

*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "C" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and  
**Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No.1435/Kol/2012**  
Assessment Year:2005-06

ITO Ward-3(1), 8/2, Esplanade East, Dwarli House, Gr. Floor, Kolkata – 700 069	बनाम / V/s.	M/s SPBP Tea Plantations Ltd., 1, Crooked Lane, Kolkata-700 069 [PAN No.AACCP 0722 L]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Sanjay Mukherjee, JCIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri S. Jhajharia, FCA
सुनवाई की तारीख/Date of Hearing	05-01-2016
घोषणा की तारीख/Date of Pronouncement	10-02-2016

**आदेश /O R D E R**

PER Waseem Ahmed, Accountant Member:-

This is an Appeal by the Revenue is arising out of order No.166/CIT(A)-I/Wd-3(1)/10-11 dated 05.07.2012 of Commissioner of Income-tax (Appeals)-I, Kolkata. Assessment was framed by ITO Ward-3(1) u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 13.12.2007 for assessment years 2005-06. Assessee has raised the following grounds:-

*"1. That the Ld. CIT(A) has erred in law and on facts by allowing the appeal of the assessee company that proceedings u/s. 147 in this case is invalid and infructuous.*

*2. That the Ld. CIT(A) has erred in law and on facts by allowing the appeal of the assessee company and by deleting the addition of Rs.13,90,751/- under the head Excise duty and Cess.*

*3. That the Ld. CIT(A) has erred in law and on facts by allowing the appeal of the assessee company that invoking of sec 41(1)(b) read with explanation 2(iv) by the AO is not applicable and thereby deleting the addition of Rs.1,04,81,934/-"*

Shri S. Jhajharia, Ld. Authorized Representative appearing on behalf of assessee and Shri Sanjay Mukherjee, Ld. Departmental Representative appearing on behalf of Revenue.

2. At the time of hearing Ld. DR has not pressed ground No. 2, hence, same is dismissed as not pressed.

3. Coming to ground No.1 raised by Revenue in this appeal is that Ld. CIT(A) erred in law and fact by holding the proceedings u/s. 147 of the Act invalid and infructus.

4. At the outset, it was observed that assessee has challenged the legality and validity of assessment framed u/s. 147 of the Act on the ground that no reasons for reopening whatsoever has been communicated to assessee. Ld. AR further submitted that several requests for the reasons for the reopening the assessment u/s 147 of the Act was made but no details were submitted by AO. We also find that Ld. DR also failed to bring anything on record to controvert the argument made by AO and also the finding of Ld. CIT(A).

5. We have heard the rival parties and perused the materials on record. Ld. AR has submitted paper book which is running from page 1 to 87. In the instant case, we find that AO was bound to furnish the reasons for reopening the assessment u/s 147 of the Act but he failed to do so. We have also found from the orders of the Hon'ble Court wherein the reassessment proceedings have been quashed for non furnishing of the reasons for reopening of the case. On the same lines we are relying in the decision of Hon'ble Bombay High Court in the case of *M/s Allana Cold Storage Ltd. v. ITO* (2006) 206 CTR 401 (Bom) in which it was very clearly held that if objection petition filed is not disposed off before completing the assessment u/s/. 147 of the Act, the entire order is bad, illegal and void ab-initio for your kind reference a gist of the decision is reproduced herewith: In the case of your petitioner, no reasons were at all communicated and hence your petitioner had no opportunity to file objection.

*“The law laid down by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. Vs. ITO [2003] 259 ITR 19 is that when a notice under section 148 of the Income-tax Act, 1961, is issued, the notice is expected to file a return and if he so desires he may seek reasons for issuing the notice, The Hon'ble Supreme Court has laid down that on the assessee seeking such reason, “the Assessing Officer is bound to furnish the reasons within a reasonable time”*

From the above decision of Hon'ble Bombay High Court in the case of *M/s Allana Cold Storage Ltd.* (supra) we find that it is the mandatory duty of the Assessing Officer to furnish the reasons in regard to reopening the assessment u/s. 147 of the Act and in this ground AO failed to provide the reasons to assessee. In this view of this matter the appeal is not maintainable in the eye of law accordingly, we dismiss the appeal of Revenue.

6. Since the appeal of Revenue is not maintainable in the eye of law on the ground of invalid assessment order passed by Assessing Officer u/s 147 of the Act, hence the other ground does not require to be adjudicated.

7. **In the result, Revenue's appeal is dismissed.**

Order pronounced in open court on 10/02/2016

Sd/-

(S.S.Viswanethra Ravi)

Judicial Member

Kolkata,

\*Dkp

दिनांक:- 10/02/2016 कोलकाता

**आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-ITO Ward-3(1), 8/2, Esplanade East, Dwarli House, Gr. Floor, Kolkata-69
2. प्रत्यर्थी/Respondent- M/S SPBP Tea Plantatins Ltd., 1, Crooked Lane, Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

Sd/-

(Waseem Ahmed)

Accountant Member

By order/आदेश से,

/True Copy/

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता