

आयकरअपीलीयअधिकरणन्यायपीठमुंबईमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

**BEFORE HON’BLE JUSTICE (RETD.) C V BHADANG, PRESIDENT &
SHRI ARUN KHODPIA, AM**

I.T.A. No.1224/Mum/2015
(Assessment Year: 2009-10)

M/s. M. Abbas & CO. ½, Majid Ali Mansion, Bharda Wadi, Andheri (W), Mumbai- 400058 PAN: AANFM4548C	Vs.	ACIT 24(2), Mumbai
Assessee- अपीलार्थी / Appellant	:	Revenue -प्रत्यर्थी/ Respondent

Assessee by : Shri Vipul Josshi, Adv.
Revenue by : Shri Layaqat Ali Aafaqui, Sr. AR.
Date of Hearing : 22.01.2026
Date of Pronouncement : 21.04.2026

ORDER

Per Arun Khodpia, AM:

The captioned appeal is preferred by the assessee challenging the order of Commissioner of Income Tax (Appeals), Mumbai – 36[“the Ld. CIT(A)"] dated 16.12.2014 for the assessment year (AY) 2009-10, arises from assessment order u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (“the Act”) dated 28.02.2014.

The grounds of appeal raised by the assessee are as under:

Grounds of Appeal

“1. The learned Commissioner of Income-Tax (Appeals)-36 committed an error of law and fact in rejecting the appellant's submissions in statement of facts made along with the grounds of the appeal while filing the appeal.

2. *The learned Commissioner of Income-Tax (Appeals) erred in confirming the order of the A.O. The learned A.O. treated the disclosure of the income during the survey proceedings u/s. 133A as unexplained expenditure and treated such expenditure taxable u/s. 69C. The Assessee submits that they have no other source of income except the income from civil contractor's activities which is chargeable to tax u/s. 28 of the Income Tax Act.*

3. *On the facts and circumstance of case the learned A.O. has erred in law by invoking the provisions of sec. 69C instead of sec. 28 of the Income Tax Act."*

Additional Ground of Appeal (Revised)

"4.1 The Learned Commissioner of Income-tax (Appeals)-36, Mumbai ["L.d. CIT (A)"], erred in confirming the action of the A.O. in initiating reassessment proceedings and framing the assessment of the Appellant by invoking the provisions of section 147 r.w.s. 148 of the Income tax Act, 1961 ["the Act"].

4.2 While doing so, the Ld. CIT (A) failed to appreciate that:

(i)The case of the appellant did not fall within the parameters laid down by section 147 r.w.s. 148 of the Act; and

(ii)The necessary preconditions for initiating reassessment and completion thereof were not satisfied.

4.3 Without prejudice to the generality of the above grounds, the reassessment is bad in law as-

(i)The actual reasons recorded before issuing the notice u/s 148 of the Act were not supplied;

(ii)The basic condition of having 'reason to believe that income chargeable to tax has escaped assessment was absent;

(iii) The purported reasons were based on wrong fact/ legal position; and

(iv) There was no live nexus between the purported reasons and the formation of belief about an income having escaped assessment.

4.4 It is submitted that in the facts and the circumstances of the case, and in law, the reassessment framed is bad, illegal and void."

2. Brief facts of the case are, that the assessee is a firm which had filed its return of income on 31st March, 2011, for the assessment year 2009-10. It is observed by the AO that the assessee has not filed its return u/s 139(1) for the relevant assessment year, which was due on 30.09.2009. A survey u/s 133A was carried on 29.01.2010, on assessee's business premises in which the assessee has

disclosed an additional income of Rs.5 crores over and above the declared income for the assessment year 2009-10 and assessment 2010-11. Accordingly, the additional income offered by the assessee was Rs.1.5 crores for AY 2009-10 and 3.5 crores for AY 2010-11. Since assessee had not filed its return of income u/s 139(1), despite having income exceeding threshold limit for filing of return of income, the AO inferred that the income of assessee has escaped assessment within the meaning of section 147 and accordingly, the reopening assessment proceedings were invoked in the case of assessee.

3. After discussions and deliberations, the assessment u/s 143(3) r.w.s 147 had come to be completed on 28.02.2014, with an addition of Rs.1.5 crores on account of improper disclosure of additional income which was admitted during the survey.



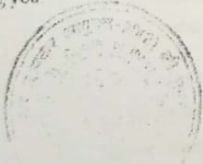

4. Being aggrieved, assessee preferred an appeal before the Ld. CIT(A), who had dismissed the appeal of assessee with the following observations:

“5.2.5 In the instant case, the statement recorded with the time of survey u/s 133A makes it clear that the appellant had incurred certain amount of expenses till the date and was unable to substantiate the sources for the expenditure Incurred. Accordingly the said expenditure clearly fell under the purview of section 69C and was deemed to be income for that year. Deemed income cannot be imbued with the nature of business income unless proved to be so. The amount disclosed was offered as addition Income by the partner in the statement recorded in the survey proceedings and in the same, it was admitted that the source, from which, the expenditure was met, could not be substantiated. In the absence of any evidence to show that unaccounted receipts, from which, expenses were met were from business, the disclosed income cannot be taken to be 'business income.' That being the case, the appellant cannot subsequently seek to set-off expenses related to business, whether on account of administrative charges or partner salary, against the deemed income. Accordingly the assessment of total income by the AO at Rs.1.50 crores is upheld and the grounds raised by the appellant are dismissed.”

5. As the appeal of assessee had been rendered as dismissed by Ld. CIT(A), assessee preferred an appeal before this Tribunal, which is under consideration.

6. At the outset, Ld. AR representing the assessee submitted that the reopening assessment in the case of assessee was not in accordance with the provisions of section 147 r.w.s 148 of the Act. It is submitted that the case of assessee did not fall within the parameters laid down by section 147 r.w.s 148 of the Act, as the necessary pre-conditions for initiating re-assessment and completion thereof were not satisfied.

7. To establish the aforesaid legal ground, ld. AR raised a contention that the actual reasons recorded before issuing the notice u/s 148 of the Act were not supplied to the assessee. The basic condition for having reason to believe that income chargeable to tax has escaped assessment was absent. Ld. AR drew our attention to the copy of reasons recorded, supplied to the assessee during the assessment proceedings placed at page no.7 of the assessee's paper book, which is extracted hereunder for the sake of completeness of facts:

	OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX -20(2) Room No. 612, Piramal Chambers , Lalbaug, Mumbai - 400 012. Ph- 24155882
No. DCIT-20(2)/Reasons u/s.148/2013-14	Date :17.09.2013
To, M/s. M. Abbas & Co. 1/2, Majidali Mansion, Bhardawadi Lane, S.V. Road, Andheri (West) Mumbai - 400 058	
Sir/Madam,	
Sub:- Reasons recorded U/s 148 of the Income Tax Act. in your case for A.Y. 2009-10 (AANFM4548C) - Regarding - *****	
Please refer to the above.	
As desired by you, I am giving hereunder the text of reasons recorded u/s 148 of the I.T. Act. for reopening of the above assessment for A.Y. 2009-10	
The assessee firm engaged in the business of development of properties. A survey u/s 133A was carried on 29-01-2010 in which the assessee has disclosed additional income of Rs 1.5 Crore over and above the regular income of the firm for the said assessment year. On perusal of E-filed data from ITD system it is found that the assessee has not filed return of income for A.Y. 2009-10 which was due on 30/09/2009 and filed only after survey action	
The Assessee has taxable income and he has also disclosed additional income during survey action which was out of books. Thus he had income which has escaped assessment. Therefore I have reason to believe that there is income chargeable to tax has escaped assessment for the relevant year under consideration within the meaning Section 147 of the Income Tax Act, 1961	
This is for your information. Notices u/s 142(1) & 143(2) are enclosed herewith for your compliance.	
Thanking you	Yours faithfully,  Vishwas S. Jadhav Deputy Commissioner of Income-tax 20(2), Mumbai.
	

8. With respect to aforesaid communication, whereby the text of reasons recorded are communicated to the assessee, it is contended that the actual reasons were not supplied to the assessee, whereas only the text of reasons are provided,

which is violative to the principle of law laid down by Hon'ble Apex Court in the case of "*GKN Driveshafts (India) Ltd vs Income Tax Officer And Ors (2003)259 ITR 19 (SC), (2002) 125 taxmann.com 963(SC)*".

9. Ld. AR submitted that the procedural guidelines directed by the Hon'ble Apex Court in the aforesaid order are further deliberated and dealt with by various courts, wherefrom, it is established that the reasons actually recorded by the Assessing Officer needs to be mandatorily supplied to the assessee, which cannot be further improved upon or amended. Supply of gist of reasons as furnished in the present case, cannot be treated as reasons actually recorded by the Assessing Officer and, therefore, the entire proceeding of reopening assessment vitiates. Ld. AR relied upon the following decisions and finding therein:

"NO SUPPLY OF ACTUAL REASONS RECORDED"

1. Tata International Ltd. v. DCIT [(2012) 52 SOT 465 (Mumbai)]

It is settled proposition as laid down by the Hon'ble Supreme Court as well as Hon'ble High Court that the reasons as recorded by the Assessing Officer are required to be furnished to the assessee and the reasons recorded cannot be improved upon or amended by any correspondence, letters etc. It is an undisputed fact that the reasons actually recorded by the Assessing Officer were not furnished to the assessee despite repeated requests and demands and therefore, the gist of reasons as furnished cannot be treated as reasons actually recorded by the Assessing Officer as per section 148 (2) and as mandated by the Hon'ble Supreme Court in case of GKN Driveshafts (India) Ltd. Thus, the Assessing Officer has failed to furnish the reasons recorded for reopening of the assessment within the reasonable time and rather prior to the completion of assessment, than the reassessment order passed without supply of reasons as recorded for reopening of the assessment, is invalid and cannot sustain.

2. ITO v. Rishi Godani-[(2018) 97 taxmann.com 135 (Agra-Trib)] [Para 11]

"In the present case, non-supply of the reasons to the assessee is in direct violation of GKN Driveshafts (India) Ltd.'s case (supra), debarring him from exercising his legal right to file objections against the issuance of the reassessment notice. Conveying the gist of the reasons to the assessee nowhere serves the purpose, as objections. If required

to be filed by the assessee, are to be against the reasons proper and not any 'gist' of such reasons"

3. Vinoda B. Jain v. JCIT JITA No. 676/M/2014, Order dated 24.09.2014 (Mum Trib)]/[A.Y. 1991-1992] [Considered Tata International]

The assessee had requested the AO in November 1996 to furnish him the copy of reasons recorded. In February 1997, the then AO was again requested to furnish the copy. Even after filing the return of income on 26.11.1996 the assessee wrote several letters regarding furnishing the copy of the reasons recorded. Till the date of hearing before Tribunal, the assessee had not received any reply from the AO or the reasons recorded by him. The Tribunal held that the effect of reopening is to partly vacate or set aside the original order of assessment and to substitute it and the concept of escapement of income includes both non assessment or underassessment. Whatever may be the reason but it is mandated by the Hon'ble Courts that reasons to believe must necessarily show, indicate and communicate why and for what grounds/cause any income has escaped assessment. Recording of reasons has been emphasized and adverted to as the foundation of the jurisdiction of an AO, who initiates reassessment proceedings. The validity of the reassessment proceedings is tested, by the Hon'ble Courts, on the basis of the underlying reasoning stated and recorded for opening of the reassessment. If the person affected by the action of the AO is not aware as to why the AO had found it fit to reopen his assessment, he will be in dark and will not be in position to defend himself. Principles of natural justice demand that nobody should be penalize unheard. Without furnishing the assessee a copy of the reasons recorded would tantamount to punish the assessee without hearing him. The power of the A.O. to issue notice u/s.147 of the Act is coupled with the duty to follow a prescribed method. A duty has been cast upon him to supply the copy of reasons recorded to the assessee. Rights are always accompanied by duties and bigger rights bring higher the duties in picture. Power given to the AO by section 147 is not a simple power it is to unsettle the completed proceedings and it generally results in higher tax liability. Therefore, safeguards have been provided in the Act. Duty of the AO to communicate the reasons to the assessee is the other side of the coin and is the right of the assessee.

The assessee cannot be burdened only with duties. His duty is to file the return once he gets the notice. Similarly, his right to know the reasons starts once he files a return and asks the AO to supply him the copy of recorded reasons. His right has the same sanctity that of the right of the AO.

Even after 18 years of the issuance of 148 of the Act, the AO is not been able to prove that the assessee was supplied copy of the reasons recorded"

10. Based on aforesaid submissions, it was the prayer that once the reasons recorded are not supplied to the assessee in the form in which they are originally recorded and only the gist of reasons extracting the text was provided to the assessee under a communication by the AO, is not in accordance with the

mandate of law and violative to the settled principles as directed by the Hon'ble Apex Court in GKN driveshaft(Supra.), the assessment proceedings invoked u/s 147 r.w.s 148 are bad in law and cannot sustain. Consequently, the assessment framed on the foundation of such invalid proceedings, would liable to be quashed.

11. Per contra, Ld. Senior DR representing the revenue submitted that all the necessary information was provided to the assessee which was the foundations of reason to believe, therefore, the plea of assessee that original reasons were not provided to it is not just and fair in the interest of justice. Therefore, such ground raised by the assessee needs to be rejected and the reopening assessment proceedings shall be treated as lawful and valid in the eyes of law.

12. We have considered the rival submissions, perused the material available on record and judicial pronouncements relied upon by the assessee. At the outset, without going to the merits of the issues, while dealing with the additional ground raised by the assessee that the original reasons recorded for reopening of assessment were not provided to the assessee, are demonstrated by the Ld. AR, whereas the revenue was unable to rebut with corroborative evidence such as a communication, whereby the copy of the original reasons recorded were furnished to the assessee. The case of assessee therefore found to be supported with the jurisprudences referred to (supra.), thereby the proceedings of reopening assessment found to be not in accordance with law or the principles of law settled

by the Hon'ble Apex Court in the case of *GKN Driveshafts (India) Limited* (*supra.*)

13. We, thus, in terms of aforesaid discussion, find substance in the contention raised by the Ld. AR as per additional ground raised and accordingly, are of the considered opinion that the assessment proceedings are vitiated de hors supply of original reasons recorded, consequently the assessment framed on the foundation of such illegal proceedings have no legs to stand in the eyes of law. Consequently, we are inclined to set aside the order of Ld. CIT(A) and quash the impugned assessment dated 28.02.2014, framed u/s 147 r.w.s 143(3) of the Act.

14. Since, in appreciation of additional legal ground raised by the assessee, the assessment u/s 147 r.w.s 143(3) has been quashed by us, any other legal ground or ground in merits renders academic only, therefore, no separate adjudication is called for.

15. In result, the appeal of the assessee, stands **allowed** in terms of our aforesaid observations.

Order pronounced in the open court on 21-04-2026.

Sd/-
(JUSTICE (RETD.) C V BHADANG)
President
Mumbai, Dated : 21-04-2026.
Ankit, Sr. PS

Sd/-
(ARUN KHODPIA)
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