

आयकर अपीलीय अधिकरण  
दिल्ली पीठ "बी", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एस रिफौर रहमान, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER  
आअसं.1152/दिल्ली/2020(नि.व. 2011-12)  
ITA No. 1152/DEL/2020 (A.Y.2011-12)

Income Tax Officer,  
Ward-2, Karnal, Haryana 132001

..... अपीलार्थी/Appellant

बनाम Vs.

Hardeep Singh,  
S/o Jaswant Singh, Vill. Kutail,  
PO Darar, Karnal, Haryana 132001  
PAN: EXUPS 8061 N

..... प्रतिवादी/Respondent

CO No. 150/DEL/2023 (A.Y.2011-12)  
In ITA No. 1152/DEL/2020

Hardeep Singh,  
S/o Jaswant Singh, Vill. Kutail,  
PO Darar, Karnal, Haryana 132001  
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..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer,  
Ward-2, Karnal, Haryana 132001

..... प्रतिवादी/Respondent

Assessee by : S/Shri Ved Jain, Aman Garg, Advocates &  
Ms. Uma Upadhyay, Chartered Accountant  
Department by: Shri Vivek Kumar Upadhyay, Sr. DR

सुनवाई की तिथि/ Date of hearing : 13/12/2024  
घोषणा की तिथि/ Date of pronouncement: : 27/12/2024

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-Karnal (hereinafter referred to as 'the CIT(A)') dated 24.01.2020, for assessment year 2011-12. The assessee has filed Cross Objections in the said appeal by Revenue.

2. The facts of the case as emanating from records are; Notice u/s. 148 of Income Tax Act, 1961(hereinafter referred to as 'the Act') was issued to the assessee on 23.03.2018. In response to the said notice, the assessee filed return of income on 05.05.2018 declaring income of Rs.1,34,955/- and agricultural income of Rs.2,70,468/-. The assessee filed objections against reopening of assessment on 23.08.2018. The contention of the assessee is that the Assessing Officer (AO) in violation of the law laid down by the Hon'ble Supreme Court of India in the case of *GKN Driveshafts (India) Ltd vs ITO, 259 ITR 19* completed the assessment without disposing of objections of the assessee by a separate order. The AO vide assessment order dated 31.12.2018 passed u/s. 143(3) r.w.s 147 of the Act made addition of Rs.2,57,38,200/- on account of cash deposits. Against the said assessment order, the assessee filed appeal before the CIT(A) *inter alia* assailing validity of assessment proceedings u/s. 147 r.w.s 148 of the Act, and the addition on merits. The CIT(A) vide impugned order allowed appeal of the assessee and quashed the assessment order on the ground that the AO before proceeding with the assessment was mandatorily required to dispose of objections of the assessee, as per dictum of the Hon'ble Apex Court in *GKN Driveshafts (India) Ltd vs. ITO (supra)*. Hence, the present appeal by the Revenue.

3. Shri Vivek Kumar Upadhya, representing the department submitted that the objections of the assessee dated 23.08.2018 were considered by the AO and were disposed of on 05.09.2018. The assessee filed same objections on 26.12.2018 at the fag-end, that is just four days before time barring date for completion of assessment. He further submitted that merely for the reason that the AO failed to comply with the procedure indicated by the Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd vs. ITO (supra) would not rendered the assessment proceedings null and avoid. At the most it can be held as procedural infirmity that can be rectified. To support his contention; he placed reliance on the decision in the case of *Home Finders Housing Ltd. vs. ITO 404 ITR 611 (Madras)*. He submitted that against the decision of Hon'ble High Court, the SLP filed by the assessee was dismissed.

4. Au contraire, Shri Ved Jain appearing on behalf of the assessee vehemently defended the impugned order and prayed for dismissing appeal of the Revenue. He submitted that the AO without disposing of objections filed against reopening of assessment has passed the assessment order. The Hon'ble Apex Court has mandated that the objections have to be decided by the AO by passing a speaking order before proceeding to complete the assessment. Deciding of objections against reopening is not merely a procedural formality but goes to the root of validity of reassessment proceedings. He further pointed that letter dated 05.09.2018 vide which the AO is stated to have disposed of the objections does not deal with objections of the assessee at all, it only says that proceedings u/s. 148 of the Act have been initiated on the basis of cash deposits and copy of reasons u/s. 148 of the Act have already been supplied to the assessee and the assessee is now required to explain the source of cash deposits along with

documentary evidences. Thus, a perusal of letter would show that it does not deal with the detailed objections filed by the assessee against reopening of assessment. The Id. Counsel for the assessee submitted the various High Courts including jurisdictional High Court have held that the law laid down by Hon'ble Supreme Court of India has to be necessarily followed. If any order is passed in violation of the law laid down by Hon'ble Apex Court it is without jurisdiction. To buttress his arguments he placed reliance on following decisions:-

*i. Ferrous Infrastructure P. Ltd. vs DCIT, 2015 (5) TMI 871 (Delhi HC);*

*ii. KSS Petron P Ltd. vs ACIT 2016 (10) TMI 1112 (Bom HC);*

*iii. CIT vs. M/s. Pentafour Software Employee's Welfare Foundation, 418 ITR 427 (Madras);*

*iv. ITO (Exemption) vs ICAI University Dehradun, 2019 (5) TMI 1389 (ITAT Del); and*

*v. Shri S Subash Chand Nahar vs DCIT, 2023 (11) TMI 7 (SC).*

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered the decisions on which rival sides have placed reliance. The solitary grievance of the Department in present appeal is against findings of the CIT(A) in quashing assessment order for non disposal of assessee's objections filed against reopening of assessment. The contention of the Revenue is that the AO before proceeding with assessment has disposed of objections of the assessee dated 23.08.2018 vide letter dated 05.09.2018. Before, proceeding further it would be imperative to refer to said letter vide which the objections of the assessee are alleged to have been decided. For the sake of ready reference, the relevant extract of the same is reproduced herein below:

*“Sub:- Income-Tax assessment proceedings u/s 148/143(3) for the A.Y. 2011-12-regarding-*

*Please refer to your letter dated 23.08.2018 on the above noted subject.*

*2. In this regard, it is stated that proceedings u/s 148 have been initiated on the basis of cash deposits amounting to Rs. 1,95,91,000/- in OBC bank, G.T. Road, Karnal and copy of reason u/s 148 have already been supplied to you by this office on 23.08.2018. Therefore you are requested to explain the source of cash deposits amounting to Rs. 1,95,91,000/- to this office by 10.09.2018 alongwith documentary evidence. Your case is fixed for hearing on 10.09.2018.*

*Your faithfully,*

*Sd/-*

*Kavita Batra  
Income-Tax Officer,  
Ward-2, Karnal”*

6. A bare reading of contents of aforesaid letter would show that it does not deal with the objections filed by the assessee against reopening of assessment. Hence, contentions of the Revenue that the objections were disposed of by the AO on 05.09.2018 are misplaced. I find no infirmities in the finding of First Appellate Authority. The objections of the assessee against reopening of assessment were not disposed off by the AO, hence, the assessment is vitiated.

7. The Revenue has placed reliance on the decision rendered in the case of Home Finders Housing Ltd. vs. ITO (supra), to contend that non disposal of objections are mere procedural formality and would not make reassessment order *void ab initio*.

7.1. The assessee has placed reliance on various decisions to contend that non disposal of assessee's objections by the AO by passing a separate, speaking order is fatal to the assessment. The Hon'ble Delhi High Court in the case of Ferrous

Infrastructure P. Ltd. (supra) on the issue of non compliance of directions of Hon'ble Supreme Court of India in the case of GKN Driveshafts (supra) held:-

*"8. We may also point out that the second issue raised by the learned counsel for the petitioners also deserves some consideration. In GKN Driveshafts (supra), the Supreme Court had directed as under:-*

*"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 abovesaid five assessment years."*

*8. On going through the same, it is evident that the Assessing Officer has to pass a speaking order disposing of the objections "before proceeding with the assessment". In the present case, a separate speaking order has not been passed and the objections have been dealt with, if at all, in the re-assessment order itself. On this ground also, the petitioner is liable to succeed."*

7.2. The Hon'ble Bombay High Court in the case of KSS Petron P. Ltd. (supra) taking a similar view held:

*"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 reopening 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."*

7.3 The Hon'ble Madras High Court in the case of CIT vs. Pentafour Software Employees' Welfare Association (supra), subsequent to the decision rendered in the case of Home Finder Housing Ltd. (supra) held that, the procedure carved out in GKN Driveshafts (India) P Ltd. (supra) is binding, if any order violates the law laid down by Hon'ble Supreme Court of India, then it is without jurisdiction. For the sake of completeness the relevant extract of the observations by Hon'ble High Court are reproduced herein under:-

*"36. In our considered view, the decision arrived at in the case of Jayanthi Narayanan (supra) reflexes the correct position of law because, the procedure carved out by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. (supra) not only binds the assessee, but also the Revenue. Filing of objections to the reasons for reopening is not an empty formality. If this is so, passing a speaking order on the objections cannot be treated as an empty formality and to be brushed aside as a procedural error. The purpose for passing a speaking order on the objections is to afford an opportunity to the assessee to question the same, in the event the assessee is aggrieved by such an order. Therefore, to state that it would be sufficient for the Assessing Officer to deal with the objections in the assessment order and thereafter, if the assessee is aggrieved, he can file a statutory appeal, is a proposition which would be against the principles of natural justice. Therefore, if an order violates the law laid down by the Hon'ble Supreme Court, then it has to be necessarily held to be an order without jurisdiction. The law declared by the Hon'ble Apex Court is a binding character and is a source of law and to itself which will bind all authorities.*

37. xxxxxxxx

38. xxxxxxxx

39. *The Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. (supra) had clarified that when a notice under Section 148 of the Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek for reasons for issuing such notice. Further, it was held that the Assessing Officer is bound to furnish reasons within a reasonable time, on receipt of the reasons, the noticee is*

*entitled to file objections and the Assessing Officer is bound to dispose of the same by passing a speaking order.*

*40. We do not agree with the interpretation canvassed before us that assuming objections were not disposed of by a speaking order, it would be only a procedural error.*

*41. We have referred to Kelvinator of India Ltd. (supra), which has pointed out as to how serious is reopening of a concluded assessment, that too, after four years. The Hon'ble Supreme Court has laid down the law and it has been made mandatory for the Assessing Officer to pass a speaking order. The use of the word "bound" cannot be rendered meaningless. Therefore, we are of the clear view that if there has been a procedural error, it goes to the root of the matter thereby affecting the jurisdiction of the Assessing Officer to proceed further to give a fresh innings to the Assessing Officer on the ground that it is a procedural error, will not only dilute the decision of the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. (supra), but would lead to abuse of power conferred under Section 147 of the Act, which had been pointed out in Kelvinator of India Ltd. Therefore, this would be the one more reason to hold that the reopening of assessments are bad.*

*(Emphasized by us]*

8. In so far as dismissal of assessee's SLP in the case of Home Finders Housing P. Ltd. (supra) is concerned, we observe that the SLP has been dismissed at threshold without any observations by the Hon'ble Apex Court. Dismissal of SLP in *limine* without any detailed reasons, does not constitute any declaration of law or a binding precedent under Article 141 of the Constitution [Re. State of Orissa vs Dhirendra Sundar Das (2019) AIR SC 2331].

9. Thus, in light of our above findings, we find no merit in appeal by the Revenue. We concur with the findings of the CIT(A), hence, appeal of Revenue is dismissed.

10. The assessee has filed cross objections supporting the order of CIT(A). Since, we have dismissed appeal of the Revenue, the cross objections filed by the assessee have become infructuous and the same are dismissed as such.

**11. In the result, appeal of the Revenue and cross objections by the assessee are dismissed.**

Order pronounced in the open court on Friday the 27<sup>th</sup> day of December, 2024.

Sd/-

(S RIFAUR RAHMAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 27/12/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**NV/-**

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI