

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1639/Mum/2024
Assessment Year: 2011-12

DCIT, Central Circle - 4(1), Mumbai	Vs	Kanakia Spaces Realty Pvt. Ltd., Mumbai 10 th Floor, 215 Atrium Andheri Kurla Road Andheri East Mumbai - 400093 [PAN: AACCC4199F]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

C.O. No. 86/Mum/2024
Assessment Year: 2011-12

Kanakia Spaces Realty Pvt. Ltd., Mumbai 10 th Floor, 215 Atrium Andheri Kurla Road Andheri East Mumbai - 400093 [PAN: AACCC4199F]	Vs	DCIT, Central Circle - 4(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Vijay Mehta, A/R
Revenue by :	Shri Biswanath Das, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 18/12/2024
घोषणा की तारीख /Date of Pronouncement: 20/12/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 1639/Mum/2024 & C.O. No. 86/Mum/2024, are appeal by the revenue and cross-objection by the assessee preferred against the order of the Id. CIT(A) -52, Mumbai, dated 30/01/2024, pertaining to AY 2011-12.

2. The grievance of the revenue read as under:-

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in reducing the disallowance from 100% to 12.5% of the bogus purchases, i.e. from Rs. 13,52,010/- to Rs. 1,69,001/- and thus reducing the taxable income by Rs. 11,83,009/-, without appreciating the fact that the assessee couldn't prove the genuineness of these bogus purchases.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance of Rs. 3,00,00,000/- on account of bogus deduction claimed u/s 35AC of the Act, without appreciating the fact that the entity trust which received the donation was only providing accommodation entries to the assessee in lieu of donation made by the assessee.

3. The appellant craves to leave, to add, to amend and/or to alter any of the ground, if need be."

3. The grounds raised by the assessee in the cross-objections read as under:-

"1. The learned CIT(A) has erred in upholding the reopening of assessment by issuing notice u/s 148 of the Act.

2. The learned CIT(A) has erred in upholding disallowance of alleged bogus purchase to the extent of 12.5% of addition made by the Assessing Officer."

4. Since Ground No. 1 of the cross-objection goes to the root of the matter, we decide to take this ground first. The assessee has challenged the assumption of jurisdiction thereby challenging the validity of the re-assessment proceedings.

5. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidence brought on record duly considered in light Rule 18(6) of the ITAT Rules, 1963. Judicial decisions relied upon were considered wherever necessary.

6. Briefly stated, the facts of the case are that the assessee filed its original return of income on 28/09/2011 declaring total income at Rs.

Nil. This return was selected for scrutiny assessment and subsequently an order u/s 143(3) of the Act was passed on 28/03/2013 assessing total income at Rs.4,14,25,180/-. This assessment was framed in the old name of the assessee, namely, Centaur Mercantile Pvt. Ltd.

6.1. The AO issued notice dated 06/06/2014 and assumed jurisdiction for reopening the assessment and the reasons for reopening were given as under:-

**The Reasons for Re-opening in case of M/s. Centaur Mercantile P. Ltd
Assessment Year : 2011-12**

"It has been found that the assessee has made bogus purchases from the following parties in the respective quanta stated against them.

S.No	Name of supplier	TIN of supplier	Amount of purchase in Rs.
1	Siddivinayak Trading Company	27830560491V	31,149
2	Subh Enterprises	27330733135V	3,29,913
3	R B Enterprises	27550544543V	9,90,948
	Total		13,52,010

The above suppliers have admitted before the Sales Tax Department of the State of Maharashtra that they have been involved in the supply of bogus bills, without delivery of goods. The statements of the managing persons of the above concerns have been recorded before the Sales Tax Authorities. In these statements the above parties have admitted that they have been engaged in supplying bogus bills in their names to many beneficiaries parties. This information was received by the O/o the DGIT (Inv.), Mumbai from sales Tax Department and was forwarded to the respective Assessing Officers after processing.

The above mentioned information leads to drawing a prima facie conclusion that the assessee has taken bogus bills from the above parties and has therefore inflated its purchases in its books, through such bogus bills. The inflation of purchases has therefore led reduction in profits and has led to the escapements of income to the above extent.

Therefore, there is a reason to believe that the income chargeable to tax to the extent of Rs.13,52,010/- has escaped assessment and has subsequently come to the notice of this office. This issue needs to be examined and the said income brought to tax."

6.2. The assessee vide letter dated 19/01/2016, raised objections for reopening the assessment, the same read as under:-

The Deputy Commissioner of Income Tax,
Central Circle – 4 (1),
Mumbai



Respected Madam,

Re: M/s Centaur Mercantile P. Ltd
PAN: AACCC4199F
Assessment year 2011-12

Our above client is in receipt of notice u/s 142(1) with annexure requiring for submitting the details / explanations called for in the said notice. In reference to the same & under the instructions from our above client, we submit as under –

1. Our objections against the reasons recorded for issuance of notice u/s 147 of the I T Act - Separately submitted
2. In respect of purchases made form alleged bogus parties –
 - a) Copy of bills - Sample bill at 'A'
 - b) Proof of transportation - Free delivery at site
 - c) Purchase register - Enclosed at 'B'
 - d) Ledger account of parties - Enclosed at 'C'
 - e) Copy of stock register - Not maintained
 - f) Material receipt register - Sample GRN at 'D'
 - g) Description of material purchased - Aggregates
 - h) Use of material purchased - In construction
 - i) Proof of payment made - Bank Statement 'E'
3. Name & Address, copy of account, PAN no etc - Annexure 'F'
4. Bank statement reflecting payment made to these parties - Annexure 'E'
5. It is stated at point no 5 that "A survey u/s 133 A was conducted on several premises of Kanakia Group including your case on 29.12.2014 in follow up to search and seizure action on 27.10.2014 in case of M/s Navjeevan Charitable Trust. In the course of action it was found that this trust is engaged in providing accommodation entry by accepting donation cheques and returned in cash after deducting nominal commission. You have paid a sum of Rs. 3 Crore to Navjeevan Charitable Trust & claimed deduction u/s 35 AC of the Act. You are show caused as to why the deduction claimed u/s 35 AC be not allowed."

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In response to the same & under the instructions from our above client, we submit as under –

- a. Search action u/s 132 was carried out on Kanakia group on 29/03/2011. Also survey action u/s 133 A was also carried out on Kanakia group on 29/12/2014. Nothing incriminating was found whereby it can be alleged that these donation is mere accommodating entry. Moreover, in my return of income filed for above assessment year, deduction u/s 35 AC was claimed and during the course of assessment proceedings details regarding donation given with receipt was filed. Please note that deduction u/s 35 AC was allowed in the assessment passed u/s 143(3).
- b. As against these you have relied on the search in the premises of Navjeevan Charitable Trust wherein it is stated that *"this trust is engaged in providing accommodation entry by accepting donation cheques and returned in cash after deducting nominal commission. You have paid a sum of Rs. 3 Crore to Navjeevan Charitable Trust & claimed deduction u/s 35 AC of the Act. You are show caused as to why the deduction claimed u/s 35 AC be not allowed."*

However, you have not stated whether any evidence was found in that search indicating return of cash of Rs. 3 Cr to these assessee. You have also not stated as to whether the main trustee had said that against cheque of Rs. 3 Cr, cash s returned to these assessee. Thus, you have merely suspected that the donation by these assessee is an accommodation entry.

- b. Before replying in detail, it is requested in the interest of natural justice, to provide the following –
 - Copy of statements recorded of Trustees wherein there is confirmation of returning of cash to these assessee.
 - Documents / papers seized from place where search was conducted wherein noting is found about returning of cash to these assessee.
 - Any other direct proof or statement in support of allegation of the Department.
- c. Since the Trust is notified by the National Committee, Ministry of Finance, Government of India, for the purpose of deduction u/s 35 AC of the I T Act, 1961, deduction is allowable u/s 35 AC to these assessee. Enclosed herewith receipt issued by the Trust & approval of Trust u/s 35AC - Annexure G
- d. Further, we request you to provide us an opportunity for cross examination of the principal officer, Navjeevan Charitable Trust who had said having returned cash against cheque to these assessee at your convenient time.

On receipt of the same, we shall submit our further reply.

Thanking you,

Yours Sincerely,

N:1024

Encl: As above

CERTIFIED TRUE COPY



The Deputy Commissioner of Income Tax,
Central Circle – 4 (1),
Mumbai

Respected Madam,

Re: M/s Centaur Mercantile P. Ltd
PAN: AACCC4199F
Assessment year 2011-12

Our above client is in receipt of reasons for reopening of assessment u/s 147 of the I T Act, 1961. The same reads as under –

“The assessee filed its Return of Income on 28/09/2011 declaring total loss of Rs.3,05,31,399/-. This office is having information that the assessee has obtained bills of bogus purchases from the following parties:-

TIN No	Name of the Party	Amount (In Rs.)
27830560491V	M/s Siddivinayak Trading Company	31,149/-
27330733135V	M/s Subh Enterprises	3,29,913/-
27550544543V	M/s R.B Enterprises	9,90,948/-
	Total	13,52,010/-

It would not be out of place to mention here that the specific information was received from the office of the DGIT (Inv), Mumbai that the assessee made purchases from the above mentioned parties as per details given in the above table. It was informed that the Sales Tax Department, Mumbai, Govt. of Maharashtra carried on detailed enquiries in respect of above parties and recorded statements, deposition, affidavit etc of main persons of above concern which established that no actual goods or services are delivered by these parties to their customers and they have issued bogus bills after charging small commission.

In view of detailed enquiries made by the Sales Tax Department, it is evident that the assessee took bills worth Rs. 13,52,010/- at least from the above parties to inflate its purchases. Hence, I have reason to believe that income chargeable to tax has escaped assessment by reason of failure on the part of assessee to disclose fully and truly all material facts necessary for that assessment year i.e for A Y 2011-12 within the meaning of section 147 of the Income Tax Act, 1961.”

We object the above reasons on the following facts – ✓

1. Assessee is builder & developers.
2. Search action u/s 132 was carried out on the assessee on 29-03-2011. The same was concluded on 24-05-2011.
3. Search revealed that the assessee company along with other group concern had shown various purchases from paper entities which have only issued accommodation bills.
4. On 24-05-2011, final statement of Shri Rasesh Kanakia was recorded u/s 132(4). In the final statement, he confirmed sum of Rs. 39,42,19,151/- in the hands of various group concerns on account of purchases made from parties who are known to be paper entities issuing accommodation bills whose credentials were in doubt.
5. In the hands of assessee, sum of Rs. 17,05,48,209/- was admitted on account of purchases made from parties who are known to be paper entities issuing accommodation bills whose credentials were in doubt.
6. As regards above admission of bogus purchases, there were no supporting documents available.
7. As regards genuine purchases, details like PO / Bills / Challan / Copy of account / GRN etc were submitted with ADIT, Unit V(2), Mumbai - Copy enclosed at 'A'
8. Thereafter notice u/s 153 A was issued for A Y 2005-06 to A Y 2010-11.
9. Assessee filed return of income for A Y 2005-06 to A Y 2010-11 in response to notice u/s 153 A of the I T Act.
10. Assessee also filed return of income for A Y 2011-12 u/s.139(1) of the I T Act.
11. Assessment for A Y 2005-06 to A Y 2011-12 were completed u/s 153 A r.w s 143(3) / 143(3) as the case may be with the prior approval of Additional Commissioner of Income Tax, Central Circle – 23, Mumbai
12. In respect of above parties, we submit the copy of ledger account, sample copy of bill / delivery challan / PO / GRN, bank statement reflecting payment made to them for your kind perusal - Annexure 'B'
13. From the bills, it is seen that item purchase from above parties is of 13,52,010/-. Challan reflects the date of delivery, site address, lorry no, total quantity delivered, receiver signature. Bank statement reflects the payment to above listed parties is made by an account payee cheque only.
14. ✓ The purchases made have been utilized for the construction work carried out for the project. The construction work could not be carried out unless materials have been utilized for the same.

15. At the time of purchases, appellant had confirmed the validity of VAT number from the sales tax department, which now been now declared as havala dealers. Thus, appellant, in bonafide belief has accepted the same and accordingly made purchases as well as made payment for the same. It was later that the Sales Tax Department have investigated the erring dealers and declared them as havala dealers.
16. It can be appreciated that list of suspicious / bogus / havala dealer is prepared on the basis of various reasons like statements of the proprietor of the supplier, on the basis of report of the inspector / Sales Tax Officer about non availability of such dealer at the address as per Sales Tax department address etc. The name of the parties also appears if such dealers have not filed MVAT / CST returns and / or not paid MVAT dues to the State Government Exchequer.
17. It is submitted that mere appearance of the name in the list of Sales Tax authorities or a general statement recorded by such authorities wherein name of the appellant and the amount concerning the assessee has not been specified, would not be conclusive enough to prove the purchases made by the assessee as bogus.
18. Noting for the period 01-04-2007 to Feb, 2011 was found & seized from the office premises during the course of search. The said noting reflects the cash receipt from accommodation transactions and utilization thereof. In the said noting, there is no receipt of cash from these parties which proves that the purchases are not by mere accommodation entry. Further there was a survey action u/s 133A on the group on 29/12/2014 wherein also there was no finding about accommodative transaction with these parties.
19. In view of the above facts, it is proved beyond doubt that purchases from these parties is genuine purchases as goods were actually received by the assessee and the payment is made by an account payee cheque without receiving cash back from these parties.

Thus, purchases are genuine as confirmed by the above facts & documentary evidences and question of treating the same as accommodation bills to inflate the cost does not arise.


You are requested to take a note of our above objection to reopening of assessment u/s 147 of the I T Act, 1961.

Thanking you,

Yours Sincerely,



Encl: As above





6.2.1. The above extract clearly show that when the reasons for reopening the assessment were supplied by the AO, the assessee specifically objected for the reopening of the assessment. The objections raised by the assessee were very specific and point-wise as mentioned hereinabove.

6.3. The AO framed assessment u/s 143(3) r.w.s. 147 of the Act vide order dated 21/03/2016 and there is not even a whisper about disposing the objections raised by the assessee. When this was brought to the notice of the Id. CIT(A), the Id. CIT(A) simply rubbished the contention of the assessee by holding as under:-

“5.8. The appellant has raised another contention that Assessing Officer has not disposed off the objection filed by the appellant against reopening. In this regard, find that the AO had issued notice u/s 148 dt. 06.06.2014. The appellant's response came much later after 18 months vide letter dt. 02.12.2015 stating that its return filed earlier be considered. The objections to reopening have been subsequently made on 19.01.2016. Given the inordinate delay of 18 months by the appellant, it would not be prudent to lay blame on the AO. Hence, this part of the argument of the appellant is not sustainable.

5.9. In any case, the Hon'ble Madras High Court in Home Finders Housing Ltd. v. ITO, 404 ITR 611 has held that any procedural irregularity in Sec. 148 proceedings including non-disposal of objections could be cured by remitting the matter to the AO. This view of the Hon'ble Madras High Court has been upheld by the Hon'ble Supreme Court in 256 taxman59. Hence, even if this ground were to be admitted, the only course of option left is to make the case available to the AO for fresh reassessment and the order cannot be treated as null and void.”

7. We have given a thoughtful consideration to the orders of the authorities below *qua* the issue raised by the assessee. We are of the considered view that by not disposing the objections raised by the assessee, the AO fell into a grave error and that error was confirmed by the Id. CIT(A) who further erred in accepting the assessment.

8. The Hon'ble High Court of Bombay in the case of *KSS Petron P. Ltd. vs. ACIT in ITA No. 224 of 2014 dated 03/10/2016*, was seized with the following 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 reopening Notice dated 28th March, 2008.?”

9. The Hon'ble High Court *inter alia*, held as under:-

"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.

9. In fact, to ensure that reopening 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 reopening 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 Hon'ble High Court of Bombay in the case of MSPL Gases Ltd. vs. DCIT in ITA No. 1269 of 2015 dated 27/01/2016, observed as under:-

"4. When the Petition reached effective hearing for the first time on 23 July 2015 for admission, the Revenue accepted the position that the order dated 3rd February 2015 passed on reopening of assessment for AY 2010-11 is without jurisdiction and the same be set aside. However, we were disturbed as on quite a few occasions we had noticed the orders on reassessment were being passed without disposing of the objections. However, in Court the Revenue accepts the position that the order is not sustainable. We were of the view that if a mechanism could be put in place by the Revenue to recall an order such as this (where even the Revenue concedes that the order dated 3rd February 2015 is without jurisdiction). This for the reason that otherwise Assessee are being unnecessarily harassed and have to move the Court to remedy the injustice to have the order which is ex facie without jurisdiction, set aside.

8. It is accepted by the Revenue that passing of an assessment order without disposing of the objections to the reasons recorded in support of the reopening notice, is an order without jurisdiction being in defiance of the Apex Court's decision in GKN Driveshafts (India) Ltd (supra). Therefore, we set aside the order dated 3d February, 2015 passed on reassessment for the A. Y. 2010-11."

11. Again in the case of *Bayer Material Science P. Ltd. vs. DCIT (382 ITR 333)*, the Hon'ble Bombay High Court was seized with the following facts:-

"5. On 25th March, 2015 the Petitioner filed its objections to the reasons recorded as communicated on 19th March 2015 for issuing the impugned notice dated 6th February, 2013. The Assessing Officer without disposing of the Petitioner's objections passed a draft Assessment order dated 30th March, 2015."

12. The Hon'ble High Court, consequently held as under:-

".....This passing of the draft Assessment order without having disposed of the objections is in defiance of the Supreme Court's decision in GKN Driveshafts (India) Ltd. (supra). Thus, the draft Assessment order dated 30th March, 2015 is not sustainable being without jurisdiction. This for the reason that it has been passed without disposing of the objections filed by the Petitioner to the reasons recorded in support of their impugned notice. Accordingly, we set aside the draft Assessment order dated 30th March, 2015. We are not dealing the validity of the reasons in support of the impugned notice in the present facts as the time limit to pass the Assessment order as provided under 4th Proviso to sub-section(2) of Section 153 of the Act has already expired when the petition was filed."

13. The Co-ordinate bench in the case of *Manish Rajnarain Goswami vs. ITO in ITA No. 3960/Mum/2023*, was considering the disposal of objections by the AO and found that all the objections of the assessee were not disposed off. The Co-ordinate Bench held as under:-

"15. Let us examine the validity of reopening from another angle, the assessee raised objections to reopening and the objections of the assessee read as under:

"I am in receipt of your notice u/s. 148 of the Income Tax Act 1961, dated 18/6/2018 along with reasons recorded for reopening for the A.y. 2011-12. I submit as under:

1. *I request Your Honor to kindly provide me the copy of sanction given by Pr. Commissioner of Income Tax after being satisfied of the reason recorded by your goodself that my case is fit for issue of notice u/s. 148 of the Act for reopening the case*

2. *I understand from the reasons provided by your goodself that you have received information from Asstt DIT (inv), unit 2(17) Kolkata that Wheelers developers pvt ltd has deposited large value of cash into several bank accounts maintained with ICICI bank followed by transfer to other accounts. You are requested to provide me copy of all such bank statements.*

I am Informed by Wheelers developers pvt ltd that company has not deposited any cash before transfer of amount to me. Money was deposited from Korp

Securities Limited against sale of securities, I enclose copies of the bank statement and letter dated 16th July, 2018 for your kind perusal.

I object to the said reassessment since there does not appear to be any independent finding of escapement by your goodself and there is merely a reliance on the directions of the Asst. DIT (Inv), Unit -2 (1), Kolkata. The law on reassessment is clear to the effect that an assessment can be reopened only if the Assessing Officer has reasons to believe that income of the assessee has escaped assessment. The formation of this belief is a jurisdictional condition and its absence can vitiate the re-assessment proceedings.

without prejudice to above I further submit that case is reopened beyond the limitation period of four years I have disclosed all the facts while filing income tax return.

3. *I object to the said reassessment proceedings and request you to kindly provide us with copy of all the evidences that is to be used against me. Treat these as my objections to the reassessment and kindly deal with these before proceeding with the said assessment.*

4. *I also request you to give us opportunity to file further objections based on material provided by you. In case your goodself is going to rely on the evidences provided by Asst. DIT(Inv) Kolkata collected on Wheelers Developers Pvt Ltd, you are requested to kindly provide me all such evidences and statements taken during search /survey and also provide us an opportunity to cross examine concerned persons.*

In view of the above I request Your Honor to drop the reassessment proceedings and oblige."

16. Order disposing the objections raised by the assessee read as under: -

"ORDER DISPOSING OFF THE OBJECTIONS RAISED ON THE RE-OPENING OF THE ASSESSMENT u/s. 148 OF THE I.T. ACT

Kindly refer to the above wherein you have been submitted reply to this office letter dated 18/06/2018.

2. *In your submission, you have stated that you are required the documents which are the basis of reopening of your assessment for the year under consideration and without that the objection cannot be filed without 'proper examination of the same.*

2.1 *In this respect, this is to submit that your case has been reopened after due approval of the Pr. CIT-16, Mumbai as per the provisions of section 151(1) of the I.T. Act, 1961 and after satisfying the reasons recorded by the Assessing officer. As required by you, copy of which is also enclosed herewith.*

2.2. *In respect of copies of documentary evidences/statements recorded or any other information found/recorded in search on which reliance is placed for re-opening of your assessment is concern, this is to inform you that 'at the initiation stage, what is required to the Assessing Officer for reopening the case is reason to believe, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on record which a reasonable person could have formed a requisite belief. This fact was also confirmed by the Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Brokers P. Ltd. [291 ITR 500].*

2.3 *Further, in the case of Raymond Woollen Mills Ltd reported in 236 ITR 34, the Hon'ble Supreme Court has also held that at the stage of initiation of reassessment, the only thing required to be seen by the Assessing officer is that whether there is any prima facie*

material on the basis of which a case can be reopened. It is further held that the sufficiency or correctness of material is not a thing to be considered at this stage.

2.4 In respect of the bank statement and copy of letter from wheelers developers Pvt Limited, it is to submit that during the course of assessment proceedings, you will be afforded adequate opportunity to explain your case and the resultant order will be passed on an objective appraisal of the evidence available and details/evidences submitted thereon by you.

3. In view of the above discussion, objections raised by the assessee for reopening of the case u/s.147 are hereby disposed of. You are accordingly required to submit details as per notice u/s.143(2) & 142(1) enclosed."

17. It can be seen from the above that the objections raised by the assessee has not been fully disposed by the Assessing Officer. The Hon'ble Jurisdictional Bombay High Court in the case of KSS Petron Private Ltd. v. ACIT in Income Tax Appeal No. 224 of 2014 dated 03.10.2016, had an occasion to consider the following 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.?"

18. The Hon'ble High Court answered as under: -

"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 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 a 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."

19. Considering the reopening from all possible angles, we are of the considered view that the impugned notice issued under section 148 of the Act is bad in law and

accordingly, we set-aside assessment order framed pursuant to the said notice is quashed. The appeal of the assessee is allowed Qua Ground No. 1 and since the assessment order has been quashed we do not find it necessary to dwell into the merits of the case."

14. Considering the facts of the case in totality, in light of the decisions of the Hon'ble Jurisdictional High Court, discussed hereinabove, we have no hesitation in holding that the AO erred in assuming jurisdiction in framing the assessment order u/s 143(3) r.w.s. 147 of the Act without disposing the objections raised by the assessee which is contravention to the decision of the Hon'ble Supreme Court in the case of *GKN Driveshafts (2003) 259 ITR 19 (SC)*. Therefore, the assessment order is set aside. Ground No. 1 of the cross-objection is allowed.

15. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

16. In the result, appeal of the revenue is dismissed and cross-objection filed by the assessee is allowed.

Order pronounced in the Court on 20th December, 2024 at Mumbai.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 20/12/2024

SD S/S

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai