

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.6704/M/2024
Assessment Year: 2012-13**

Mr. Suresh Babulal Agrawal 7/537 MHB Colony, Gorai Road, Borivali(W) Mumbai-400092 PAN: AACPA299E	Vs.	Income Tax Officer, Room No. 519,5 th Floor, Kautilya Bhavan, C-41 to C- 43, G Block, BKC Mumbai-400051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jay Bhansali, Ld. A.R.
Revenue by : Shri Srinivas P., Ld. Sr. D.R.

Date of Hearing : 03 .04 .2025
Date of Pronouncement : 28 .04 .2025

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 12.11.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13.

2. In the instant case, the case of the assessee was reopened by recording the reasons for reopening u/s 147 of the Act and issuing the notice u/s 148 of the Act on dated 25.03.2019, mainly on the reasons that the Assessee has entered into the transaction of selling the script of penny stock namely M/s. Banas Finance Ltd. to the tune of Rs.14,96,500/- but has not filed his return of income for the A.Y. under consideration.

3. The AO in the Assessment order, has noted the fact the Assessee has not filed any return of income, whereas it is a fact that the Assessee has duly filed the return of income on dated 24.07.2013, which was processed u/s143(1) of the Act, as demonstrated by the Assessee, whereby the Net refundable amount of Rs. 1,190/- was determined. Therefore, the fact mentioned by the AO for not filing the return of income by Assessee, is contrary to the fact on record and thus on this point itself, the assessment order, is liable to be quashed being void-ab-initio.

4. However coming to the other aspect of the case, this Court observe that the Assessee in response to the notice 25.03.2019 u/s 148 of the Act, filed his return of income on dated 24/04/2019 declaring total income of Rs. 1,83,150/- and claiming short term capital loss of Rs. 1,50,924/-.

5. The Assessee vide letter dated 04/11/2019, also requested the AO to supply copy of the reasons recorded for reopening of the proceedings u/s 147 of the Act, which were provided to the Assessee by the AO, vide letter proceedings u/s 147 of the Act. dated 20/11/2019.

6. Thereafter, the Assessee vide letter dated 25/11/2019 as claimed before this court, has filed objections against the reopening

7. The AO has not disposed of such objections raised against the reopening of the assessment u/s 147 of the Act and therefore, the Assessee has claimed that AO has violated the dictum laid down by the Hon'ble Apex Court in the case of **GKN Driveshafts (India) Ltd. Vs. ITO (259 ITR 19) (SC)**.

8. On the contrary the Ld. DR supported the impugned order by refuting the claim of the Assessee but not the factual aspects mentioned above.

9. Having heard the parties and perusing material available on record and giving thoughtful consideration to the facts and circumstances of the case and rival claims of the parties, following question emerge:

(1) *“Whether the directions/parameters laid down by the Hon’ble Apex Court in GKN Driveshafts case (supra) are required to be followed mandatorily”;*

(2) *“Whether non-following the directions/parameters laid down by the Hon’ble Apex Court in GKN Driveshafts case (supra), would entail the assessment order as invalid”.*

10. This Court observe that the Hon’ble High Court in **KSS Petron Private Ltd. Vs. Assistant commissioner of Income Tax (ITA No. 244/14)** decided on 03.10.2016, also considered the identical issues and has observed as under:

“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.”

11. Recently the Hon’ble High Court in the **Kesar Terminal and Infrastructure limited VS. DCIT in WP No. 3248/2022 decided on 27.01.2025 citation [2025] 171 taxmann.com 800 (Bombay)** also dealt with identical issue *“wherein the AO failed to disposed of the objection, raised by the assessee challenging the reassessment proceeding”* and therefore the Hon’ble High Court ultimately quashed the assessment order, for want of compliance with judicial parameters set out by Hon’ble Apex Court in GKN Driveshafts (India) Ltd. case, by observing and holding as under:

“6. The rival contentions now fall for our determination.

7. In this matter, vide assessment order dated 25 March 2016 made under Section 143(3) of the Income Tax Act, the returns filed by the Petitioner were assessed and accepted, and the claim under Section 80-IA was revised.

8. The petitioner was issued the impugned notice under Section 148 of the Income Tax Act on 30 March 2021, seeking to reopen the assessment. In compliance with the notice, the petitioner filed a return on 7 April 2021. On 12 May 2021, the Petitioner requested the reasons for reopening, which were furnished to the Petitioner on 6 July 2021.

9. On 4 August 2021, the Petitioner filed objections to the reopening of the assessment by raising several contentions. Without disposing of such objections, on 22 November 2021, the Petitioner was issued a notice under Section 142(1) directing it to justify its claim under Section 80-IA with supporting documents.

10. On 26 November 2021, the Petitioner requested the Respondents to dispose of the objections filed by the Petitioner before proceeding any further. The Petitioner made a specific reference to the Hon'ble Supreme Court's decision in the case of GKN Driveshafts (India) Ltd. v. 170 [2002] 125 Taxman 963/ [2003] 259 ITR 19 (SC). The Petitioner also referred to this Court's decision in the case of Asian Paints Ltd. v. Dy. CIT [2008] 296 ITR 90 (Bombay), which had provided that an assessee must be given a reasonable period of about four weeks to take any remedial course of action should the Assessee's objections to the reopening be rejected by the revenue.

11. The Petitioner's objections were never disposed of, but the impugned consolidated reassessment order dated 31 March 2022 was made, in which the Petitioner's objections were also purported to be disposed of.

12. Apart from the fact that the making of such consolidated or combined orders was not approved in some decided cases, which we propose to refer to, we think that such a procedure also involves breaching the principles of natural justice and fair play.

13. The assessing officer in Fomento Resorts & Hotels Ltd. (supra) made a similar combined order. Neither were the assessee's objections disposed of by a separate order, nor was the assessee granted any reasonable opportunity of questioning the order disposing of the objections. In such circumstances, the Court, after analysing the decision of the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. (supra) and following its earlier precedents in KSS Petron Private Ltd. v. Asstt. CIT [IT Appeal No. 224 of 2014, dated 3-10-2016]. and Bayer Material Science (P.) Ltd. v. Dy CIT [2016] 66 taxmann.com 335/237 Taxman 723/382 ITR 333 (Bombay) quashed the combined order on the ground of want of compliance with jurisdictional parameters.

14. Accordingly, we cannot accept Mr. Suresh Kumar's contention about there being no infirmity in the impugned consolidated order dated 31 March 2022, given the above decisions referred to by us rendered in substantially similar facts.”

12. Thus the questions posed are answered accordingly.

13. Considering the peculiar facts and circumstance of the case specific to the effect that AO in this case has failed to dispose of the specific objections against the reopening of the assessment proceedings, raised by the Assessee vide letter dated 25.11.2019 and therefore respectfully following the dictum laid down in GKN Driveshafts (India) Ltd. case {supra} and the judgments of Hon'ble High Court in the case referred to above, the reopening of the proceeding and in consequence thereof, the assessment order itself is liable to be quashed being void-ab-initio. **Thus, the same is quashed.**

14. As this court has quashed the reopening proceedings u/s 147 of the Act and in pursuance thereof the Assessment order and therefore is inclined not to delve into other grounds raised by the Assessee including on merits, as the adjudication of the same would be futile exercise.

15. In the result, appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 28.04.2025.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Disha Raut

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.