

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE JUSTICE (RETD.) C V BHADANG, PRESIDENT &
MS PADMAVATHY S, AM**

**I.T.A. No. 2468/Mum/2024
(Assessment Year: 2010-11)**

Shivshankar Agarwal HUF, 204A, Corporate Centre, Marol Pipe Line, Andheri-Kurla Road, Andheri (E), Mumbai-400059. PAN: AAFHS0899Q	Vs.	Income Tax Officer-31(2)(1), KB-248, Kautilya Bhawan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Ashok Bansal & Shri Ajay
Daga, AR

Revenue / Respondent by : Shri Swapnil Choudhary, Sr. DR

Date of Hearing : 11.08.2025

Date of Pronouncement : 28.08.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals), Thiruvananthapuram [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 22.03.2024 for Assessment Year (AY) 2010-11. The assessee raised the following grounds of appeal:

“1. The Ld. CIT(A) in disposing of the appeal erred in not adjudicating ground nos 1 to 3 of the Grounds of Appeal raised before her challenging the validity of assessment.

2. The Ld. CIT (A) erred in confirming the disallowance made by the ITO of Rs.309610/- being 12.50% of the alleged bogus purchases.

2.1. In doing so, the id.CIT(A) erred in issuing notice u/s 251 (2) of the Act proposing disallowance 12.50% of the alleged bogus purchases without appreciating that the said disallowance was already made by the ITO & and the appellant was in appeal before her against the said disallowance

2. ii. In further doing so, the Id.CIT(A) erred in confirming the disallowance merely on the basis of adverse inferences drawn by the ITO without considering the grounds of appeal raised and the written submissions filed before her.

Your appellant, therefore, submits that the assessment order be quashed and in the alternative suitable relief be allowed.”

2. The assessee is a HUF and carries on business in under proprietorship the name of M/s Karan Steel which is engaged in the business of dealing in Iron & Steel. The assessee filed the return of income for AY 2010-11 on 15.10.2010 declaring a total income of Rs. 8,76,380/-. The assessment was reopened by issue of notice under section 148 of the Act dated 27.11.2015 based on the information received from DGIT (Inv.) that the assessee has obtained bogus bills towards purchases from alleged entry providers. The AO completed the assessment under section 143(3) r.w.s. 147 of the Act on 22.02.2016 where an addition of Rs. 1,60,08,115/- towards bogus purchases were made. Subsequently the AO once again issued a notice under section 148 dated 31.03.2017, requiring the assessee to submit the return of income on the ground that he had reason to belief that the income has escaped assessment. The assessee vide letter dated 04.04.2017 requested the AO to treat the return filed on 15.10.2010 as the return filed under section 148 of the Act. The assessee in the said letter had also requested to provide

the reasons recorded for reopening of the assessment for the second time. The AO without responding to assessee's request proceeded to issue notice under section 142(1) requiring the assessee to furnish certain details pertaining to purchases from one M/s Shree Ram Steel. The assessee submitted that the details pertaining to the above party was already furnished as part of the first round of reassessment proceedings and that the AO in the said proceedings had made addition towards alleged bogus purchases from the said parties. The AO however held that there is variance in the amount of purchase from M/s Shriram Steel and assessee has not discharged the onus of providing the necessary details with regard to the differential purchases treated the same as bogus. Accordingly made an addition of Rs.3,09,610/- by applying 12.5% on the additional the amount of purchases i.e. 24,76,877/-. The assessee filed further appeal before the CIT(A). Before the CIT(A) the assessee raised the legal contention that the AO has not provided the copy of reasons recorded to enable to the assessee to file objections / required details. The assessee also contended the addition made on merits. The CIT(A) dismissed the appeal on merit without recording any findings on the legal contentions. The assessee is in appeal before the Tribunal against the order of the CIT(A)

3. The primary contention of the ld. AR before us is that the AO has not supplied the reasons recorded and the assessment completed without providing the reasons recorded is liable to be quashed. The ld. AR in this regard placed reliance on the decision of the Vishakapatnam Bench of the Tribunal in the case of M/s Shri Sarvaraya Sugars Ltd. vs. ITO (ITA No. 294/Viz/2014 dated 20.12.2017). The ld. AR further submitted that the AO has not issued notice under section 143(2) of the Act and on that count also the assessment order is invalid. The ld. AR on merits submitted that the revised purchase amount of Rs. 62,73,461/-

alleged to be made by the assessee from M/s Shree Ram Steel is without any basis and that during the first round of reassessment proceedings the assessee has furnished all the relevant details before the AO with regard to the purchase amount of Rs. 37,96,584/- from the parties as called for by then by the AO. The ld. AR argued that the assessee has discharged the onus in the first round of reassessment for the amount of purchase as per assessee's books of accounts. The ld AR further argued that the additional amount of purchase alleged to be bogus is based on a information from third party which has not been shared with the assessee. The ld AR also argued that the assessee has denied having made the amount of purchase as mentioned by the AO and that the assessee cannot be asked to prove a negative fact.

4. The ld. DR submitted that during the course of earlier hearing the Bench had directed the revenue to produce the report with regard to providing the copy of reasons recorded to the assessee. The ld. DR submitted a report with the response from the AO dated 16.06.2025 with the copies of notice issued under section 148 dated 31.03.2017 and the copy of approval obtained from PCIT dated 24.03.2017 annexed with the draft reasons for reopening. The ld. DR fairly conceded that the AO had not submitted evidence of providing copy of reasons recorded to the assessee. On merits, the ld. DR submitted that the assessee has not discharged the onus of providing the necessary details to substantiate the genuineness of the additional amount of purchases and therefore, the lower authorities have correctly made the addition.

5. We heard the parties and perused the material on record. The reassessment in assessee's case was originally completed vide order dated 22.12.2016 by making addition towards bogus purchases. It is relevant to note here that the parties from

whom the assessee has made the alleged bogus purchases includes M/s Shree Ram Steel to the tune of Rs. 37,96,584/-. The assessment of the assessee was once again reopened vide notice dated 31.03.2017 and from the perusal of the notice under section 148, we notice that it merely states that the AO has reasons to believe that the income of the assessee has escaped assessment. The relevant copy of the notice under section 148 of the Act is extracted below:

3-4-17
3:50pm


GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 25(1)(2), MUMBAI

To. SHIV SHANKAR AGARWAL 1/1, MANISH DARSHAN, J B NAGAR, ANDHERI EAST, MUMBAI 400059			
PAN: AAFHS0899Q	AY: 2010-11	Dated: 31/03/2017	Letter No : ITBA/AST/S/148/2016- 17/1003790050(1)

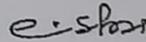
Notice Under Section 148 Of The Income Tax Act, 1961

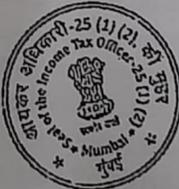
Sir/ Madam/ M/s.

Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year 2010-11 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/ re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the additional Commissioner/ Commissioner of Income Tax/ Chief Commissioner of Income Tax.


RATNESH KUMAR MISHRA
WARD 25(1)(2), MUMBAI



6. We further notice that the assessee vide letter dated 04.04.2017 submitted that the return filed originally may be treated as the return filed in response to

notice under section 148. We also notice that in the said reply the assessee has requested for the reasons recorded for reopening the assessment. A copy of the letter filed by the assessee is as under:

04.04.2017

To,
The Income Tax Officer,
Wd 25(1)(2),
C-10, Pratyaksh Kar Bhawan,
BKC, Bandra (E),
Mumbai - 400 051

Dear Sir,

Re: Our PAN - AAFHS0899Q
Sub : Notice u/s 148 of the IT Act, 1961 - A.Y.2010-11

Kindly refer to your above notice u/s 148 of the IT Act, 1961 dated 31.03.17 requiring us to file return of income for A.Y.2010-11 as you have reasons to believe that the income chargeable to tax has escaped assessment within the meaning of sec. 147 of the Act. In reply we wish to inform you that we had e-filed the return for the above assessment year u/s 139(1) of the Act on 15.10.2010 vide ack no. 173186560151010 declaring total income of Rs.876380/- and tax payable thereon was Rs. 171921/- and after deducting Advance Tax of Rs. 75000/- and TDS of Rs. 432865/-, refund of Rs. 335940/- was claimed. The return so filed was not selected for scrutiny and afterward the assessment was reopened by notice u/s 148 purportedly issued on 27.11.15 and by order u/s 143(3) r.w.s 147 dt. 22.12.2016 the income was assessed at Rs.16884492/-. We are in appeal against the said order before the CIT (A). The voluntary return of income filed as above discloses all material particulars of our income, whether or not includible in computing total income, and we are sanguine that our income for the said year has not escaped assessment within the meaning of sec.147 of the Act.

Be that as it may, we hereby request you to treat the above return filed as having been filed in pursuance of the above notice. Kindly, therefore, confirm that this is sufficient compliance of your above notice.

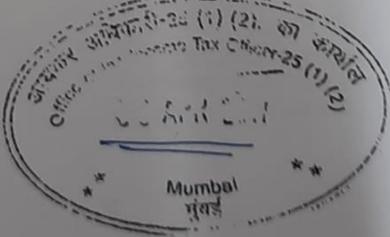
Now that we have filed the return of income, we have to request you to please furnish us the reasons recorded for reopening of the assessment to enable us to file objections, if any, in the matter. You are aware that the law as laid down by the Supreme Court is that the AO cannot initiate re-assessment proceedings without disposing of the objections that may be raised.

We also request you to kindly let us know whether the statutory approval u/s 151 was obtained before issue of notice u/s 148 of the Act & if yes, then a copy of approval recording satisfaction may please be furnished to us.

Thanking You,

Yours faithfully,
For Shiv Shankar Agarwal HUF

S. S. Agarwal
Shiv Shankar Agarwal
Karta



6 Apr 2017

7. From the perusal of the orders of the CIT(A), we notice that the contention raised by the assessee with regard to non-supply of reasons recorded have not been adjudicated by the CIT(A). We further notice from the perusal of the report of the AO filed by the Id. DR that there is nothing on record to show that the assessee has been supplied with the reasons recorded. The report contains the details of approval taken from PCIT which is annexed with the draft reasons but it does not evidence the supply of the said reasons to the assessee. It is relevant to mention here that the Hon'ble Supreme Court in the case of GKN Driveshafts India Ltd. ((2003) 259 ITR 19) has laid down the ratio that once the assessee after filing the return of income in response to notice under section 148 seeks the reasons recorded then the AO is required to provide the same to the assessee. We in this regard further notice that the issue of validity of completing the assessment proceeding without providing the reasons recorded to the assessee is considered by the Co-ordinate Bench in the case of M/s Shri Sarvaraya Sugars Ltd. (supra) where it is held that

“8. We have heard both the parties and perused the material placed on record. The assessee has filed reply to the notice u/s 148 and requested the AO to treat the return filed on various dates as mentioned in the table in para 2 as returns in response to the notice u/s 148 of the I.T.Act and also requested to furnish the reasons recorded for issue of notice u/s 148. The AO completed the assessment without communicating the reasons recorded. On appeal the Ld.CIT(A) dismissed the assessee's appeal on the validity of the assessment for non communication of the reasons stating that the assessee had responded to the notice and participated in the assessment proceedings.

9. The AO has completed the assessment without communicating the reasons recorded for issue of notice u/s 148, in spite of the specific request made by the assessee for furnishing the reasons. As per the judgement of Hon'ble Supreme Court in the case of M/s GKN Drive Shafts (India) Ltd. Vs. ITO, it is obligatory on the part of AO to communicate the reasons on furnishing the return of income. The assessee in response to the notice issued u/s 148 submitted a letter to the AO to treat the returns filed earlier as returns in response to the notice issued u/s 148. Thus the assessee has complied with

the mandate of Hon'ble Supreme Court judgement cited supra but the AO failed to communicate the reasons. The assessee relied on the decision of Hon'ble High Court of Calcutta in the case of Berger Paints India Ltd. Vs. ACIT (Supra), wherein Hon'ble High Court held that the assumption of jurisdiction of assessing officer u/s 147 depends upon existence of reasons followed by communication thereof to the assessee. If the notice served under section 148 is challenged, the AO cannot proceed with the assessment under section 147 unless reasons are communicated. In the instant case, the contention of the assessee is that the assessee has complied with the notice u/s 148 and the AO has not furnished the reasons recorded for issuance of notice u/s 148 despite the request made by the assessee. The Revenue could not place any evidence to controvert the argument of the Ld.AR that the reasons were not communicated. Thus the assessee's case is squarely covered by the decisions in the case of Berger Paints India Ltd. Vs. ACIT (Supra) and CIT vs. Trend Electronics (Supra).

9.1. The Hon'ble Bombay High Court in the case of CIT vs. Trend Electronics (Supra) following the decision of CIT vs. Videsh Sanchar Nigam Ltd and applying the decision of Apex court in the case of GKN Drive Shafts (India) Ltd. Vs. ITO held as under :

“8. We find that the impugned order merely applies the decision of the Apex Court in GKN Driveshafts (India) Ltd. (supra). Further it also follows the decision of this Court in Videsh Sanchar Nigam Ltd. (supra) in holding that an order passed in reassessment proceedings are bad in law in the absence of reasons recorded for issuing a reopening notice under Section 148 of the Act being furnished to the assessee when sought for. It is axiomatic that power to reopen a completed assessment under the Act is an exceptional power and whenever revenue seeks to exercise such power, they must strictly comply with the prerequisite conditions viz. reopening of reasons to believe that income chargeable to tax has escaped assessment which would warrant the reopening of an assessment. “

9.2. In the instant case, the AO had issued notice u/s 148 and the assessee has complied with the notice and requested for reasons. The AO completed the assessment without communicating the reasons. Therefore, the facts of the case are similar to that of the decision of Hon'ble Bombay High Court relied upon by the Ld.AR cited supra. Respectfully following the decision of Hon'ble Bombay High Court, we hold that the assessment made u/s 147 r.w.s. 143(3) without communicating the reasons is bad in law. Accordingly, the orders framed u/s 147 r.w.s. 143(3) are quashed and the appeal of the

assessee is allowed. Since, we have quashed the assessment made u/s 143(3), we consider it is not necessary to adjudicate the grounds on merits.”

8. Similar views have been expressed by the Co-ordinate Bench in the case of DCIT vs Bhawna Computers (P.) Ltd. ([2023] 154 taxmann.com 326 (Mumbai - Trib.)) where it has been held that –

As regards the argument that notice u/s. 148 was not served to the assessee and that reasons recorded had not been supplied to the assessee, the assessment records were called for. On perusal of the assessment records, in the course of hearing on 17-10-2022, bench pointed out that the assessment records show that at the fag end of reassessment proceedings, the concerned Ld. AO had requested the predecessor Ld. AO at Kolkata (who issued the notice u/s. 148) regarding the objections taken by the assessee of not receiving any notice u/s. 148 and that no reasons of reopening had been supplied to it. Since, we could not find any proof of service of reasons recorded being supplied to the assessee, ld. DR was asked to respond. Accordingly, the ld. DR submitted the remand report issued by the Ld. AO dated 10-11-2022 wherein he stated that request has been made to the ITO Ward 9(2), Kolkata to provide the reasons recorded for reopening in this case since the same is not available with his office and that the same shall be submitted as soon as the records are received. The ld. DR explained that the case was reopened by the ITO Ward 9(2), Kolkata and case records were later transferred to DCIT, Central Circle -7(3), Mumbai. The ld. AR filed his rejoinder vide letter dated 13-1-2023. Firstly, we find that despite several opportunities given and after perusal of assessment records, no proof is available with respect to supply of the reasons recorded for escapement of income for our verification. Merely because in the assessment order at Para 4 ,it is stated that the reasons for reopening were provided to the assessee, the same cannot be accepted at the face of it more so when there were repeated submissions made by the assessee during the reassessment proceedings vide letter dated 4-3-2016 and 16-3-2016 objecting that it has not received the reasons recorded coupled with the fact that the assessment records itself speak about the same being sought from the concerned Ld. AO at Kolkata which has even not been received till date. Further, even in the Statement of Facts filed [form no 35 Memorandum of Appeal before CIT (A)] before the ld. CIT (A), the assessee had stated that no notice u/s. 148 was received and without prejudice to the same, it had requested to treat the original return as return in response to notice u/s. 148 of the Act and had even requested to provide the reasons recorded for reopening. However, before the ld. CIT (A), the Ld. AO had not responded or rebutted this fact at all. Even before us, the Ld. AO has failed to demonstrate that the reasons were actually supplied to the assessee. Even the ld. AR has

*explained that in para 6.2, the ld. CIT (A) had reproduced the submission of A.Y. 2009- 10 and not for A.Y. 2008-09 for which rectification had also been filed on 8-12-2022 and have also drawn our attention to the actual submission dated 11-7-2019 filed before CIT (A) for A.Y. 2008-09 placed at page no. 19 to 44 of PB. Hence, no recourse can be taken of para 6.2 of the CIT (A) order. Further, the assessee has all along sought reasons in the course of assessment proceedings vide letter dated 4-3-2016 and 16-3-2016 and even before the ld. CIT(A) in submission dated 11-7-2019. **Therefore, in absence of this statutory requirement under the law of providing reasons recorded, the reassessment order passed is bad in law and invalid.** In this regard, support is also drawn from the decision of the Hon'ble Jurisdictional High Court in the case of IDBI Ltd (supra) and CIT v. Videsh Sanchar Nigam Ltd. [2012] 21 taxmann.com 53/340 ITR 66 (Bom.). **We are also not convinced with the argument of the ld. DR that since the assessee has participated in the reassessment proceedings, no prejudice is caused. In fact, by not providing the reasons recorded, the assessee has been deprived of fundamental right to know and object on the basis of which jurisdiction has been acquired or assumed by the Ld. AO and is completely in dark about the reasons of reopening against which he could not even file any objections.** For these reasons, we quash the reassessment order passed by the Ld. AO for A.Y. 2008-09 as bad in law.*

(emphasis supplied)

9. In assessee's case from the extract of the letter filed by the assessee on 04.04.2017 in response to notice under section 148 it is seen that the assessee has requested the AO to treat the return originally filed as the return filed in response to notice under section 148 of the Act thereby complying with the requirement of filing the return of income. The assessee in the said letter has also requested for the copy of the reasons recorded to file appropriate objections to the reopening which has not been provided to the assessee. As has been held by the coordinate bench in the above case, the assessee participating in the reassessment proceedings would not mean that there is no prejudice caused to the assessee as argued by the ld DR in the present case. Considering the facts and circumstances of the case, respectfully following the above judicial precedents we hold that the reassessment done in assessee's case without supply of proper reasons recorded is not sustainable and liable to be quashed.

10. In result, appeal of the assessee is allowed.

Order pronounced in the open court on 28-08-2025.

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai