under section 148 read with section 147(a) on the basis of the letter was valid.

v. Pratibha Finvest (P) Ltd. v ITO (2013) 2015 taxman 470 (Del).

"Reassessment on the basis of the investigation report was held to be justified in respect of cash credits (Section 68): Reopening of assessment on the basis of investigation report was justified. Also, the addition made was justified even though the same did not form part of 'reason to believe' to reopen assessment. Cash Credits and bank deposits which the assessee could not substantiate with supporting documentary evidence could be added to income.

After applying the above judicial precedents to the facts of the case, the objections canvassed by the assessee against the initiation of re-assessment proceedings are not tenable. Accordingly, the undersigned is of the considered opinion that there is adequate and relevant material for forming a reasonable belief that taxable income has escaped assessment and, therefore, the initiation of reassessment proceedings by issue of notice under section 148 of the Act for A.Y 2011-12 is in order. During the course of re-assessment proceedings adequate opportunity will be afforded to explain the case and the resultant order will be passed as per law on an objective appraisal of all the facts and the evidences available."

8. Against the said rejection passed by the Assessing Officer, the assessee filed a letter dated 26.11.2018 stating

therein that the action of the Assessing Officer in rejecting the objections filed by the assessee was not as per the law:

"Ref. NO. : PGKSA/2018-2019\ Dated: 26-11-2018

*The Dy. Commissioner of Income Tax
Central Circle - II
Kitchlu Nagar Market,
Ludhiana*

Sub: -Assessment proceedings relating to Asstt. Year 2011-2012 - M/s G.J.Holdings Private Limited, C-31, VikasPuri, New Delhi-110018 PAN: AAACG6664K- your queries regarding

Sir,

Kindly refer to your notice U/s 143(2) dated 20.11.2018 alongwith communication no. ACIT/CC-I/Lah/Refuting Order/201819/954 dated 20.11.2018vide which your good-self have rejected the objections raised to reopening U/s 148of the Income Tax Act which is not as per law.

Refer:

The Hon'ble High Court of Delhi dated 31.08.2017 in WP(C) No. 614/2014in the case of Yum! Restaurants Asia Pte Ltd. vs. DDIT, held that

"the glaring mistakes in the proforma for approval is the valid ground forquashing the assessment on the premise of non-application of mind by all theauthorities involved in the process of recording reasons and providingsatisfaction U/s. 151 of the Act".

Similarposition of law has been upheld by Hon 'ble ITAT Delhi in Pioneer TownPlanners Pvt. Ltd. Vs. Dy. Commissioner of Income in ITA No. 132/Del/ 2018decided

on 06.08.2018.

Hon'ble ITAT Agra in case of Dheeraj Hospital P Limited Vs. ITO held that

"If the reopening is based on information received from the investigation department, the reasons must show that the A.O. independently applied his mind to the information and formed his own opinion. If the reopening is done mechanically, it is void".

Hon'ble Delhi HC in Pr, CIT Vs. Meenakshi Overseas Pvt Limited 395 ITR677 held that

"Mere reliance on the information received without having acted thereon before recording the reasons, showing non application of mind on the part of A.O., is unsustainable in law.

Hon'ble Delhi HC in PCIT Vs. G & G Pharma 384 ITR 147 held

"that reopening of assessment by an AO based on the information received from the Director of Investigation without making any effort to discuss the materials on the basis on which he formed a prima facie opinion that income had escaped assessment. The Court held that the basic requirement of s. 147 of the Act should apply independent mind in order to form reasons to believe that income had escaped assessment had not been fulfilled".

Hon'ble Delhi HC in PCIT Vs. RMG Polyvinyl 396 ITR 5 held that

"where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by AO, said information could not be said to be tangible material as per se and, thus, reassessment on said basis was not justified".

Also Refer :

Johri Lal HUF VS. CIT 88 ITR 439 (SC) ;

Sheo Nath Singh Vs. AAC 82 ITR 147 (SC) ;

Gagan Saran & Sons P Limited Vs. ITO 130 ITR (SC)

ITO Vs. LakhmaniMawal Dass 103 ITR 437 (SC)

Hence, in view of the above legal position, reopening is bad in law.

However, reply to the queries raised/details as required in response to notice U/s 142(1) are under compilation and will be submitted to you on the next date of hearing. It is, therefore, requested that you adjourn the date fixed for today to some other date preferably in the first week of December, 2018.

Thanking you,

Yours sincerely

FOR G.J.HOLDING PVT. LIMITED

9. The ld. Counsel for the assessee inviting our attention to the reasons recorded by the Assessing Officer has submitted that the Assessing Officer has based his reasoning for reopening of the assessment only on the basis of report of the Investigation Wing. He, further inviting our attention to the reasons recorded, has submitted that the only information received by the Assessing Officer from the Investigation Wing was that the assessee had received share application money from paper concerns which was in the nature of accommodation entries, by which the assessee introduced his own unaccounted income. The Assessing Officer, thereafter, noted certain facts about the authorized capital of the assessee company, paid up capital of the assessee company and also it was noticed that there was no trading

transactions of purchase and sale, no accumulated profits in the capital reserved to justify such huge share application money. It was also noticed that share application had increased to Rs. 5,57,26,000/- during the F.Y. 2010-11 relevant to A.Y. 2011-12 and no allotment of shares were made neither during F.Y. 2009-10 nor during F.Y. 2010-11. The Assessing Officer, therefore, concluded that he had reasons to believe that unaccounted money of Rs.2,59,40,000/- had been introduced under the garb of share application money in the books of account of the assessee company, which has been passed on to various companies of G.S Auto Group, as unearthed during the course of search and seizure operation in G.S Group of companies. The Assessing Officer, therefore, reopened the assessment.

9.2 However, in his objections, the assessee had stated that the Assessing Officer did not have any cogent or tangible material to form belief that the assessee had introduced unaccounted income in the grab of share application money. That the Assessing Officer has simply relied upon the report of the investigation wing which was a borrowed satisfaction of the Assessing Officer, without independent application of mind to the facts of the case. It was pointed out that there were serious factual errors in the reasons recorded by the Assessing Officer. It was pointed out that Sh. Jasbir Singh Ryait, who is

promoter/director of the assessee company being assessed to Income Tax and he had also made an application U/s 245C before Settlement Commission and therefore, his identity and creditworthiness was not doubted. However, the Assessing Officer in the reasons recorded has mentioned him as a paper entity. It was also pointed that actual figure of share application money received was Rs.264.40 Lacs, whereas, in the reasons recorded the figure was mentioned as 259.40 lacs. Further, it was also pointed out that in the reasons recorded, it was observed that there was no accumulated profits to justify huge share application money, whereas, as per audited balance sheet, accumulated profits of the assessee were at Rs. 1,73,36,525/- as on 31.03.2010 and Rs. 1,73,33,607/- as on 31.03.2011. It was also pointed out that the assessee company was an investment company and earn income by way of dividend and during the year ended 31.3.2010 and 31.3.2011, dividend income was Rs.533500/- and RS. 127895/- respectively as per audited profit and loss account. It was also contended that the observation of the Assessing Officer that income had escaped assessment because there was no trading transactions i.e. purchase and sale as mentioned in reasons recorded was wrong and factually incorrect. It was also pointed out the assessee that the assessee company had allotted shares of face value of Rs. 3076200/- (307620 Shares @ Rs. 10/- each) during the FY 2009-2010 as per audited balance sheet. The

Assessing Officer had noted that no allotment of shares was made during the financial year 2009-2010 and 2010-2011. The assessee, therefore, pleaded that factually wrong observations were made by the Assessing Officer in the reasons recorded and, therefore, the formation of belief that the income of the assessee has escaped assessment was based on factually wrong reasons. He, therefore, has submitted that reopening of the assessment was bad in law.

10. However, a perusal of the order rejecting the objections raised by the assessee would show that the Assessing Officer has only noted that he has applied his mind to the facts of the case for formation of belief of escapement of income. However, relating to the factual details, the Assessing Officer has mentioned that all these were facts that would be checked during the reassessment proceedings. This means that the Assessing Officer did not apply his mind to the actual facts of the case to form belief of escapement of income for the purpose of reopening of the assessment. The ld. Counsel for the assessee in this respect has made the following submissions:

“b) Regarding the objections of the assessee at Sr. No. 2,3, & 4, All these are the facts and would be checked during the reassessment proceedings after giving opportunity to the assessee.”

Sir, from the perusal of the above comments of the Ld. AO at Sr. No. 5 b), it is clearly evident that the Ld. AO has not disposed off objections to the issue of the notice u/s 148 for reopening of

assessment meaning thereby that the Ld. AO has himself admitted that objections to the issue of notice u/s 148 against reopening of assessment has not been disposed off by him which is against the law and various judicial pronouncements on the issue. In fact, no jurisdiction is conferred to the Ld. AO to proceed with the reassessment proceedings without disposing off all the objections by speaking order. Even, the appellant vide letter dated 26.11.2018, again brought to the notice of the Ld. AO that objections has not been disposed off as per law referring the various judicial pronouncements on the issue and hence, reopening is bad in law.

REFER:

Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. vs. ITO &Ors.

“We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under [Section 148](#) of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the above said five assessment years.”

Hon'ble Bombay High Court in Tata Capital Financial Services Ltd. vs. ACIT

“8. In the circumstances, the Revenue is directed to adhere to the following:

a) While communicating the reasons for re-opening the assessment, a copy of the standard form/request sent by the Assessing Officer for obtaining approval of the Superior Officer should itself be provided to the assessee. This would contain comment or endorsement of the Superior Officer with his name,

designation and date. The Assessing Officer shall not merely state the reasons in the letter addressed to the assessee.

(b) If the reasons make reference to any other document or a letter or a report, such document or letter or report should be enclosed to the reasons. Such a portion as it does not bear reference to the assessee concerned could be redacted.

(c) The order disposing of the objections should deal with each objection and give proper reasons for the conclusion.

(emphasis given)

(d) A personal hearing shall be given and minimum seven working days advance notice of such personal hearing shall be granted.

(e) If the Assessing Officer is going to rely on any judgment/order of any Tribunal or Court reference/ citation of these judgments/orders shall be provided along with notice for personal hearing so that the assessee will be able to deal with/distinguish these judgments/ orders.

9. A copy of the Order to be placed before the CBDT to issue guidelines to all its officers based on these directions with clear instructions that they shall be strictly followed. We only hope that, this will reduce the same errors being repeated by the concerned revenue authorities and will not drive the assessee to rush to the court. Thereby, the burden on the Court will also get reduced.”

Hon’ble Delhi High Court in the case of SABH Infrastructure Ltd. vs. ACIT

“19. Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under Sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided;

(ii) the reasons to believe ought to spell out all the reasons and grounds available with the AO for re-opening the assessment - especially in those cases where the first proviso to Section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the AO on the same and if so, the conclusions thereof;

(iii) where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons;

(iv) the exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed." (Emphasis given).

Hon'ble ITAT Delhi in Archana Garg vs. ITO in 2916/Del/2018 dated 18.12.2018

11. I find that the Hon'ble Delhi High Court in the case of Multiplex Trading & Industrial Co. Ltd. (supra) has held as under :

"32. There is yet another safeguard provided to the Assessee which was sought to be side-stepped by the AO. The Supreme Court in the case of G.K.N Driveshafts (India) Ltd. v. ITO: (2003) 259 ITR 19 (SC); (2003) 1 SCC 72 had held that if an Assessee if so desirous, could seek reasons for issuance of notice under Section 148 of the Act and the AO would be bound to furnish the same within a reasonable time. The Court further held that that

the noticee would be entitled to file objections against the issuance of the notice and the AO would be bound to dispose of the same by passing a speaking order.

33. In the present case, the Assessee filed its objections by a letter dated 12th December, 2008 and requested the AO to drop the proceedings. The Assessee by its letter dated 18th December, 2008 6 ITA NO. 2916/Del/2018 (Archana Garg) sent in response to another notice, also provided its response in respect of the alleged accommodation entries, which were reported by the Investigation Wing. However, the objections filed by the Assessee were not disposed of by the AO and he proceeded to frame the assessment. This Court in M/s Haryana Acrylic Manufacturing Co. (P) Ltd. (supra) had observed that the requirements regarding recording the reasons to believe; communicating the same to the Assessee; permitting the Assessee to file the objections; and passing a speaking order disposing of the objections are all designed to ensure that the AO does not reopen assessments, which have been finalized, on his mere whim and fancy and that he does so only on the basis of lawful reasons. It was further held that a deviation from the directions issued by the Supreme Court in G.K.N Driveshafts (India) Ltd.(supra) would entail nullifying the proceedings. Although the AO is required to provide reasons, receive objections and pass a speaking order thereon, only after the notice under Section 148 of the Act has been issued; these requirements are an integral part of the safeguards which have been inbuilt for ensuring that the assessments are reopened only for lawful reasons and in a transparent manner. If the said safeguards are flouted, it would invalidate the exercise of jurisdiction under Section 147 and 148 of the Act."

Hon'ble ITAT Cuttack in case of Soumya Ranjan Mohanty vs. ITO in ITA No. 420 & 421/CTK/2017

"23. Thus, respectfully following the above well settled position of law, I find that it was mandatory for the Assessing Officer to dispose of the objections filed by the assessee against the issuance of notice u/s 148 of the Act by passing a speaking order and thereafter to wait for a reasonable time before proceeding with reassessment which the AO has failed to do. Consequently, the impugned reassessment orders for both the assessment years under consideration i.e. AY 2007-08 & 2009-10 are bad in law and are liable to be quashed. I accordingly quash the same

and allow this ground of appeal of the assessee for both the assessment years under consideration.”

Hon’ble Delhi High Court in the case of Scan Holidng Pvt. Ltd. vs. ACIT

“15. In the facts of the present matter, we feel that the Assessing Officer has merely observed and recorded that the objections raised by the assessee were untenable and wrong, without elucidating and dealing with the contentions and issues raised in the objection letter dated 10th June, 2015. The Assessing Officer has not applied his mind to the assertions and contentions raised by the petitioner and the core issue to be examined and considered.”

Hon’ble ITAT, Jaipur in case of Girraj Prasad Gilara HUF vs. ITO in ITA No. 354/JP/2019

“Thus the requirement of disposing off the objections against the notice issued under section 148 by a separate and speaking order is a mandatory requirement in view of the judgment of the Hon’ble Supreme Court in case of GKN Driveshafts (India) Ltd. vs. ITO (supra), the failure of the AO to dispose off the objections renders the reassessment order not sustainable in law. In the case in hand there is complete failure on the part of the AO to dispose off the objections against notice u/s 148 of the Act and not merely a procedural irregularity of separate and speaking order. Accordingly, in the facts and circumstances of the case and specifically involving the issue of addition of Rs. 2,71,317/-, we find that in this case the AO does not deserve a second inning. Accordingly, without remitting the matter to the record of the AO, the reassessment order passed by the AO is set aside being invalid.”

Hon’ble ITAT, Delhi in ITO(E), Dehradun vs. M/s Icfai University, Dehradun on 23rd May, 2019

“10. We have carefully considered the orders of the authorities below. There is no dispute that the Assessing Officer has not dismissed the objections of the assessee by any speaking order. This is clearly the violation of the ratio laid down by the Hon’ble Supreme Court in the case of M/s GKN Driveshafts (supra) wherein the Hon’ble Supreme Court clearly laid down that where the notice u/s 148 was issued and the assessee filed objections.

The Assessing officer was bound to dispose of the same by a speaking order.”

Hon’ble ITAT, Bangalore in Lakhsmana, Bangalore vs. The Income Tax Officer

“9. We have given a careful consideration to the rival submissions. The facts are undisputed that the assessee raised objections with regard to validity of initiation of proceedings under section 147 of the Act by his letters dated 03.10.2016 and 24.10.2016 after filing the return of income. The admitted position is the AO has not disposed off the objections by a speaking order. Under the circumstances, it is clear that the mandatory procedure of disposal of objection by the AO before proceeding with the assessment has not been followed and therefore the order of assessment ITA No.382/Bang/2018 cannot be sustained and has to be quashed. The decision of the Hon'ble Karnataka High Court which is the jurisdictional High Court as far as this Tribunal is concerned in the case of Deepak Extrusions Pvt. Ltd., (supra) supports the case of the assessee. The other decisions of the Hon'ble Gujarat High Court and the Hon'ble Madras High Court referred to in the order of the CIT(A) being the decisions of the non-jurisdictional High Courts, are not binding in the light of the decision of the Hon'ble jurisdictional High Court. Consequently, we uphold the grievances projected by the assessee in ground No.3 n) and hold that the order of assessment passed is vitiated and liable to be annulled. In view of the above conclusion, we are of the view that the other issue raised by the assessee in its appeal does not require examination.”

Hon’ble Delhi High Court in the case of Pr. CIT vs. Tupperware India Pvt. Ltd.

“6. The Court is of the considered view that after having correctly understood the decision of the Supreme Court in G.K.N. Driveshafts (India) Ltd. (supra) as mandatorily requiring the AO to comply with the procedure laid down therein and to dispose of the objections to the reopening order with a speaking order, the CIT (A) committed an error in not quashing the reopening order and the consequent assessment.”

Besides, the above judgments, the appellant has also relied upon the following judgments.

- *Hon'ble Gujrat High Court in case of Arvind Mills Ltd. vs. Assistant Commissioner of Wealth Tax*
- *Hon'ble Karnataka High Court in case of Deepak Extrusions Pvt. Ltd. vs. The Deputy Commissioner of Income Tax*
- *Hon'ble Bombay High Court in case of Asian Paints Ltd. 296 ITR 90*
- *Hon'ble Delhi High Court in case of Haryana Acrylic vs. The commissioner of Income Tax*
- *Hon'ble ITAT Delhi in case of DCIT vs. Multiplex Trading & Industrial Co . Ltd.*

Copy of all judgments as mentioned above and relied upon by the appellants are enclosed herewith.

Sir, from the position as explained above, it is evident that the reassessment made by the Ld. AO without first disposing off the objections against issuance of notice u/s 148 for reopening of assessment by passing speaking order is against the law and deserves to be quashed.

11. From the above discussion, it is evident that only the information before the Assessing Officer was the report of the investigation wing that unaccounted income has been introduced through layering of group companies of G.S. Group. Further, the Assessing Officer has noted in para 6 of the reasons recorded that the aforesaid money has been further passed on to various companies of G.S. Auto Group as unearthed during the course of search operation. However, the assessee has produced on file a chart to show that the assessee had made investment of major amount out of share application money in Reliance mutual funds and HDFC mutual funds. The Assessing Officer has not pointed out the name of the paper companies of G.S. Auto Group in which the assessee had moved the unaccounted funds by way of layering. The ld. Counsel has further

submitted that the only information to the Assessing Officer from investigation wing was regarding the factum of receipt of share application money. However, the reasoning given by the Assessing Officer for formation of belief that the said money was out of unaccounted income of the assessee, was factually incorrect. The assessee has not only pointed out that the amount mentioned was wrong but also the other observations of the Assessing Officer regarding the accumulated profits of the assessee and also regarding the allotment of shares of the assessee company during F.Y 2009-10, were not correct. The Assessing Officer also failed to take note of the fact that the assessee company was an investment company. The Assessing Officer has based his reasonings for formation of belief regarding the escapement of income on such facts and observations which were factually incorrect. Even when the assessee filed objections against the aforesaid incorrect facts recorded by the Assessing Officer, the Assessing Officer refuted the same by observing that the same will be seen during the reassessment proceedings. It has been held time and again by various courts of law that the reopening of the assessment cannot be done by the Assessing Officer to make fishing and roving enquiries. When the Assessing Officer receives information about the escapement of income, he is supposed to correlate the same with the assessment records and after verifying the facts, if there is found tangible material to form reasons to believe that

income of the assessee has escapement, only then the recourse to provisions of section 147 r.w.s. 148 can be made. In the case in hand, the assessee has strongly refuted the facts noted in the reasons recorded, however, the Assessing Officer did not consider the same and rejected objections of the assessee in a mechanical manner. The belief formed by the Assessing Officer on the basis of such wrong facts, therefore, was not a valid belief justifying the reopening of the assessment. In view of various judicial pronouncements on this issue, the reopening of the assessment cannot be held valid in law. Therefore, the reassessment order passed by the Assessing Officer is not sustainable in the eyes of law and the same is hereby quashed and the consequential additions are, accordingly, stand deleted.

12. In the result, the appeal of the assessee stands allowed.

Order pronounced in the Open Court on 30th January, 2024.

Sd/-
(VIKRAM SINGH YADAV)
लेखा सदस्य/ **Accountant Member**

Sd
(SANJAY GARG)
न्यायिक सदस्य/ **Judicial Member**

Dated: 30.01.2024.

RS