

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'C', BANGALORE

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

1. I.T.A No.474/Bang/2014
(Assessment Year : 2008-09)
2. 1. I.T.A No.475/Bang/2014
(Assessment Year : 2008-09)

1. M/s. Vijaya Woven Sacks P. Ltd,
PAN : AAACV6746P
2. M/s. Vijaya Poly Plast
PAN : AACFV2654H
No.182 – B, Industrial Area,
Bykampady, Mangaluru .. Appellants

v.

Income-tax Officer,
Ward – 1(1), Mangaluru .. Respondent

Assessee by : Shri. S. Venkatesan, CA
Revenue by : Shri. K. R. Narayan, JCIT

Heard on : 01.06.2016
Pronounced on : 10.06.2016

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

These are appeals filed by the respective assesseees against a consolidated order dt.05.09.2013, of the CIT (A), Mysuru, for the assessment year 2008-09.

02. Facts apropos are that assesseees had filed their returns for the impugned assessment year declaring income of Rs.1,80,370/- and Rs.2,08,210/- respectively. During the course of assessment proceedings it was noted that assesseees had entered into certain transactions with one M/s. Ashapura Minechem Ltd., through which they had agreed to sell a land at Mangaluru to M/s. Ashapura Minechem Ltd. It seems there was a search conducted in the premises of M/s. Ashapura Minechem Ltd, at Mumbai on 27.03.2008. As per the AO, documents seized during the course of search, showed that assesseees had entered into an agreement dt.04.04.2007 to sell certain immovable property at Mangaluru to M/s. Ashapura Minechem Ltd. In the said agreement, consideration mentioned was Rs.104 lakhs and Rs.86 lakhs respectively. However in the conveyance deed registered on 15.05.2007, the consideration reflected was Rs.70 lakhs and Rs.51 lakhs only. During the course of search of M/s. Ashapura Minechem Ltd, Revenue had taken a statement from one Shri. Chetan Shah, Director of the said company. Shri. Chetan Shah had offered a sum of Rs.100 lakhs as undisclosed income against land purchases made by him at Mangalore and Trivandrum. As per the AO copies of the agreements were also found at the branch office at Bengaluru as well. In the returns filed by the assesseees the sale consideration shown was only Rs.70 lakhs and Rs.50.60 lakhs

against the consideration of Rs.104 lakhs and Rs.86 lakhs shown in agreements respectively. AO was of the opinion that there was escapement of income in the meaning of Section 147 of the Act and notices u/s.148 of the Act were issued to the assesseees. Assesseees in reply requested the AO to treat the original return filed as the one returned in pursuance to such notice. Assesseees also sought reasons for the reopening. It seems the AO communicated such reasons to the assessee on 04.01.2011 and the assesseees received such communication on 10.01.2011. Thereafter the reassessment proceedings continued wherein assesseees asserted that what was received on sale of the property was only the consideration which were mentioned in the registered conveyance deed and nothing more. As per assessee, CEO of M/s. Ashapura Minechem Ltd, Ms. Geetha Neruka had affirmed that what was paid by M/s. Ashapura Minechem Ltd, were only the consideration stated in the conveyance deed and nothing more. AO was of the opinion that the statement of Shri. Chetan Shah, Director of M/s. Ashapura Minechem Ltd group, was more reliable and confirmation letter given by Ms. Geetha Neruka did not have much credence.

04. Vis-a-vis, objections raised by the assesseees to the reopening, AO stated that such reopening was rightly done. Rebutting the argument of the

assesseees that proceedings ought have been initiated u/s.153C of the Act, AO held that he was free to have recourse to Section 148 of the Act, in preference to Section 153C of the Act. He thus recomputed the capital gains earned by the assesseees by substituting the consideration mentioned in the sale agreements to what were returned by the assesseees concerned.

05. Aggrieved assesseees moved in appeal before the CIT (A). One of the grounds taken by the assesseees before the CIT (A) questioned the assumption of jurisdiction u/s.148 of the Act. Assesseees also assailed the addition made in computation of capital gains, citing the following reasons:

- i) Shri. Chetan Shah, Director, whose statement was relied on by the AO for making the addition was not made available for cross examination.
- ii) Ms. Geetha Neruka, who was the CEO of M/s. Ashapura Minechem Ltd, and who had signed the sale agreement as well as the conveyance deed had confirmed to have paid nothing more than what was mentioned in the respective conveyance deeds.

06. CIT (A) sought a remand report from the AO. In the remand report AO reiterated the stand taken by him in the assessment order. According to the AO, reasons were communicated to the assesseees and the reopening

was rightly done. AO also stated that assessments were completed on the basis of facts and materials available on record.

07. On the above remand report, assessee filed a rebuttal before the CIT (A). In such rebuttal, assessee argued that its objections to the reopening were disposed off by the AO in the assessment order and this was contrary to law. Further as per the assessee, opportunity to cross examine Shri. Chetan Shah was never given and this was contrary to the judgment of Hon'ble Apex Court in the case of Kishanchand Chellaram v. CIT [125 ITR 713]. CIT (A) sought a second remand report from the AO on the above aspects. In the second remand report, AO mentioned that the documents which were found in the premises of M/s. Ashapura Minechem Ltd, were made available to the assessee for examination. As per the AO, copy of the sworn statement recorded from Shri. Chetan Shah was also given to the assessee. As per the AO though no separate orders were passed on the objections raised by the assessee against reopening, such objections were appropriately dealt with and disposed off in the assessment order passed u/s.143(3) of the Act. As per the AO, judgment of Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd v. ITO 259 ITR

19] only required the AO to dispose off the objections by a speaking order and this was rightly done by him.

08. CIT (A) after considering the submissions of the assesseees and the remand report of the AO, was of the opinion that the objections raised by the assesseees against reopening having been addressed by the AO in the assessment order, the challenge to reopening was devoid of merits. In so far as the addition made for capital gains was concerned, CIT (A) was of the opinion that the primary document which was being relied on was the agreement for sale and actual consideration shown in such agreements could not be brushed aside. According to him, this was true especially since both the assesseees as well as M/s. Ashapura Minechem Ltd, were parties to such agreement. Further according to him, Shri. Chetan Shah in his statement during the course of search in the premises of M/s. Ashapura Minechem Ltd, had affirmed payments to have been made by him in accordance with the sale agreement for purchase of property at Mangaluru and also made disclosure of more than Rs.100 crores as source for such investment. He thus confirmed the orders of the AO.

09. Now before us, Ld. AR strongly assailing the orders of lower authorities submitted that assesseees had sought for reasons and these were

given by the AO. As per the Ld.AR, assessee had vide their letter dt.12.11.2011 objected to the reopening and submitted to the AO that the notice issued u/s.148 of the Act was invalid since such reasons did not disclose the source of information. As per the Ld. AR, once assessee had objected to the reopening, AO could not have proceeded with the assessment unless and until such objections were disposed off through a separate speaking order. Relying on the judgments of Hon'ble Gujarat High Court in the case of MGM Exports v. DCIT [323 ITR 331], General Motors P. Ltd v. DCIT [354 ITR 244], as well as Hon'ble Bombay High Court in the case of Rabo India Finance Ltd [346 ITR 81], Ld. AR submitted that unless and until the objections against reassessment filed by the assessee were disposed off, reassessment orders could not have been validly done. Further according to him, assessee's request for a cross examination of Shri. Chetan Shah, Director of M/s. Ashapura Minechem Ltd, whose statement was relied on, for making the addition, was not granted. This was against the rules of natural justice and according to Ld. DR went against the judgments of Hon'ble Apex Court in the case of Kishinchand Chellaram (Supra) and that of Andaman Timber Industries v. CIT [127 DTR 241]. According to him non-adherence to the principles of natural justice rendered the proceedings void.

10. On merits, Ld. AR submitted that Ms. Geetha Neruka, CEO, of M/s. Ashapura Minechem Ltd , who was a party to the agreement had confirmed that nothing more than what was mentioned in the conveyance deed was paid by them. She was the CEO of M/s. Ashapura Minechem Ltd and lower authorities according to him, fell in error in relying on the statement recorded from the Director of the said company in preference to the confirmation given by the CEO.

11. We have perused the orders and heard the rival contentions. In so far as the question of validity of proceedings u/s.148 of the Act is concerned, it is not disputed by the parties that assessee had required the reasons for reopening from the AO and these were furnished. It is also not disputed that assessee through their letters dt.12.11.2011 had objected to the reopening. Relevant part of the letter dt.12.11.2011, is reproduced hereunder :

9. It is submitted that the notice is invalid as the reasons are recorded without application of mind. It is also submitted that the notice is invalid as the process of the reasoning is not disclosed. It is also submitted that the notice is invalid as the reasons do not disclose the source of information. It is also submitted that the notice is invalid as the reasons are not given with the notice. It is also submitted that the notice is invalid as the reasons not given within reasonable time.

10. It is submitted that the issue of notice is not valid. The notice issued is bad for want of proper jurisdiction. The AO'S

jurisdiction to reopen an assessment depends upon the issuance of a valid notice. The notice itself should be clear and unequivocal. Issuing of a notice is not a mere formality. If the notice issued by him is invalid for any reason, the entire proceeding taken by him would become void for want of jurisdiction. Reliance is placed on CIT Vs Kurban Hussain Ibrahimji Mithiborwala (1971 82 ITR 821 (SC) and CIT Vs Ram Das Deokinandan Prasaci (HEIP) (2005) 277 ITR 197 (All).

11. We hope that the detailed objections are acceptable and considering the objections judiciously, your goodself would drop the further proceedings and spare us from the unnecessary ordeal on merits. The proposed reassessment is challenged on the ground of being arbitrary, erroneous with power being exercised without due application of mind and mechanically in stereo type manner. The reassessment would be in total defiance of legal provisions/judicial decisions and would fail to withstand judicial scrutiny and the very foundation to make the assessment would be unsustainable in terms of issuance of invalid notice u/s 148. We hope that the submissions made would be judiciously dealt with and the learned Assessing Officer would refrain from making a high pitched assessment.

12. It is also not disputed that the AO had disposed of such objections only in the assessment order finally passed u/s.143(3) r.w.s.147 of the Act and not through a separate order. Question before me is whether it is open for an AO to decide on the objections to a notice u/s.148 of the Act, through a composite order disposing of the objections and making an assessment. Hon'ble Gujarat High Court in the case of General Motors P. Ltd [supra] held as under at para 24 of the judgment :

24. From the aforesaid discussion, we are of the considered opinion that the writ petition under article 226 of the Constitution of India is maintainable where no order has been passed by the Assessing Officer deciding the objection filed by the assessee under section 148 of the Act and assessment order has been passed or the order deciding an objection under section 148 of the Act has not been communicated to the assessee and assessment order has been passed or the objection filed under section 148 has been decided along with the assessment order. If the objection under section 148 has been rejected without there being any tangible material available with the Assessing Officer to form an opinion that there is escapement of income from assessment and in the absence of reasons having direct link with the formation of the belief, the writ court under article 226 can quash the notice issued under section 148 of the Act. The writ petition filed by the petitioner is maintainable. The Assessing Officer is mandated to decide the objection to the notice under section 148 and supply or communicate it to the assessee. The assessee gets an opportunity to challenge the order in a writ petition. Thereafter, the Assessing Officer may pass the reassessment order. We hold that it was not open to the Assessing Officer to decide the objection to notice under section 148 by a composite assessment order. The Assessing Officer was required to, first decide the objection of the assessee filed under section 148 and serve a copy of the order on the assessee. And after giving some reasonable time to the assessee for challenging his order, it was open to him to pass an assessment order. This was not done by the Assessing Officer, therefore, the order on the objection to the notice under section 148 and the assessment order passed under the Act deserves to be quashed.

13. Same view has been taken by Hon'ble Bombay High Court in the case of Rabo India Finance Ltd (supra) also. Not following the law laid down by Hon'ble Apex Court in the case of GKN Driveshafts India Ltd,

(supra), in our opinion does render the assessment void. Assesseees are deprived of a valuable right to move higher judicial forum, if it is not given the reasons why AO was rejecting the objections against the reopening.

14. That apart, we also find that for the addition of capital gains, AO had relied on the agreements of sale which reflected amounts, different from what were mentioned in the conveyance deed. In both these documents M/s. Ashapura Minechem Ltd, was represented by its CEO, Ms. Geetha Neruka. Said Ms. Geetha Neruka had later on given a confirmation letter wherein it was affirmed by her that nothing more than what was mentioned in the conveyance deed was paid by the company. If the AO wanted to treat the statement taken from the Director, Shri. Chetan Shah, as more credible than that of Ms. Geetha Neruka, he ought have definitely given a chance for cross examining Shri. Chetan Shah. This was not given despite assesseees' specific request. Taking all these facts and circumstances, I am of the opinion that reassessment proceedings done on the assesseees were invalid. Such reassessments stand quashed.

15. In the result, appeal of the assessee are allowed.

Order pronounced in the open court on 10th day of June, 2016.

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order
Assistant Registrar