

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

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 204/Chd/2023
निर्धारण वर्ष / Assessment Year : 2008-09

M/s G.S. Auto International Ltd. G.S. Estate, G.T. Road, Dhandari Kalan, Ludhiana	बनाम	The DCIT Central Circle-2, Ludhiana
स्थायी लेखा सं. / PAN NO: AAACG6090R		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA NO. 39/Chd/2023
निर्धारण वर्ष / Assessment Year : 2008-09

M/s G.J. Holdings Pvt. Ltd. A-22, Tagore Market Opp. Metro Pillar No. 332, Kirti Nagar, New Delhi-110015	बनाम	The DCIT Central Circle-2, Ludhiana
स्थायी लेखा सं. / PAN NO: AAACG6664K		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Ashwani Kumar, CA and
Ms. Deepali Aggarwal, CA
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/ Date of Hearing : 14/08/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 08/11/2024

आदेश/ Order

PER PARESH M. JOSHI, J.M. :

Both the above appeals filed by different assessee's against the separate orders of Ld. CIT(A)-5, Ludhiana dt. 24/02/2023 and 06/01/2023 respectively pertaining to Assessment Year 2008-09.

2. Both the above appeals were heard together so they are being disposed off by this consolidated order for the sake of brevity and convenience.

3. Firstly we shall deal with the appeal of the Assessee in ITA No. 204/Chd/2023 for the A.Y. 2008-09.

4. This is an appeal filed by the Assessee before this Tribunal under section 253 of the Income Tax Act, 1961. The assessee is aggrieved by the order No. 10055/IT/CIT(A)-5/(195)/Ldh//2016-17 dt. 24/02/2023 passed by the Ld. CIT(A) under section 250(6) of the Act, which is hereinafter referred to as the "impugned order". The relevant assessment year is 2008-09 and corresponding previous year is from 01/04/2007 to 31/03/2008.

Factual Matrix

5. The assessee is a company registered under the Companies Act, 1956/2013 and its shares are listed.

6. The assessee company filed return of income for A.Y. 2008-09 on 27/09/2008 declaring income at Rs. 1,98,76,840/-.

7. The assessee company is engaged in the business of manufacturing of automotives components.

8. A notice under section 148 was issued to the assessee company on 13/03/2015 for reopening of the case. It was served on 16/03/2015. A notice under section 143(2) was also issued on 28/09/2015 which was served on 30/09/2015, in response to which assessee requested vide letter dt. 18/12/2015 to provide the reasons for reopening under section 148 which were duly supplied.

9. In response a letter was filed on 15/04/2015, stating that the return of income originally filed on 27/09/2008 may kindly be treated as a return filed in response to the notice under section 148. A copy of the reasons for reopening the case was furnished to the Assessee company (supra).

10. A search operation under section 132 of the Act was conducted on the group of the assessee company on 03/12/2014.

11. One of the allegation against the group was that the group is engaged in the layering and placement of unaccounted money in the form of share capital and share premium by using paper entities specifically floated for this purposes.

12. The reasons recorded are as under for purpose of reopening the assessment:

i) A search operation u/s 132 of I.T. Act, 1961 was conducted on G.S Group including its promoters/ directors on 03.12.2014. One of the allegation 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. The group company i.e. M/s G.S Auto International Ltd was found to be receiving investments from paper companies having doubtful creditworthiness and genuineness, thereby giving indication that these investments are nothing but its unaccounted incomes which are then placed, layered and re-introduced in the group companies as share capital and share application money.

ii) The details of investments received by M/s G.S Auto International Ltd (as per MCA data, ITD data and post search submissions) in F.Y.2007- 08 are as under:

(Figures in Lacs)

S.N o.	Names	F.Y. 2007-08
1.	G.J Holdings Pvt. Ltd. A-22 Tagore Market, Kirti Nagar New Delhi	69.38
2.	M.R. Italian Chains Ltd., 3160 34 FF Saraswati Marg, Beadon Pura, Karol Bagh Delhi (Formerly Goldline Enterprise Ltd.)	23.50
3.	Sharda Ispat Rollers Pvt. Ltd., 1304 Padma Tower-1, Rajendra Place New Delhi-110008	20.40
4.	Disha Commercial Pvt. Ltd. 1304 Padma Tower-1, Rajendra Place New Delhi-110008	19.90
5.	Securocorp Securities (I) Pvt. Ltd, Shop no. 37 Shankar Market, Connaught Circus New Delhi-110001	6.00
6.	Rajpal Singh	0.75
7.	Gurcharan Singh	0.75
8.	Satish Monga	7.00

Total	147.68
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iii) During the later years also, the company M/s G.S Auto International Ltd has received approximately Rs.14 Crores from the same or similar companies and other individuals, as share capital and share application money. During the pre-search enquiries (both through ITD database as well as discrete enquiries), it was found that the investor companies do not exist at their addresses or the addresses are of a single premise i.e. 1304 Padma Tower-1, Rajendra Place Delhi (office of a Chartered Accountant). The ITD database also showed that the investor companies are filing returns with meager incomes.

iv) Furthermore survey u/s 133A was conducted at the registered addresses of some of the investor companies at 1304, Padma Tower-1 Rajendra Place, New Delhi on 03.12.2014. At the above mentioned address Sh. Satish Monga, CA is running a firm M/s Satish Monga & Associates.

v) Further summons were issued to directors of various paper companies at various addresses during post search enquiries, to ascertain the creditworthiness, identity of the investor companies and genuineness of the transactions. From the replies received/ not received, it is evident that directors of the layer-III and layer-II companies have tried to evade the verification of identity and creditworthiness of their respective companies as well as genuineness of the transactions with respect to investment in GS Group companies in different financial years. In some cases no reply has been received, while in some cases repeated adjournments were sought and finally no one appeared even after giving last opportunity. None of the investor companies filed any documents proving their creditworthiness and genuineness of the transactions. A total of six different companies having different directors and having different addresses in Delhi, appointed one single authorized representative i.e. Sh. Shanti Bhushan Aggarwal, FCA located at Ludhiana. These facts strongly indicate a common control point of all these related paper concerns designed for giving accommodation entries.

Proceedings before AO

13. That from the examination of Balance Sheet of the assessee company for A.Y.2008-09 it is noted that the assessee company has received share application money amounting to Rs.8,50,500/- and warrant allotment money amounting to Rs.1,39,18,800/-. Accordingly, the AR of assessee company was asked to justify the receipt of share application and warrant allotment money and show cause as to why the same may not be added as assessee company's own unaccounted money u/s 68 of Income Tax Act, 1961. Further, the AR was also required to submit the relevant bank statements of investor company from whom money has been received in the form of share application & warrant allotment money, their ITR's, PAN and jurisdiction where these are assessed to

justify the credit worthiness and genuineness of these investors/ companies. The AR was also required to submit complete set of balance sheets of lenders showing the amount of corresponding investment in their balance sheets alongwith the supporting schedule/ annexure of investments to justify the investments made by them order sheet entry dated 08.03.2016.

14. That at the first instance the AR of assessee company raised objections to the issuance of notice u/s 148 of the I.T Act which were disposed off through speaking order dtd.26.02.2016. Regarding objections raised, it is hereby stated that all conditions which are required to be satisfied for invoking the provisions of section 147 of the Act have been satisfied before issuing notice u/s 148 and therefore, notice issued u/s 148 is strictly in accordance with the provisions of law.

15. That further in response to the queries raised, the AR of the assessee company filed certain submissions vide letter dt. 18/03/2016 the relevant extracts of which are as under:

"During the year under assessment, an amount of Rs. 1,39,18,880/- was received from all the investors to whom the above said warrants were issued and allotted, Rs. 26,50,000/- was received in financial year 2008-2009 and the balance amount of Rs.2,94,31,200/- was received in next the financial year ended 31st March, 2010 i.e Assessment year 2010-2011. After the sub-division of the face value of the equity shares of the company from Rs. 10/- per equity shares to Rs.5/- per equity shares on dated 20th August, 2008 and after the receipt of all the amount from all the warrants holders, all the above said 2300000 (twenty three lacs) convertible warrants were converted into 4600000 (forty six lacs) equity shares of the face value of Rs.5/- each at a premium of Rs.5/- per equity shares on dated 01 July, 2009. A copy of the listing approval for the above said 4600000 (forty six lacs) equity shares from the Bombay Stock Exchange Limited and all the copies of resolutions are also attached herewith. The above said equity shares were allotted in physical as well as in demat form. A copy of the share certificate issued to the respective shareholders are enclosed herewith. A copy of the Central Depository Services (India) Limited (CDSL) & National Securities Depository Limited (NSDL) confirming the allotment of equity shares in demat forms are also enclosed herewith. A copy of Form-02 filed with the ROC, with respect to the allotment of above said equity shares is also enclosed herewith.

Further regarding the identity, creditworthiness and genuineness of the transactions, it is submitted that the identity of the companies from whom such

share capital/warrant allotment money was received, all the relevant documents which includes PAN, confirmations and Memorandum and Articles of Association along with Certificate of Incorporation of all the companies have already been submitted. As far as the genuineness of the transactions is concerned, it is submitted that all the amounts, which were received on account of share capital / warrant allotment money /share premium, were received through normal banking channel and through account payee cheques/RTGS. No part of the share capital/warrant allotment money /share premium was received otherwise than cheques/RTGS. For these purposes, bank statements of the companies from whom share capital /warrant allotment money /share premium received have also been submitted.

As regards credit worthiness of the parties, it is submitted that balance sheets along with ITR of the companies from whom such warrant allotment money /share/ capital/premium received have also been submitted.

It is further submitted that it is not disputed that the Income Tax Authorities are required to satisfy themselves about the identity of the persons, genuineness of the transactions and the credit worthiness. In the instant case the said onus enjoined upon the Assessee Company stands not just adequately but completely and comprehensively discharged in as much as the identity of the investors stands proved by the fact that all the investors are limited companies incorporated by due process of law as laid out in the Companies Act, 1956 and whose existence is verified from the records of the concerned Registrar of Companies.

In the instant case no case can be made out to doubt the genuineness, existence or identity of the investors and as such no adverse inference is warranted/ drawable on this account."

16. The explanation of the AR alongwith the facts of the case on this issue have been taken on record and considered but found No merits. Further, the notices u/s 133(6) of the Income Tax Act, 1961 was issued to the following companies/ individuals and the replies received are placed on record:

(a) Sh. Rajpal Singh, 274, Phase IV-A, Focal Point, Ludhiana.

(b) Sh. Gurcharan Singh, 1934, Block-21, Street No., Janta Nagar, Gill Road, Ludhiana.

(c) M/s M. R. Italian Chains Limited (formally known as M/s Goldline Enterprises Limited) 1304, Padam Tower-1, Rajendra Place, New Delhi.

(d) M/s G. J. Holdings Pvt. Limited, Opp. Metro Pillar No. 332, Kirti Nagar, New Delhi.

(e) Sh. Satish Monga, Proprietor M/s Satish Monga & Associates, 1304, Padma Tower, Rajendra Place, New delhi.

(f) M/s Securocop Securities (I) Pvt. Limited, Shop No. 37, Shankar Market, Connaught Circus, New Delhi.

(g) M/s Sharda Ispat Rollers Pvt. Limited, 1304, Padma Tower-1, Rajendra Place, New Delhi.

(h) M/s Disha Commercial Pvt. Limited, 1304, Padma Tower-1, Rajendra Place, New Delhi.

Asking to produce the following information/detail:

a) *"You are requested to provide complete address of the Director/Promoter of the company.*

b) *Please explain the nature of financial transaction between you and M/s G. S Auto International Limited.*

c) *Confirmed copy of account of M/s G. S. Auto International Limited, for the period 01.04.2007 to 31.03.2008 as appearing in your books of accounts.*

d) *Submit the Income Tax Return alongwith computation, Balance sheet, Profit & loss account, Audit report and its annexures for the relevant period.*

e) *Copy of bank account statement from where the investment was made in M/s G. S. Auto International Limited explaining creditworthiness and immediate source of such investment.*

f) *Further, you are required to intimate your PAN & Jurisdictional Assessing Officer."*

16.1 Further, the Authorized Representative filed submission which does not justify the source of income in bank statement of investor companies and therefore, the facts that can be concluded are as under:

- *The companies run from a single premise 1304, Padma Tower-1 Rajendra Place, New Delhi*
- *They are being operated by the same person/ group of persons.*

- *The bank accounts of these companies are showing regular deposits and transfers which is highly unlikely for a business transactions and is a common feature observed in the case of accommodation entry providers.*
- *Also, Income Tax Returns which were submitted by the Authorized Representative in various cases show that the investor companies are filing returns with meager income. Thus, the creditworthiness of these companies to invest such huge amounts into M/s G.S Auto International Ltd is doubtful.*
- *It appears that the money is being layered through bank accounts of these many companies being controlled by Sh. Satish Monga and thereafter invested in M/s G.S Auto International Ltd.*
- *The authenticity of share application money introduced has thus failed the important and necessary test of genuineness and creditworthiness since the source of this money itself is bogus.*
- *The bank transactions are sham. The bank accounts of paper companies run by Sh. Satish Monga, and their accomplices are used to layer the money through multiple channels before depositing in the account of M/s G.S Auto International Ltd and thereafter it is given the colour of investment.*
- *Thus, addition of the entire money u/s 68 of the I.T. Act, 1961 is the rational outcome.*

16.2 Thus, it is clear that this share application and warrant allotment money is the Assessee Company's own unaccounted money being routed back in the form of accommodation entries. Further, the provisions of section 68 with respect to cash credits are reproduced as under:

"Cash credits: Sec. 68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

[Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee company shall be deemed to be not satisfactory, unless -

a) The person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

b) Such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

From the wording of the section it is evident that the amount which is credited in the books of the assessee is to be explained and if no explanation about the nature and source thereof is given, the sum so credited shall be charged to income-tax. It is further provided that the explanation as offered if not satisfactory in the opinion of the AO and in those circumstances also the sum so credited may be charged to income tax.

17. The entry of share application money does not prove the actual availability of funds with the company. Thus the assessee has failed to prove the credit worthiness of the share applicant. Even after giving so many opportunities, the AR failed to prove the creditworthiness and genuineness of the companies investing the money in share application of the assessee company. The assessee's assertion that he has discharged his onus by merely providing the name, address, PAN and other details of share applicant fades in the background in the light of the glaring facts brought out in the above paragraphs. Rather it is clear that these are merely paper companies which were used for introducing the unaccounted monies into the assessee company.

18. Accordingly, total money received/credited by assessee company in the form of share application and warrant allotment money amounting to Rs.1,47,69,300/- during the year under assessment. But the AR of assessee company has failed to establish the identity, credit worthiness as well as genuineness of these amounts received by the assessee company.

19. That Ld. AO after recording aforesaid proceeded to pass assessment order dt. 31/03/2016 and held as under:

“During the course of assessment proceedings, it is noted that the substantial amount have been invested by M/s G.J Holdings Pvt. Ltd in assessee company out of funds raised amounting to Rs.61,40,000/- by way of share capital and share application money during the year under consideration from various different

companies of Delhi. Although this amount has also been added in the assessment order of M/s G. J. Holdings Pvt. Ltd for the assessment year 2008-09, which has also been reopened U/s 148 of the Income Tax Act, 1961. Since the real beneficiary is the assessee company i.e. M/s G.S Auto International Ltd. Hence, I add this amount in the income of assessee company on Substantive basis and on Protective basis in the hands of M/s G.J Holdings Pvt. Ltd.

Therefore keeping in view the above factual and law position, an amount of Rs. 1,47,69,300/- (inclusive of addition of Rs.61,40,000/- made on Substantive basis) is hereby added to the returned income of the assessee company U/s 68 of the Income Tax Act, 1961.

I am also satisfied that the assessee has furnished inaccurate particulars of its income on this account and therefore penalty proceedings u/s 271(1)(c) of the I.T. Act are hereby initiated separately.

Subject to the above discussion, total income of the assessee company is assessed as under:

Income as per return of income	Rs. 1,98,76,840/-
Addition as discussed above in para 3	Rs. 1,47,69,300/-
Total Income	Rs. 3,46,46,140/-
Or Say	Rs. 3,46,46,140/-

Assessed at total income of Rs.3,46,46,140/-. Charge interest u/s 234A, 234B and 234C. Penalty proceedings u/s 271(1)(c) of the Act have been initiated separately and penalty notice is enclosed. Issue tax calculation sheet in ITNS 150, demand notice, challan and a copy of this order to the assessee."

Proceedings before CIT(A)

20. The assessee being aggrieved by the aforesaid order of Ld. AO dated 31/03/2016 prefers first appeal before Ld. CIT(A) and interalia raises following grounds of appeal:

(i) That Assessment order passed under section 143(3)/147 is against law and facts on the file in as much as the Ld. Assessing Officer was not justified to arbitrarily compute the total income at Rs. 34646140 as against returned income at Rs. 19876840.

(ii) That the Assessment order dated 31/03/2016 passed under section 147/143(3) of the Act by the Ld. Assessing Officer is against the law and facts on the file in as much as he was not justified the resort to the reassessment proceedings under section 148 and accordingly the notice issued under section 148 was bad in law.

(iii) That the Ld. Assessing Officer was not justified to arbitrarily make an addition of Rs. 14769300 by resort to provisions of Sec 68 of the Income Tax Act, 1961

received by the appellant company on account of fresh addition of share capital/premium share warrant allotment money from different parties.

21. The Ld. CIT(A) by impugned order has however confirmed the addition amounting to Rs. 1,27,19,300/- and thus has partly allowed the first appeal.

Proceedings before Tribunal

22. The assessee company being aggrieved by the "impugned order" has raised following grounds of appeal in Form 36 before us:

1. That order passed u/s 250(6) of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals)-5, Ludhiana is against law and facts on the file in as much he was not justified to uphold the action of the Learned Assessing Officer in resorting to reassessment u/s 148 of the Act.

2. That he was further not justified to arbitrarily uphold the addition of Rs. 1,27,19,300/- as against Rs. 1,47,69,300/- made by the Learned Assessing Officer by resort to provisions of Section 68 of the Income Tax Act, 1961, received by the appellant on account of fresh addition of share capital / premium share warrants allotment money from different parties.

Record of Hearing

23. The hearing took place before us when both the parties appeared before us. Both the parties were given equal treatment and equal opportunities in respect of their respective submissions. The Ld. AR for the assessee brought to our notice brief facts of the case and thereafter contended vehemently that the Income Tax Department ought not to have resorted to reassessment within the meaning of section 147/148 of the Act. It was contended that reopening under section 148 is not at all justified and Ld. CIT(A) has erred in law by upholding the order of Ld. AO even partly. In the impugned order no cogent grounds in terms of law has been given for reopening of the assessment. The provisions of law including binding judicial precedents on issue of reassessment as expounded by Apex Court, High Courts and Tribunal have not been followed. **He finally prayed for setting aside the impugned order and relied upon decision of Chandigarh Bench in case of G J Holding Pvt. Ltd Vs. ACIT CC-II, Ludhiana**

one of the group company of present assessee in ITA No. 1171/Chandi/2019 dt. 30/01/2024 for A.Y. 2011-12 and placed the copy of the same across Bar. Basis this order he contended that on identical facts on issue of section 147/148 the appeal of the assessee was allowed. The Ld. DR however relied upon both the orders of the Ld. AO and CIT(A) and contended that issue of section 147/148 have been considered by both authorities below by passing well merited speaking order and impugned order should not be set aside at all.

Findings & Conclusions

24. We have perused the aforesaid order of one of Assessee's group company (supra) and in view of observation of this Tribunal in para 9,10,and 11 which is reproduced as under:

9. *The Id. 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 garb 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 Id. 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 Holiday 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 appellant 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 Id. 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.

25. We set aside the impugned order of Ld. CIT(A) and allow the appeal of the assessee as facts are parimateria. In result, the appeal of the assessee stands allowed.

26. In the result, appeal of the assessee is allowed.

27. Now we shall deal with the appeal in ITA No. 39/Chd/2023 for the A.Y. 2008-09.

28. Since the issues involved in the abovementioned appeal is identical to the issues in ITA No. 204/Chd/2023 for the A.Y 2008-09. Therefore our findings given in ITA No. 204/Chd/2023 shall apply mutatis mutandis to this appeal also.

29. In the result, both the above appeals of the Assessee are allowed.

Order pronounced in the open Court on 08/11/2024.

Sd/-
विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-
परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar