

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-2" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
ITA.No.4560/Del./2019
Assessment Year 2010-2011

FGR Logistics Pvt. Ltd., Shop No.3, Zakhira Chara Mandi, New Delhi. PIN 110 015 PAN AAACF5892N (Appellant)	vs.	The ACIT, Circle 9(1), New Delhi. (Respondent)
---	-----	--

For Assessee :	Shri Shantanu Jain, Advocate
For Revenue :	Mr. Sri Prakash Dubey, Sr.DR

Date of Hearing :	23.12.2020
Date of Pronouncement :	01.01.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-34, New Delhi, Dated 18.02.2019, for the A.Y. 2010-2011, challenging the re-assessment proceedings under sections 147/148 of the I.T. Act, 1961, addition of Rs.10 lakhs on account of share

capital under section 68 of the I.T. Act, 1961 and addition of Rs.17,500/- on account of commission paid.

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

3. Briefly the facts of the case are that assessee company filed return of income on 29.09.2011 declaring total income of Rs.31,74,650/-. Subsequently, it was revised to the same income which was processed under section 143(1). The A.O. issued notice under section 148 of the I.T. Act on 29.03.2017. The assessee in response thereto filed letter dated 20.04.2017 [PB-26] submitting therein that the return filed under section 139 of the I.T. Act may be considered as return filed in response to the notice under section 148 of the I.T. Act, 1961. The assessee requested for supply of the reasons for re-assessment proceedings which were provided to the assessee on 21.11.2017. The assessee filed objections to the re-assessment proceedings which were disposed of by the A.O. by speaking order. The A.O. noted that in assessment year under appeal assessee has

received share application money of Rs.10 lakhs from M/s. Attractive Finlease Pvt. Ltd., on 08.02.2010. Information was received from the DDIT (Inv.) that it was a bogus share capital. The A.O. after giving an opportunity of being heard to the assessee, made addition of Rs.10 lakhs on account of unexplained share capital under section 68 of the I.T. Act, 1961 and further made addition of Rs.17,500/- on account of unexplained expenditure under section 69C of the I.T. Act, 1961. The Ld. CIT(A) dismissed the appeal of assessee.

4. Learned Counsel for the Assessee referred to PB-1 [Paper Book Page Nos.1 to 32] which is letter Dated 25.04.2017 filed before A.O. requesting for supply of the reasons for reopening of the assessment on which there is a stamp of the Revenue Department. He has submitted that prior to that assessee filed letter Dated 20.04.2017 PB-26 intimating the A.O. the return filed originally may be treated as return filed in response to notice under section 148 of the I.T. Act, 1961. He has submitted that despite assessee made a request for supply of the reasons for reopening of the assessment on 25.04.2017, but, same have been

supplied to the assessee only on 21.11.2017. The assessee immediately on the same day on 21.11.2017 filed objections against the initiation of re-assessment proceedings, copy of which is filed at Page Nos.28 to 50 of the PB. He has submitted that A.O. has disposed of the objections of the assessee vide Order Dated 05.12.2017 PB-51 and 52. He has submitted that A.O. immediately after disposing of the objections of the assessee on 05.12.2017 passed the impugned assessment order under section 147 read with section 143(3) on 28.12.2017. Therefore, A.O. has not given four weeks time to the assessee to seek legal remedy after rejection of the objections and within 23 days passed the assessment order. Therefore, reopening of the assessment is clearly bad in Law and is nullity and liable to be quashed. In support of his contention, he has relied upon the Order of the ITAT, Delhi A-SMC Bench in the case of Smt. Kamlesh Goel, Delhi vs., Income Tax Officer, Ward-59(3), New Delhi in ITA.No.5730/Del./2017, Dated 30.08.2018 which is reproduced as under :

"IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI
'A-SMC' BENCH, : NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 5730/DEL/2017
[Assessment Year: 2009-10]

Smt. Kamlesh Goel
22, 2nd Floor,
Chitra Vihar
Delhi
PAN : AGHPG 4212 H
[Appellant]

Vs.

The I.T.O
Ward 59(3)
New Delhi.
[Respondent]

Date of Hearing : 28.08.2018
Date of Pronouncement : 30.08.2018

Assessee by : Shri P.C. Yadav, Adv

Revenue by : Shri D.S. Rawat, Sr.DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals]-19, New Delhi dated 31.07.2017 pertaining to assessment year 2009-10.

2. Vide letter dated 01.03.2018, the assessee has revised the grounds of appeal, which read as under:

"1. The order passed by the CIT(A) is bad in law and on facts of the case.

2. The CIT(A) has erred in affirming the jurisdiction of AO under section 147 read with 148, ignoring that the AO has not followed the procedure of law as propounded by the Hon'ble Apex Court in GKN Drive Shaft case 259 ITR 19(SC)

3. The CIT(A) has erred in law and on facts in not quashing the jurisdiction of the AO u/s 147 in view of the facts that the AO has not followed the due process of law as held by the Apex Court in GKN Drive Shaft (Supra) before framing the reassessment

4. The CIT(A) has further erred in not appreciating that AO has proceeded to assess that income which does not form part of reasons recorded particularly when the income for which the AO has assumed jurisdiction has been accepted by the AO.

5. The CIT(A) has further erred by partly allowing the addition made by Ld. Income Tax Office, under [section 147/143\(3\)](#) of the Income Tax Act, 1961 from Rs. 14,06 060/- to Rs. 5,09,193/-, is legally and

factually incorrect and has been made by recording factually incorrect findings."

3. Facts on record show that the assessee is an individual and engaged in the business of cloth trading. Return for the year was filed on 31.07.2009 declaring an income of Rs 2,93,743/-. The return so filed was processed u/s 143(1) of the *Income-tax Act, 1961* [hereinafter referred to as 'the Act' for short]. Thereafter, the case of the assessee was reopened u/s 147 of the Act on 28.03.2016. On 04.07.2016, reasons for reopening assessment were provided to the assessee and on 13.07.2016, the assessee filed objections to the reasons so recorded. The objections raised by the assessee were disposed off by the Assessing Officer on 13.12.2016. However, the Assessing Officer framed assessment u/s 143(3) of the Act vide order dated 30.12.2016.

4. The bone of contention is as to whether the Assessing Officer has rightly framed the impugned order within 16 days of disposing of the objections of the assessee.

5. The answer is given by the coordinate bench in the case of Metaplast Engineering P. Ltd in ITA No. 5780/DEL/2014 wherein the co- ordinate bench has considered the judgment of the Hon'ble Bombay High Court in the case of Bharat Jayantilal Patel 378 ITR 596. The relevant finding reads as under:

"Further, in view of the decision of the Hon'ble Bombay High Court in the case of Bharat Jayant Patel (supra) , learned AO should have allowed four weeks' time to the assessee to seek their legal remedies after rejection of the objections of the assessee. In view of the fact that the AO has disposed of the objections of the assessee on 22.11.11 and passed the assessment order on 19.12.2011, it is clear that no such time was granted to the assessee. "

6. The relevant observations of the Hon'ble High Court of Bombay in Bharat Jayantilal Patel [supra] reads as under:

"21. For the first contention of Mr.Pardiwalla to be considered, it is material to note that on 11th September, 2014 the petitioner

addressed a detailed communication setting out his objections to the recorded reasons. These objections which are elaborate run into about 9 pages. Thereafter, the petitioner pointed out on 8th December, 2014 that he was required to attend the office of the Deputy Commissioner of Income Tax on 9th December, 2014. He pointed out as to how the reasons were supplied and how they have been dealt with and objected to by him. The petitioner specifically requested the assessing officer not to proceed with the scheduled hearing till the objections raised to the reasons have been disposed of by a speaking order.

22. On 5th March, 2015 a communication was addressed to the petitioner which purported to reject his objections. The objections have not been referred to in detail but what has been stated is that the case has not been reopened merely on the basis of a change of opinion. The fact that came to light during the assessment proceedings for assessment year 2011-12 are the basis for reopening the case pertaining to the assessment year 2007-08. Since the petitioner is

stated to have filed a new return of income, he was called upon to attend the office with the information required on 13th March, 2015. The petitioner addressed a letter on 12th March, 2015 and pointed out that the communication dated 5th March, 2015 was received on 12th March, 2015, but no speaking order has been passed rejecting the objections and which is required by the law laid down in the case of GKN Driveshaft (India) Ltd. V/s. Income Tax Officer reported in (2003) 259 ITR 19 and Asian Paints Ltd. V/s. Deputy Commissioner of Income Tax & Anr. reported in (2009) 308 ITR 195 (Bom). The petitioner specifically invited the attention of the assessing officer to the directions in the case of Asian Paints (supra) and to the effect that if the assessing officer does not accept the objections to the reopening of the assessment or the reasons recorded, he shall not proceed further in the matter within a period of four weeks from the date of receipt or service of the said order on the assessee. Since the order dated 5th March, 2015 is stated to be rejecting the objections, then, the

assessee prayed that for a period of four weeks from that order, no steps should be taken.

23. However, as has been rightly contended by Mr. Pardiwalla, ignoring this mandate in the decisions of this Court and the Hon'ble Supreme Court which has been further reiterated in M/s.Aroni Commercials Ltd. (supra), the impugned assessment order has been passed, that is dated 27th March, 2015. That is clearly within the period of four weeks from 5th March, 2015. The first contention of Mr.Pardiwalla, therefore, deserves acceptance as nothing contrary to the same has been placed before us."

7. Respectfully following the same, we hold that the assessment order dated 30.12.2016 framed u/s 147 r.w.s 143(3) of the Act is bad in law and deserves to be quashed.

8. In the result, the appeal filed by the assessee in ITA No. 5730/DEL/2017 is allowed."

5. On the other hand, Ld. D.R. submitted that there was a delay on the part of the assessee in filing the

objection and Judgment of Hon'ble Bombay High Court relied upon by Delhi Bench is not applicable to the facts because it is not jurisdictional High Court. The Ld. D.R. submitted that even no sufficient time is given by the A.O. after disposing of the objections of the assessee. The matter may be remanded to the A.O. for doing the needful as per Law and in support of his contention he has relied upon the Judgment of Hon'ble Gujrat High Court in the case of Pr. CIT-2, Vadodara vs., Sagar Developers in Tax Appeal No.797/2015 etc., Dated 20/21.07.2016.

6. We have considered the rival submissions and perused the material on record. It is not in dispute that assessee immediately after receipt of notice under section 148 of the I.T. Act, 1961, Dated 29.03.2017 filed letter Dated 20.04.2017 intimating that return filed originally may be treated as return having been filed in response to notice under section 148 of the I.T. Act, 1961 [PB-26]. This fact is also mentioned by the A.O. in the assessment order. The A.O. has also mentioned in the assessment order that assessee thereafter requested for supply of the reasons

recorded for re-assessment proceedings which were provided to the assessee on 21.11.2017. The assessee has filed copy of the letter Dated 25.04.2017 which was filed to the A.O. asking for copies of the reasons recorded for reopening of the assessment. It bears the stamp of the Revenue Department also. Thus, it is clear that assessee immediately asked for copy of the reasons for reopening of the assessment on 25.04.2017 after filing earlier letter Dated 20.04.2017. Thus, there is no delay on the part of the assessee asking for copy of the reasons recorded for re-assessment proceedings. It is an admitted fact that reasons were supplied to the assessee only on 21.11.2017 and assessee on the same day filed the objections to the reopening of the assessment which have been disposed of vide Order Dated 05.12.2017 [PB-51]. The A.O. within 23 days after disposing of the objections of the assessee passed the impugned re-assessment order Dated 28.12.2017. Thus, no time of four weeks have been granted to the assessee to take remedial action in the matter. The issue is thus covered by Order of ITAT, Delhi A-SMC Bench, Delhi in the

case of Smt. Kamlesh Goel, Delhi vs., ITO, Ward 59(3), New Delhi (supra) in which the Tribunal has followed the decision of Hon'ble Bombay High Court in the case of Bharat Jayantilal Patel 378 ITR 596 (Bom.) in which the Judgment of Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd., vs., ITO [2003] 259 ITR 19 (SC) is also considered. Thus, following the same we hold that re-assessment order Dated 28.12.2017 framed under section 147/143(3) of the I.T. Act, 1961, is bad in Law and deserves to be quashed. In view of the above, the decision of the Hon'ble Gujrat High Court in the case of Pr. CIT-2, Vadodara vs., Sagar Developers (supra) cited by the Ld. D.R. would not support the case of the Revenue. Further it is well settled Law that if there are two views are possible, then the view in favour of the assessee shall have to be followed for deciding the matter in dispute. Therefore, the contention of the Ld. D.R. is rejected that matter may be remanded to the A.O. for doing the needful. In view of the above, we set aside the Orders of the authorities below and quash the re-assessment proceedings. Resultantly, all additions stand

deleted. In view of the above, there is no need to decide the other issues raised in the appeal as well as contentions raised before us because the same are left with academic discussion only. Accordingly, appeal of the Assessee is allowed.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Date 01 January, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-2' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar, ITAT Delhi Benches :
Delhi.