

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "F" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 1690/Mum/2020  
Assessment Year : 2009-10

UTI Asset Management Company Limited, UTI Tower, 'Gn' Block, Bandra Kurla Complex, Bandra (East), Mumbai PAN : AAACU6260F	vs.	Deputy Commissioner of Income Tax , Circle 10(1), Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri J.D. Mistry & Shri Ninad Patade
For Revenue :	Shri Paresh Deshpande, Sr.DR

Date of Hearing :	18-12-2024
Date of Pronouncement :	20-12-2024

**ORDER**

**PER B.R. BASKARAN, A.M :**

The assessee has filed this appeal challenging the order dated 29-01-2020 passed by the Ld. Commissioner of Income Tax (Appeals)-22, Mumbai [Ld.CIT(A)] and it relates to Assessment Year (AY.) 2009-10. In this appeal, the assessee has, *inter alia*, challenged the validity of the reopening of the assessment of the year under consideration.

2. The Ld.AR submitted that the reopening of assessment is not valid on several grounds. One of the grounds urged by the assessee is related to non-disposal of the objection raised by the assessee against reopening of the assessment. The Ld.AR submitted that as per the decision rendered by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO [2003] 259 ITR 19(SC), the assessee can request the AO to supply the reasons for reopening of assessment, after filing of return of income in response to the notice issued u/s. 148 of the Income Tax Act, 1961 ('the Act'). After receipt of reasons for reopening of assessment, the assessee is entitled to file his objections to the reopening and if it is so filed, the AO is bound to dispose of the objections in a separate order in writing before proceeding to finalize the assessment of the reopened proceedings.

3. The Ld.AR submitted that, in the instant case, the AO issued notice u/s. 148 of the Act for reopening the assessment of the year under consideration on 19-03-2013. The assessee requested the AO to supply the reasons for reopening on 23-04-2013. However, the reasons were supplied by the AO to the assessee only on 20-01-2014. Thereafter, the assessee objected to the reopening of the assessment by filing a letter on 11-02-2014. However, the said objection was disposed of by the AO only 24-03-2014. However, in the meantime, the AO had already passed the assessment order on 21-03-2014. Accordingly, the Ld A.R submitted that the AO has passed the assessment order without disposing of the objections raised by the assessee to the reopening of assessment. Accordingly, he submitted that the same is in violation of the procedure prescribed by the Hon'ble Supreme Court in the case of GKN Drive Shafts (India) Ltd (supra) and accordingly, the impugned assessment order is liable to be quashed. He submitted that this contention of the assessee would get support from the decision rendered by the Hon'ble jurisdictional

High Court in the case of KSS Petron Private Ltd., vs. ACIT in Income Tax Appeal No.224 of 2014, dt. 3<sup>rd</sup> October, 2016.

4. We heard the Ld.DR and perused the record. We notice that the Hon'ble Bombay High Court has examined the effect of the non-disposal of the objection before finalization of the assessment order in the case of KSS Petron Private Ltd., vs. ACIT (supra). For the sake of convenience, we extract below the decision rendered by the Hon'ble Bombay High Court:-

*"2 Appeal relates to Assessment Year 2003-04.*

*3 Appeal admitted on the following re-framed substantial question of law:-*

*"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in restoring the issue to the Assessing Officer after having quashed/ set aside the order dated 14th December, 2009 passed by the Assessing Officer without having disposed of the objections filed by the appellant to the reasons recorded in support of the re-opening Notice dated 28th March, 2008."*

*4 As the controversy in the present Appeal is short, at the request of the Counsel, the Appeal is itself taken up for final disposal.*

*5 The regular assessment for the Assessment Year 2003-04 was completed on 10 January, 2006 under Section 143(3) of the Act, determining the Respondent-Assessee's income at Rs.2.28 Crores. Thereafter, on 28 February, 2008, a notice under Section 148 of the Act was issued, seeking to re-open the Assessment for Assessment Year 2003-04. The reasons recorded in support of the notice dated 28 March, 2008 were furnished to the appellant on 8th September, 2008. The Appellant by letter dated 27th October, 2008 objected to the reasons recorded in support of notice dated 28th March, 2008. The Assessing Officer without disposing of the objections of the appellant, completed the Assessment on 14th December, 2009 under Section 143(3) read with Section 147 of the Act. The order dated 14th December, 2009 of the Assessing Officer made addition to the appellant's income on the basis of the reasons recorded for issuing of re-opening notice dated 28th March, 2008.*

6 Being aggrieved, the appellant carried the issue in appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 6th July, 2011, the CIT(A) dismissed the Appeal. Thus, confirming the order dated 14th December, 2009 of the Assessing Officer, passed without disposing of the appellant's objection for re-opening of Assessment.

7 On further Appeal, the Tribunal passed the impugned order. By the impugned order it held that the Assessing Officer was not justified in finalizing the Assessment, without having first disposed of the objections of the appellant. This impugned order holds the Assessing Officer is obliged to do in terms of the Apex Court's decision in GKN Driveshafts (India) Ltd., v/s. ITO 259 ITR 19. In the aforesaid circumstances, the order of the CIT(A) and the Assessing Officer were quashed and set aside. However, after having set aside the orders, it restored the Assessment to the Assessing Officer to pass fresh order after disposing of the objections to re-opening notice dated 28th March, 2008, in accordance with law.

**8 We note that once the impugned order finds the Assessment Order is without jurisdiction as the law laid down by the Apex Court in GKN Driveshafts (supra) has not been followed, then there is no reason to restore the issue to the Assessing Officer to pass a further/fresh order. If this is permitted, it would give a licence to the Assessing Officer to pass orders on re-opening notice, without jurisdiction (without compliance of the law in accordance with the procedure), yet the only consequence, would be that in appeal, it would be restored to the Assessing Officer for fresh adjudication after following the due procedure. This would lead to unnecessary harassment of the Assessee by reviving stale/ old matters.**

9 In fact, to ensure that re-opening notices are disposed of, expeditiously the parliament itself has provided in Section 153(2) of the Act a period of limitation within which the Assessing Officer must pass an order on the notice of re-opening i.e. within one year from the end of the financial year in which the notice was issued. In fact, Section 153 (2A) of the Act as in force at the relevant time itself provides that an order of fresh Assessment, consequent to the order of Tribunal under Section 254 of the Act, would have to be passed within one year from the end of the financial year in which the order under Section 254 of the Act, was passed by the Tribunal and received by the Commissioner of Income Tax.

10 The Director of the appellant has filed an affidavit dated 19th September, 2006. In the affidavit, it is stated that consequent to the impugned order of the Tribunal dated 14th August, 2013, the Assessing Officer has not passed any order of re-assessment. Time was granted on the last occasion to enable the Respondent to respond to the affidavit dated 19th September, 2006 of the Director of the Appellant-

*Company. The Respondent is unable to dispute the facts stated in the affidavit dated 19th September, 2016 filed by the Director of the Appellant-Company. The time to pass an order on the notice dated 28th March, 2008, even consequent to the impugned order of the Tribunal, has lapsed.*

*11 Therefore, on the above facts and law, the substantial question of law is answered in the negative i.e. in favour of the Appellant- Assessee and against the Respondent-Revenue.”*

5. Since in the instant case, the AO has passed the assessment order without disposing-of the objections filed by the assessee for reopening of the assessment, the impugned assessment will not be valid as per the decision rendered by the Hon'ble Bombay High Court in the above referred case. Accordingly, we decide the above said legal issue in favour of the assessee and accordingly quash the orders passed by the tax authorities.

6. The assessee has also challenged the validity of reopening of the assessment on some other grounds also. Since we have quashed the assessment order on the legal issue discussed above, the remaining grounds are not adjudicated and they are left open. Since we have quashed the assessment order, the grounds raised on merits also do not require any adjudication.

7. In the result, the appeal filed by the assessee allowed.

Order pronounced in the open court on 20-12-2024

Sd/-  
[ANIKESH BANERJEE]  
JUDICIAL MEMBER

Sd/-  
[B.R. BASKARAN]  
ACCOUNTANT MEMBER

Mumbai, Dated: 20-12-2024

TNMM

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1.	The Appellant
2.	The Respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "F" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,  
ITAT, Mumbai