

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष  
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1403/Chny/2024  
निर्धारण वर्ष /Assessment Year: 2012-13

The Income Tax Officer,  
Ward-1,  
Karur.

Karur Govindaraj Raajesh  
Krishna,  
**Vs.** 10, AVS & AVR Colony,  
Chinnandankoil Road,  
Karur – 639 002.  
[PAN: AHZPR 3034M]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

**Cross Objection No.19/Chny/2024**  
निर्धारण वर्ष /Assessment Year: 2012-13

Karur Govindaraj Raajesh Krishna,  
10, AVS & AVR Colony,  
Chinnandankoil Road,  
Karur – 639 002.  
[PAN: AHZPR 3034M]

**Vs.** The Income Tax Officer,  
Ward-1,  
Karur

(अपीलार्थी/**Appellant/Cross Objector**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Assessee/Cross  
Objector by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing

: 08.10.2024

घोषणा की तारीख /Date of Pronouncement

: 31.12.2024

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**आदेश / ORDER**

**PER JAGADISH, A.M :**

Aforesaid appeal filed by the Revenue and Cross Objections filed by the assessee for Assessment Year (AY) 2012-13 arises out of the order of Learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [hereinafter "CIT(A)"] dated 12.03.2024 in the matter of assessment framed by the Assessing Officer [AO] u/s. 143(3) r.w.s 147 of the Income-tax Act,1961 (hereinafter "the Act") on 31.12.2019.

2. The grounds of appeal raised by the Revenue in ITA No.1403/Chny/2024 are as under:

*"(1) The order of the Ld. CIT(A) is opposed to law on the facts and in the circumstances of the case.*

*(2) The Ld. CIT(A) erred in not appreciating the fact that the Assessing Officer has communicated the issues on which the case was reopened vide notice u/s 142(1) dated 25.10.2019 and letter dated 19.12.2019 during the course of assessment proceedings, which are basically reasons for reopening, which could be considered as compliance of the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. vs ITO reported in [2002] 125 taxmann 963.*

*(3) The Ld. CIT(A) has erred in not considering the subsequent decision of the Hon'ble Supreme Court in the case of M/s Home Finders Housing Ltd. vs ITO, Corporate Ward-2(3) reported in [2018] 94 taxmann. com 84 (SC), wherein it has been held that non-compliance of procedure indicated by the Hon'ble Supreme Court in the GKN Driveshafts (India) Ltd. would not make order void or non-est and such violation was procedural irregularity which could be cured by remitting matter to authority.*

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*(4) The Ld. CIT(A) has erred in allowing the appeal of the assessee on technical grounds alone without adjudicating the merits of the case.*

*(5) For these and such other grounds that may be adduced at the time of hearing it is prayed that the order of the Ld.CIT(A) may be reversed and that of the Assessing Officer be restored.”*

3. The assessee is an individual and filed his return of income on 20.03.2014 declaring total income of Rs. 3,04,100/-. The A.O on the basis of information that the assessee has received a sum of Rs. 4 Cr. on sale of land from M/s. Grasim Industries, but has not shown receipt in the return of income, reopened the assessment after obtaining approval from Ld. PCIT by issuing notice u/s. 148 of the Act on 28.03.2019. The assessee in response to notice u/s 148 has filed return of income on 24.04.2019. The A.O ,after calling for information from Sub Registrar, assessed total income at Rs. 3,51,90,100/- by making addition of short term capital gain of Rs. 3,48,86,000/- on sale of property. Aggrieved, the assessee preferred an appeal before Ld. CIT(A). The Ld. CIT(A) has allowed the assessee's appeal on technical ground that the A.O has not supplied the reason recorded for escaping assessment to the assessee and therefore opportunity for filling objection has not been provided and thus the decision of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO [2003] 259 ITR 19 (SC), has not been complied. The Ld CIT(A)

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allowed the appeal on technical grounds without going in the merit of case. Now, the Department is in appeal before us against the order of Ld. CIT(A).

4. The Ld. Departmental Representative (DR) has argued that the A.O has communicated the reasons for reopening in notice issued u/s. 143(2) of the Act dated 25.10.2019 and further in his letter dated 19.12.2019 therefore Ld CIT(A) was not justified to hold that reasons was not provided. The Ld. DR further submitted that the Hon'ble Supreme Court in the case of M/s. Home Finders Housing Ltd. v. ITO 94 taxmann.com 84 (SC) has upheld the decision of Honorable jurisdictional High Court that non compliance of procedure indicated by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO, supra, would not make order void or non est and such a violation was a procedural irregularity which could be cured by remitting the matter to the authority. The Ld. DR has submitted that the Ld. CIT(A) was therefore not justified to allow the appeal on technical ground disregarding the decision of Honorable jurisdictional High Court.

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5. The Ld. Authorized Representative (A.R) of the assessee, on the other hand, has supported the order of Ld. CIT(A) and submitted that the A.O has not provided the reason as per the order of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO, supra, and therefore, the Ld. CIT(A) has correctly allowed the appeal. The Ld. AR has relied on the decision of Hon'ble Madras High Court in the case of CIT v. Pentafour Software Employees Welfare Foundation [2019] 110 taxmann.com 69 (Mad.) and CIT v. Janak Shantilal Mehta [2021] 124 taxmann.com 516 (Mad.). The Ld. AR in the cross objection has also submitted that the Ld. CIT(A) erred in not adjudicating the grounds of appeal pertaining to the validity of addition of Rs. 3,48,86,000/-as short term capital gains in the hands of the partnership firm M/s Sethil & CO has already been shown and the addition in the hand of assessee again amounted to double addition.

6. We have heard the rival submissions, and perused the materials available on record. The assessee has filed return of income on 20.03.2014 .The department has not scrutinized the case u/s. 143(3) or 144 of the Act. The A.O based on the information received from ADIT (Investigation), Tiruchirapalli that assessee has not shown capital gain on sale of property has reopened the assessment after

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taking approval from Ld. PCIT. The Ld. CIT(A) has allowed the appeal on technical ground that the A.O has not provided reasons recorded for escapement of income to the assessee and therefore, the assessee was not given opportunity to file objection which is in violation of Honourable supreme Court decision in the case of *GKN Driveshafts (India) Ltd.* We find that the issue has been considered by the the Hon'ble Madras High Court in the case of *M/s. Home Finders Housing Ltd. v. ITO, supra*, and the Hon'ble High Court has held as under:

*"26. We therefore make the position clear that non compliance of the procedure indicated in the GKN Driveshafts (India) Ltd., would not make the order void or non est. Such a violation in the matter of procedure is only an irregularity which could be cured by remitting the matter to the authority. The first issue is accordingly answered against the appellant."*

7. The Ld AR , in support of order of Ld CIT(A) has sited certain case laws , which are distinguishable on facts and therefore not applicable in the facts of the case. We, therefore following the decision of Hon'ble Madras High Court in the case of *M/s. Home Finders Housing Ltd. v. ITO, supra*, set aside the order of AO and Ld CIT(A) and remit the matter back to the file of A.O with a direction to provide a copy of reasons recorded to the assessee, and to follow the procedure laid

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down by Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd.. In view of the above, the appeal file the Revenue is allowed for statistical purposes only.

**C.O No.19/Chny/2024:**

8. As far as the Cross Objection filed by the assessee is concerned, since we have remitted the matter back to the file of the A.O, the CO filed by the assessee become infructuous and liable to be dismissed. Accordingly, the CO filed by the assessee is dismissed.

9. In the result, the appeal filed by the Revenue is allowed for statistical purposes and the C.O filed by the assessee is dismissed.

*Order pronounced on 31<sup>st</sup> December, 2024.*

Sd/-  
(एबी टी. वर्की)  
(**ABY. T. Varkey**)

न्यायिक सदस्य / **Judicial Member**

Sd/-  
(जगदीश)  
(**Jagadish**)

लेखा सदस्य / **Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 31<sup>st</sup> December, 2024.

EDN/-

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**आदेश की प्रतिलिपि अग्रेषित/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF