IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI
BEFORE SHRI R.P. TOLANI, JUDICIAL MEMBER
AND
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
I.T.A. No. 6093/Del/2010
A.Y. : 2002-03

Mohan Clothing Co. Pvt. Ltd., 2E/22, Jhandewalan Extn., New Delhi – 110064 (PAN : AACM1374L) **(Appellant)**	vs.	Asstt. Commissioner of Income Tax, Circle 5(1), New Delhi **(Respondent)**

Asseessee by	:	Sh. K. Sampath, Adv.
Department by	:	Sh. R.S. Negi, Sr. D.R.

ORDER

PER SHAMIM YAHYA: AM

This appeal by the Assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals) dated 02.12.2010 pertaining to assessment year 2002-03.

2. The grounds raised read as under:-

> "That on the facts and in the circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) erred in confirming the following actions of the Assessing Officer :-
>
> (i) Initiating proceedings u/s 147 of the Income Tax Act and completing the assessment u/s 147/143(3) of the Act on income of ₹ 43,68,472/-;

(ii) making an addition of ₹ 38,99,527/- on account of alleged undisclosed purchase on surmises and conjectures; and

(iii) making an addition of ₹ 38,995/- as unexplained expenditure allegedly by way of commission paid even though there was no material in support of such allegations.

All the above actions are most arbitrary, erroneous and unlawful and it is prayed that the same must be quashed."

3. Assessee in this case is engaged in the business of manufacturing and trading of ready made garments. The original assessment was completed in this case u/s 143(2) on 31.12.2004. Subsequently, on the basis of information received from the Investigation Wing the assessment was reopened and notice u/s 148 was issued on 27.3.2009, the reassessment was completed vide order dated 15.12.2009 and addition was made on account of undisclosed purchases and unexplained expenditure and assessment was completed at ₹ 43,68,472/-.

4. Assessee appealed before the Ld. Commissioner of Income Tax (Appeals) against the reopening as well as merits of the addition. Ld. Commissioner of Income Tax (Appeals) in his appellate order rejected both the issues and rejected the assessee's appeal and against which the assessee is in appeal before us.

5. Ld. counsel of the assessee at the threshold submitted that reassessment in this case is invalid, in as much as notice was served after six years which was from the end of the relevant assessment

year. He also submitted that reasons for reopening were not given within six years from the end of the relevant assessment year. In this regard, he referred to the decision of the Hon'ble Jurisdictional High Court in the case of Haryana Acrylic Mfg. Co. vs. C.I.T. 308 ITR 38. He further relied upon the decision of this tribunal in ITA No. 4806/Del/2010 For A.Y. 2001-02 in the case of Shri Balwant Rai Wadhwa vs. ITO vide order dated 14.1.2011. The tribunal relying upon the decision of the Hon'ble Jurisdictional High Court in the case of Haryana Acrylic Mfg. Co. vs. C.I.T. (Supra) had quashed the re-assessment on account of reason for reopening not being supplied within six years.

6. We have carefully considered the submissions and perused the records. We find that it is undisputed that reasons for reopening were not supplied within six years from the end of the relevant assessment year. In this connection, Hon'ble Jurisdictional High Court in the case of Haryana Acrylic Mfg. Co. vs. Ld. Commissioner of Income Tax (Supra) has held as under:-

> 24. Thirdly, it could be argued that the reasons supplied to the petitioner in September, 2004 be disregarded so also the objections filed by it as also the impugned order dated 2-3-2005 and the reasons noted in the said form be now taken as the reasons for the issuance of the notice under section 148 and the petitioner may now prefer his objections, if any, and thereupon the Assessing Officer be directed to pass a speaking order. In other words, such an argument requires us to sweep all the proceedings emanating from the supply of reasons in September 2004

and culminating in the passing of the order dated 2-3-2005 'under the carpet', as it were. And, starting the process as per the directions given in GKN Driveshafts (India) Ltd.'s case (supra) afresh considering the reasons noted in the said form to be the actual reasons for the issuance of the notice under section 148. If we were to accept this argument, we would have to ignore the directions given by the Supreme Court in GKN Driveshafts (India) Ltd.'s case (supra) that the Assessing Officer is bound to furnish reasons within a reasonable time. The notice under section 148 was issued on 29-3-2004. The petitioner filed the return and sought reasons by its letter dated 11-5-2004. If the date of filing of the counter-affidavit in this writ petition is taken as the date of communication of the reasons which forms part of the said form, a copy of which is Annexure-A to the counter-affidavit, then the date of supply of reasons, based on this argument, would be 5-11-2007. This immediately makes it clear that the Assessing Officer, who was bound to furnish his reasons within a reasonable time, did not do so. The period which elapsed between 11-5-2004, when the petitioner made the request for communicating the reasons, and 5-11-2007, the date when the counter-affidavit was filed, can certainly not be regarded as a reasonable period of time. Apart from this, we must not forget the provisions of section 149 which prescribes the time-limit for a notice under section 148. Section 149(1)(b) stipulates the outer limit of six years from the end of the relevant assessment year where the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees one lakh or more for that year. This means that a notice under section 148, in the present case, could not, in any event, have been issued after six years from the end of the assessment year 1998-99, i.e., after 31-3-2005. In whichever way we look at it, a notice under section 148 without the communication of the reasons therefor is meaningless inasmuch as the Assessing Officer is bound to furnish the reasons within a reasonable time. In a case, where the notice has been issued within the said period of six years, but the reasons have not been furnished within that period, in our view, any proceedings pursuant thereto would be hit by the bar of limitation inasmuch as the issuance of the notice and the communication and furnishing of reasons go hand-in-hand. The expression 'within a reasonable period of time' as used by the Supreme Court in GKN Driveshafts (India) Ltd. 's case (supra) cannot be stretched to such an extent that it extends even beyond the six years stipulated in section 149. For this reason also, even assuming that we overlook all that has happened between 11-5-2004, when the petitioner sought the reasons, and 5-11-2007, when the said form annexed to the counter-affidavit was filed in this court, the validity of the notices under section 148 issued on 29-3-2004 and any proceedings pursuant thereto cannot be upheld."

7. A plain reading of the above exposition of law by the Hon'ble Jurisdictional High Court makes it clear that issuance of the notice and

the communication and furnishing of reasons would go hand in hand. The reasons are to be supplied to the assessee before the expiry of period of six years. If it has not been done then validity u/s 148 could not be upheld. In this case, reasons were not supplied before the expiry of the six years from the end of the relevant assessment year. Under the circumstances, the reassessment in this case is bad in law, hence, we quash the same. Since we have already quashed the reassessment on account of jurisdiction, hence, we are not dealing with other issues raised by the assessee in this case and the same have become academic in nature.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 14/10/2011.

Sd/-	Sd/-
[R.P. TOLANI] JUDICIAL MEMBER	[SHAMIM YAHYA] ACCOUNTANT MEMBER

Date 14/10/2011

SRB
Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar,
ITAT, Delhi Benches