

**THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'A' NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

ITA No. 5118/Del/2019 Assessment Year: 2012-13
ITA No. 5119/Del/2019 Assessment Year: 2013-14

Baba Alloys Pvt. Ltd., C/o. Ravi Gupta, Adv. B-41, Kailash Colony, New Delhi	Vs.	ITO, Ward-4(1), New Delhi
PAN :AACCB7329N		
(Appellant)		(Respondent)

Assessee by	Shri Raghav Sharma, CA
Department by	Shri Kanv Bali, Sr. DR

Date of hearing	19.09.2024
Date of pronouncement	25.11.2024

ORDER

PER MS. MADHUMITA ROY: JUDICIAL MEMBER:

The instant appeals filed by the assessee are directed against the order passed by the learned Commissioner of Income-Tax(Appeals)-2,

New Delhi dated 14th March, 2019 relating to assessment years 2012-13 and 2013-14.

2. The assessee has challenged the initiation of proceedings under Section 148 of the Income-Tax Act, 1961 by issuing notice dated 14.12.2016.

3. In fact, the reason so recorded by the Assessing Officer is based on the report issued by the Deputy General of Central Excise Intelligence (in short DGCEI) vide Letter No. 156/INT/DGCET/HQ/2013/6616 and subsequently vide Letter No. 156/INT/DGCET/HQ/2013/2289 dated 10.02.2015. In regard to searches conducted on 04.07.2013 in other premises of one Trikot Iron & Steel Casting Ltd. including factory, registered office and residence of directors. Various incriminating documents whereof were seized. Further that, such recording of reasons was also on the basis of the statement made by one Sharad Bansal, Director of the Company dated 26.09.2013 which was admittedly retracted on the very same day appearing at page 75 of the paper book filed before us. No search, whatsoever, has been conducted by the Income-Tax Authority in the case of the assessee. Thus, the reasons have been on the basis of

borrowed satisfaction, meaning thereby, no independent application of mind made by the A.O. while recording reasons as contended by the Ld. AR. As the initiation of reassessment proceedings is on borrowed satisfaction and in the absence of independent finding of the AO vis-à-vis reasons to belief that any income escaped assessment rather than relying upon the information received from the DGCEI on the basis of a third party search, the initiation of proceedings is bad in law and thus the finalization of the same upon making addition is not sustainable in the eyes of law, as the main submission made by the Ld. AR. In this regard, he has relied upon the judgment passed by the Hon'ble Apex Court in the case of KTMS Mohammed. Vs. Union of India, reported in 197 ITR 196, a copy whereof has been filed before us.

4. Apart from that, it was contended by him that upon receiving the notice under Section 148 of the Act, the assessee made several representations asking for copy of the reason along with the report of DGCEI, statement recorded by Customs behind the back of the assessee which becomes the prime consideration of reopening of assessment has been sought for whereupon the copy of reason

recorded has been provided to the assessee only on 10.08.2017. Immediately, thereafter on 01.09.2017, the assessee filed its representation raising objection to such reopening of assessment and prayed for supply of materials available with the AO on the basis of which the case of the assessee was reopened. The objections were not disposed of by a separate order, the impugned notice and the reassessment proceedings initiated in pursuance of the said notice deserves to be set aside as argued by the Ld. AR. In this regard, he has relied upon the judgment of Hon'ble Delhi High Court in the case of Ferrous Infrastructure (P) Ltd. Vs. DCIT – W.P.(C) No.5229 of 2014 passed by the Hon'ble Delhi High Court. In this regard, the Ld. DR fairly submitted before us that as per the report furnished by the Ld. ITO, Ward-4(1), New Delhi dated 13.06.2024, no document is found in disposing of the objections so raised by the assessee in the assessment record.

5. The Ld. AR has further submitted that no proper approval was granted was granted by the authorities in issuing notice of reopening appearing is evident from appearing on page 91 of the paper book filed before us wherein the concerned authority while giving the

approval at page 4, the Ld. PCIT, Delhi-II, New Delhi reads only “Yes”. Such mechanical recording of satisfaction by the Ld. PCIT while according sanction for issuance of notice under Section 148 of the Act is not sustainable in the eyes of law and the same is liable to be quashed as further argued by the Ld.AR. In this regard, he has further relied upon the judgment passed by the Hon’ble Madhya Pradesh High Court in the case of CIT vs. Goyanka Lime and Chemical Ltd. passed by the Hon'ble Madhya Pradesh High Court – 56 Taxmann.com 313.

6. Further that the Assessing Officer’s order has been challenged as void ab initio since the same has been made without passing a separate order on the basis of the objection of the assessee raised challenge the jurisdiction in exercising powers under Section 148 of the Act.

7. Further that the Assessing Officer does not have valid jurisdiction under Section 148 of the Act as no approval under Section 151 of the Act has been obtained by the Assessing Officer. There is no new fact brought by the assessee before us and these grounds could be raised even before us for consideration of the issue involved in the matter as per the judgment passed by the Hon'ble Apex Court in the

case of NTPC Ltd. Vs. CIT reported in 229 ITR 383 (S.C) contended by the Ld. AR.

8. Having regard to this particular aspect of the matter, we, therefore, admit these additional ground preferred by the assessee raised before us.

9. Since the additional ground challenging the entry of the assessment proceedings relates to non-disposal of the objection raised by the assessee against the reopening of assessment goes to the root of the matter concerning the maintainability of the proceedings, we would like to deal with the same at the very threshold. It is a fact that the copy of the reasons recorded by the Assessing Officer has been provided to the assessee after receiving representation to that effect by the assessee on five occasions by hand the letter dated 23.01.2017, 28.02.2017, 06.05.2017, 20.06.2017 and 01.09.2017 requesting for notice of the reasons along with the report of the DGCEI, statement recorded by the Customs. The assessee immediately thereafter on 01.09.2017 raised objection to the reopening of assessment of the case and also demanded for supply of material available with the Assessing Officer on the basis of which the case of the assessee was reopened.

The same is appearing at pages 34 and 35 of the paper book filed before us, the contents whereof are being followed:

“To,
Income Tax Officer, Ward 4(1), R.No.380,
CR Building I.P. Estate New Delhi

In the Matter of: Baba Alloys
Pvt. Ltd. PAN-AACCB7329N
A.Y. 2012-13

Ref: Notice under sub-section (1) of Section 142 of I.T. Act, 1961 Sub: Assessment proceeding for the A.Y. 2012-13-Baba Alloys Pvt. Ltd.

Dear Sir,

Further to our-earlier letter submitted on 18th August 2017, we are pleased to submit the following documents as per your letter dated 10.08.2017.

1. Power of Attorney already submitted on 18.08.2017.
2. Copy of ITR and computation of Income (Annex -1) along with Audited Balance Sheet and Profit & Loss account for Y.E.31.03.2012 (Annex-2) and Tax Audit Report (Annex-3).
3. The assessee company is a manufacturing concern, having its unit at Shamli, in the State of Uttar Pradesh. The manufactures MS Ingots.
4. Address & tele nos of head office and are enclosed herewith (Annex -4)
5. List of Directors with their details is enclosed herewith. (Annex-5).
6. List of Share holders of the company is enclosed herewith (Annex-6).

7. Detail of all bank accounts is enclosed herewith (Annex-7).
8. Copy of Sales Tax/VAT Return company is enclosed herewith (Annex -8).
9. Regarding reason mentioned in the Annexure -A attached with your letter, we are pleased to submit that:

- Your office has relied on the information supplied by the Central Excise Intelligence Department and issued the show cause that sales of Rs.6,23,86,981/- made out of books of accounts has escaped assessment in case of M/s Baba Alloys Pvt. Ltd. within the meaning of Section 147/148 of the Income Tax Act, 1961.
- Your office has relied on the information, which is not yet finalized by the Central Excise department. The hearing is under process there with Central Excise department. The fact may be confirmed by your office with respective office.
- Please provide us the information of department as well as statement of Mr. Sharad Goel and authorized person of Trikot Iron and Steel Casting Private Limited, so that we may examine the same.
- No suspicious material is on record with your office except report of Central Excise Department. No enquiry is being done by your office before the opening of the case.

In the light of the above, please provide us the copy of documents in your possession and investigation done by your office on basis of which, your office made reliance that the case is fit case of opening U/s.147/148.

Thanking you,

Yours faithfully,
For JPRMS & Co.

Chartered Accountants

Sd/-

(CA Peyush N Gupta) Partner”

9.1 Relevant to mention that the objection raised by the assessee dated 01.09.2017 to the reopening of assessment for the A.Y. 2013-14 has been perused by us and found to be verbatim copy of the objection raised for A.Y. 2012-13.

10. It is the mandatory requirement on the part of the Assessing Officer to dispose of the objection filed by the assessee against the reopening of assessment which will lead to the invalidation of the proceedings. The Assessing Officer is to decide the objection and to supply such decisions to the assessee in order to avail an opportunity to challenge the said order by the assessee, if aggrieved, failing which the assessment order under Section 147/148 of the Act deserves to be quashed. In this regard, Learned Counsel appearing for the assessee relied upon the judgment passed by the Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd. Vs. ITO & Ors. reported in 2003 - 259 ITR 19. The judgment passed by the Hon'ble Gujarat High Court in the case of General Motor India Pvt. Ltd. Vs. DCIT in ITA No. 1773 of 2012 and the order passed by the Hon'ble Kolkata Bench in the case of ACIT vs. Mondal Construction Co. Ltd. in ITA No.1896/Kol/2019.

11. Under these facts and circumstances of the matter, we have been considered the judgment as relied upon by the Ld. AR in support of his case in the case of GKN Driveshaft (India) Ltd. Vs. ITO & Ors. (supra) wherein it has been observed that when a notice under Section 148 of the 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 notice, the Assessing Officer is bound to furnish reasons within a reasonable time on receipt of which the notice is entitled to file objection against the issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the matter of General Motor Pvt. Ltd. Vs. ACIT (supra), the Hon'ble Gujarat High Court found the writ petition filed under Article 226 of the Constitution of India maintainable, challenging the order passed by the Assessing Officer without deciding the objection filed by the assessee under Section 148 of the Act and further assessment order passed deciding the objection but not communicating the same to the assessee. We further find that the ratio laid down in both the matters has been duly considered by the Kolkata Bench in the matter of ACIT vs. Mondal Constructions Co. Ltd. (supra) and finally the assessment order stood quashed in the

absence of non-disposal of the objection filed by the assessee against the reasons for issuance of notice under Section 148 of the Act by a speaking order. The said Bench has been pleased to observe as follows:

“5. We have heard both the parties and perused the material available on record as placed before us. The undisputed facts are that the AO has not disposed off the objection filed by the assessee against the re-opening before framing the assessment which in our opinion is a substantive defect which goes to the root of the matter. We have carefully perused the order of Id CIT(A) and find no infirmity therein as the Id CIT(A) allowed the appeal of the assessee on this legal issue by following various decisions as discussed in the appellate order. It is trite law that the assessment framed AY: 2014-15 Mondal Construction Co. Ltd.

without disposing of objections filed by the assessee against the re-opening of assessment is not a valid assessment and cannot not be sustained. The case of the assessee finds support from the decision of the [GKN Driveshafts \(India\) Ltd. vs. DCIT](#) (2003) 259 ITR 19 (SC) wherein the Hon'ble Apex Court has held that when a notice u/s 148 of the Act is issued and the assessee has filed its return of income and sought the reasons for issuance of notice u/s 148 of the Act, the AO is bound to furnish the copy of reasons within the reasonable time and assessee on receipt of the reasons is entitled to file objections to issuance of notice. The Hon'ble Apex Court held that the AO is bound to dispose of the objections filed by the assessee by passing a speaking order. However in the instant case before us, the AO has not disposed off the objections filed by the assessee.

6. Considering the facts of the case in the light of ratio laid as discussed hereinabove , we uphold the order of Id CIT(A) by dismissing the appeal of the revenue. The legal ground raised by the revenue is dismissed.

7. Since the appeal of the revenue has been dismissed on legal issue, the ground raised by the revenue on merits are not being adjudicated and left open to be decided at later stage if the need arises for the same.

8. In the result, the appeal of the revenue is dismissed”.

12. Thus, taking into consideration the entire aspects of the matter, particularly, non-disposal of the objection raised by the assessee on 01.09.2017 to the reopening of assessment by passing a speaking order before proceeding with the reassessment proceedings and finalizing the same which is the duty cast upon the Assessing Officer respectively relying upon the judgment passed by different forums as discussed hereinabove, the order passed by the Assessing Officer is found to be invalid, the same is held as void-ab-initio and thus quashed.

13. Since, the proceeding is found to be not sustainable and quashed the other grounds become academic and no order needs to be passed.

14. In the result, both the appeals filed by the assessee on identical ground are allowed.

Order pronounced in the open court on 25/11/2024.

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Dated: 25th November, 2024.
PS: Rohit

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi