

**THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, DELHI**

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER

**ITA No.3246/Del/2023
(Assessment Year 2012-13)**

Sachin Jain 1732, MZ Floor, Nayi Basti, Naya Bazar, Delhi – 110006	Vs.	ITO,Ward-47(2) Drumshape Building, Delhi- 110002
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AIJPJ5875F		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Sh. Sanjay Kumar, Sr. DR

Date of Hearing	29.10.2024
Date of Pronouncement	14.11.2024

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed by the assessee is directed against the order passed by the NFAC, Delhi, dated 04.02.2023 arising out of the order passed by Ld. ITO, Ward-47(2), New Delhi, dated 24.12.2019 under Section 144/147 of the Act (hereinafter referred to as ‘the Act’) for Assessment Year 2012-13.

2. On the basis of AIR information proceeding under Section 147 of the Act was initiated against the assessee and notice under Section 148 of the Act dated 28.03.2019 was served upon the assessee followed by notice under Section 142(1) dated 16.08.2019 alongwith the detailed questionnaire in relating to issue of cash deposit of Rs.15,00,000/- in the bank account maintained by the assessee with Axis Bank Ltd. Chandni Chowk Branch, Delhi, during the Financial Year 2011-12. By and under a reply dated 14.12.2019 the assessee informed the AO of filing of return of income under Section 148 of the Act on 21.09.2019. As there is no change from the original return filed by the assessee the portal is not giving further option to again file return under Section 148 of the Act as required by the AO as also mentioned therein. The assessee also made a request to provide the reason recorded for reopening of assessment under Section 148 of the Act. The said representation was made by the assessee was sent through email copy whereof is on record before us. This reply was made by the assessee against the notice dated 11.12.2019 under Section 142(1) of the Act. Though the assessee has made a request on 14.12.2019 for providing a copy of reason so recorded by the Ld. A.O in reopening the assessment, the same was not furnished to the assessee. On the contrary the final order was passed upon making addition of Rs.15,00,000/- in the hands of the assessee on 24.12.2019 under Section 147 of the Act by the AO which was further confirmed by the First Appellate Authority. Hence, the instant appeal.

3. The case of the assessee before us is this that though the assessee has raised this objection in regard to initiation of proceeding under Section 148 of the Act and further that made request for providing a copy of the reason recorded by the Ld. AO in reopening of assessment no reply whatsoever has been made by the Ld. AO neither the same was ever furnished and, therefore, the impugned assessment order is liable to be quashed particularly when the objection raised by the assessee has not been disposed of by speaking order.

4. On the identical facts and circumstances of the matter the assessee relied upon the order passed by the Coordinate Bench in the case of Shri Chand Singh Vs. DCIT in ITA Nos. 3860 & 3861/Del/2016 for Assessment Year 2010-11 and 2011-12 a copy whereof has duly been furnished before us. Today, at the time of hearing non-appeared on behalf of the assessee. However, having regard to the fact that Ld. Counsel in earlier occasions duly entered appearance before us the matter is decided exparte.

5. The ld. D.R on the other hand relied upon the orders passed by the authorities below.

6. Under this facts and circumstances of the matter, the order relied upon by the assessee has been duly considered. It is found that on an identical situation the Coordinate Bench relying upon the judgment passed by the Hon'ble Apex Court in the case of GKN

Driveshafts India Ltd. Vs. ITO, reported in (2003) 259 ITR 19 and further that the judgment passed by the Hon'ble Delhi High Court in the case of PCIT Vs. Tupperware India (P) Ltd., reported in (2016) 236 taxman 494 (Del) and Ferrous Infrastructure Pvt. Ltd. Vs. DCIT, reported in (2015) 120 DTR 0281 (Del) found the reassessment proceedings were vitiated as the Assessing Officer has not passed a separate speaking and reasoned order by disposing off the objection raised by the assessee against the reopening of assessment. Further that the judgment passed by the Hon'ble Bombay High Court in the case of CIT Vs. Videsh Sanchar Nigam Ltd., reported in (2012) 340 ITR 66 (Bom) as relied upon by the assessee held that reason recorded laid down by the Hon'ble Apex Court must be furnished to the assessee when sought for so as to enable the assessee to object the same before the AO failing which the reassessment proceedings suffers from jurisdictional error and thus, vitiated.

7. Having regard to the identical facts and circumstances of the matter, respectfully relying upon the judgment passed by the Bombay High Court in the case of Videsh Sanchar Nigam Ltd. (supra) and the Hon'ble Apex Court in the case of GKN Driveshafts India Ltd. (supra) the Coordinate Bench passed orders in the case of Sh. Chand Singh Vs. DCIT, Circle 1(1) vide ITA Nos. 3860 & 3861/Del/2016 on 05.07.2021 quashing the reassessment proceeding. The relevant observation of the Coordinate Bench is reproduced as under:

“9. We have heard the rival submissions and perused the materials on record. Before us, Learned AR is challenging the reassessment proceedings. It is an undisputed position that the assessee had objected to the reassessment proceedings for A.Y. 2010-11 vide letter dated 27.02.2015. It is also an undisputed fact that no separate speaking order disposing of the objections raised by the assessee has been passed by the AO and he has proceeded to pass the assessment order u/s 147 r.w. 143(3) vide order dated 28.03.2015. We find that Hon’ble Supreme Court in the case of GKN Driveshafts India Ltd. (supra) has held that when a notice u/s 148 of the Income Tax Act has 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. Thus the procedure that was required to be followed by the AO was to dispose of the assessee’s objections by passing a speaking order. In the present case it is an undisputed fact that there was a failure by the AO to comply with the mandatory requirement of disposing of the objections raised by the assessee to the reopening of assessment in terms of the law laid down by the Hon’ble Supreme Court in the case of GKN Driveshafts India Ltd. (supra). We further find that Hon’ble Bombay High Court in the case of CIT vs. Trend Electronics (2015) 379 ITR 456 (Bom), after considering the decision of Hon’ble Bombay High Court in the case of CIT vs. Videsh Sanchar Nigam Ltd. (2012) 340 ITR 66 (Bom) has held that recorded reasons as laid down by the Apex Court must be furnished to the assessee when sought for so as to enable the assessee to object to the same before the AO. It has further held that the recording of reasons and furnishing of the same has to be strictly complied with as it is a jurisdictional issue and in the absence of reasons being furnished when sought for would make an order passed on reassessment bad in law. We also find that the Hon’ble Mad High Court in the case of Jayanthi Natarajan (supra) has held that when the procedure required to be followed has not been adhered to, the entire reassessment proceedings were vitiated. We, therefore, relying on the aforesaid decision in the case of Jayanthi Natarajan (supra) and Trend Electronics (supra) hold that since the procedure required to be followed has not been followed the entire assessment proceedings are vitiated and therefore we hold the assessment order passed by the AO to be bad in law and thus set it aside. Since we have set aside the reassessment order the grounds raised on merits require no adjudication as they have been rendered academic. Thus the Appeal of the assessee is allowed.

10. As far as A.Y. 2011-12 is concerned, both the parties before us have submitted that the issue involved in A.Y. 2011-12 is identical to that of A.Y. 2010-11. We have hereinabove, while deciding the appeal for A.Y. 2010-11 have allowed the appeal of the assessee. We for similar reasons also allow the appeal of assessee for A.Y. 2011-12. Thus the appeal for A.Y. 2011-12 is allowed.

11. In the result, both the appeals of the assessee are allowed.”

8. Since, the assessee has not been provided the reason so recorded by the Ld. AO for initiation of the proceeding under Section 148 of the Act inspite of request made by the assessee and further in the absence of any separate reasoned order passed by the Assessing Officer by disposing off the objections raised by the assessee against such reassessment proceeding initiated, respectfully, relying upon the judgment passed by the Hon'ble Apex Court the assessment proceeding is found to be vitiated, void-ab-initio, bad in law, therefore, quashed.

9. Assessee's appeal is, therefore, allowed.

Order pronounced in the open court on 14.11.2024

Sd/-
(Madhumita Roy)
Judicial Member

Date 14.11.2024
Rohit: PS

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI