

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 2nd DAY OF JULY 2018

PRESENT

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

AND

THE HON'BLE Mrs.JUSTICE S.SUJATHA

I.T.A.No.451/2017

BETWEEN:

1. Pr. Commissioner of
Income Tax-4,
BTMC Complex,
Koramangala,
Bengaluru.
2. Income Tax Officer,
Ward-7(3),
Bengaluru.

...APPELLANTS

(By Mr.Sanmathi.E.I, Advocate)

AND:

Shri.V.Ramaiah,
No.49, Kaggadasapura,
C.V.Raman Nagar,
Bengaluru-560 093.

...RESPONDENT

(By Mr.A.Shankar &
Sri.M.Lava, Advocates)

This I.T.A is filed under Section 260-A of Income Tax Act 1961, arising out of order dated:10/01/2017 passed in ITA No.1282/Bang/2013, for the Assessment Year 2009-2010 praying to:

(a) Decide the foregoing question of law and/or such other questions of law as may be formulated by the Hon'ble Court as deemed fit.

(b) Set aside the appellate order dated:10/01/2017 passed by the Income Tax Appellate Tribunal, 'A' Bench, Bengaluru, in appeal proceedings ITA No. 1282/Bang/2013 for Assessment Year 2009-2010, as sought for in this appeal and to grant such other relief as deemed fit, in the interest of justice.

This I.T.A. coming on for admission, this day **Dr. VINEET KOTHARI J.** delivered the following:-

JUDGMENT

Mr.Sanmathi.E.I, Adv. for Appellant
Mr.A.Shankar and M.Lava, Advs. for Respondents

The Revenue has filed this appeal under **Section 260A** of the **Income Tax Act, 1961** raising following suggested substantial question of law as arising from the order of the learned Income Tax Appellate Tribunal passed on **10.01.2017** in **ITA No.1282/Bang/2013**, which is quoted below:

“Whether on the facts and in the circumstances of the case, the Tribunal was

justified in law in setting aside the re-assessment order by holding that the assessing authority had not supplied the reasons for re-assessment even though the assessee was made aware of the crux of the case and assessee was provided sufficient opportunity of hearing and assessee had actively contested the case before assessing authority?"

2. The findings of the learned Tribunal with regard to quashing of the aforesaid impugned reassessment order is that the reasons recorded by the assessing authority for reopening were never communicated to the assessee though the same were produced before the learned Tribunal for perusal. The findings of the Tribunal are quoted below for ready reference:

"Thus it is clear that vide letter dt.21.12.2011, the assessee has once again reiterated a request for furnishing the reasons recorded for reopening of the assessment. The assessee has stated that the Assessing Officer has not furnished the reasons recorded for

reopening despite earlier request vide letter dt.10.02.2010. It is the case of the revenue that the reasons were furnished to the assessee on 04.11.2011. The learned Departmental Representative has placed reliance on the order sheet dt.04.11.2011 in the assessment proceedings which reads as under:

"4.11.2011

In response to the notice, the applicant's A/R & C.S. Sri V. Venkatanarasimhan appeared & filed the power, the case was discussed. The A/R was asked to furnish the copy of the R/I for 2009-10 & furnish further details. Case is reposted for hearing on 9.11.2011."

The order sheet dt.4.11.2011 reproduced above indicates that in response to the Notice issued under Section 142 dt.24.10.2011, the Authorised Representative of the assessee appeared before the Assessing Officer and filed the Power of Attorney. The case was discussed with the Authorised Representative. The

Assessing Officer asked the A.R. to furnish the copy of income for the Assessment Year 2009-10 and further details. Apart from what is recorded in the order sheet note, nothing can be read into these proceedings regarding supply of reasons recorded for reopening of the assessment. Thus by no stretch of imagination it can be inferred from the proceedings recorded on 4.11.2011 that the reasons recorded for reopening of the assessment were furnished to the A.R. of the assessee. This fact is again supported by the letter dt.21.12.2012 wherein the assessee has again stated that despite his request dt.10.2.2011 the reasons recorded for reopening were not furnished and again requested the Assessing Officer for furnishing the same. The CIT (Appeals) issued a remand order to ascertain the fact of supply of furnishing of the reasons recorded for reopening of the assessment. The relevant part of the remand report has been reproduced by the CIT (Appeals) at pages 3 & 4 of the impugned order as under:

In this case information was received from the Deputy Director of Investigation (Inv) Unit

II(1), Bangalore on 26/08/2010 that during the Investigation proceedings with Sri. R.K. Govindaraj, he revealed that his father in law Mr. V. Ramaiah had sold property situated at Thimmaiah Road, Bilakahalli Village, Kasaba Hobli, Bangalore and at Domulr 2nd stage, 3rd Phase on 19/11/2008 for a total consideration of Rs.45 crores. Further investigations by them had revealed that the said Sri. Ramaiah had not paid Capital gain tax on the above sale from the A.Y.200-10. As Sri. V Ramaiah was assessed to tax under this ward, the above information was passed on this office. Sri. V. Ramaiah has stated in the statement recorded u/s 131 of IT Act that a sale proceeds of Rs.45.62 Crores has not been offered to tax. Accordingly, notice u/s 148 of IT Act was issued asking assessee to file return of income. Shri Ramaiah vide letter dated 10.02.2001 filed in the office on 11.02.2011 has stated that the return filed by him on 30.07.2009 with ITO ward 5(2) vide acknowledgement No.000760 declaring income of Rs.2,56,922/- should be taken as return filed in response to section 148 of the IT Act. Subsequently assessee filed a letter dated 22.11.2011

wherein he has stated that the return filed under protest on 11.02.2011 declaring an income of Rs.3,06,922/- should be taken as return filed in response to notice u/s 148 of IT Act. The assessee has also filed a copy of computation of total income along with the return.

That last para of the above remand report states that a copy of reasons for reopening was duly handed over to the assessee on 4.11.2011 vide order sheet nothing. We have already discussed the order sheet dt.4.11.2011 and found that there is nothing in the said proceedings to indicate that the reasons recorded for reopening of the assessment were furnished by the Assessing Officer of the assessee. Thus this statement of the Assessing Officer in the remand proceedings does not borne out from the record particularly the order sheet dt.4.11.2011. We find that the CIT (Appeals) has accepted the remand report without verifying the claim of the assessee that the reasons recorded for reopening were not supplied to the assessee. It is pertinent to note that the statement in the remand report

is not an independent statement of the Assessing Officer but it is based on the order sheet dt.4.11.2011. Therefore, this statement of the Assessing Officer is contrary to the fact as recorded in the order sheet and cannot be accepted. Thus it is clear that despite the repeated requests by the assessee, the Assessing Officer has completed the assessment without furnishing the reasons recorded for reopening of assessment. Furnishing the reasons recorded for reopening of the assessment is mandatory condition as held by the Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd. Vs. ITO (Supra) wherein the Hon'ble Supreme Court has laid down the principle that recorded reasons must be furnished to the assessee when the assessee sought for the reasons. It is not an empty formality but the purpose is to enable the assessee to file objection to the same before the Assessing Officer. Recording of reasons and furnishing of the same has to be strictly complied with since it is jurisdictional issue. It is settled proposition of law that if the assessee sought the reasons recorded for the reopening then the Assessing Officer is bound

to supply the same and on filing of the objections by the assessee, the Assessing Officer has to first decide the same before completing the reassessment. Therefore the Assessing Officer is bound to dispose of the objections before the completion of the reassessment and thus it gives the jurisdiction to the Assessing Officer to complete the reassessment. The condition of supply of the reasons and disposing of the objections prior to completion of reassessment is mandatory and therefore any development post completion of reassessment without furnishing of the reasons would not affect or obliterate the mandatory condition and the legal consequence thereof. The reasons supplied after completion of the reassessment becomes irrelevant as far as the jurisdiction issue of the Assessing Officer is concerned to decide the validity of reassessment.

Similar view has been taken by the Hon'ble Bombay High Court in the case of CIT Vs. Trend Electronics in ITA No.1867 of 2013 as well as Delhi High Court in the case of Prin. CIT Vs. Samcor Glass Ltd. & Anr. (supra). In

view of the facts and circumstances of the case, we are of the considered view that the Assessing Officer has failed to furnish the reasons recorded for reopening of the assessment despite the repeated requests of the assessee then the reassessment completed without compliance of the mandatory condition of furnishing the reasons recorded is not sustainable and therefore the same is bad in law. Accordingly, we quash the reassessment order passed under Section 134(3) r.w.s.147 of the Act.

3. The learned counsel for the Revenue Mr.Sanmathi.E.I, relying upon the decision of the Madras High Court in the case of **HOME FINDERS HOUSING LTD. Vs. INCOME-TAX OFFICER, CORPORATE WARD 2(3), CHENNAI (2018) 93 TAXMANN.COM 361 (MADRAS)** has submitted that this was a procedural requirement and any lapse in such compliance cannot result in the quashing of the reassessment order and the Tribunal ought to have remanded the case back to the

learned assessing authority. **Para 18** of the said Judgment is quoted below for ready reference:

"The disposal of objections is in the value of a procedural requirement to appraise the assessee of the actual grounds which made the Assessing Officer to arrive at a prima facie satisfaction that there was escape of assessment warranting reopening the assessment proceedings. The disposal of such objection must be before the date of hearing and passing a fresh order of assessment. In case, on a consideration of the objections submitted by the assessee, the Assessing Officer is of the view that there is no ground made out to proceed, he can pass an order to wind up the proceedings. It is only when a decision was taken to overrule the objections, and to proceed further with the reassessment process, the Assessing Officer is obliged to give disposal to the statement of objections submitted by the assessee."

4. On the other hand, the learned counsel for the assessee Mr.A.Shankar submitted that non-supply of the

reasons recorded for re-assessment goes to the root of the matter and is a jurisdictional issue and in view of the Hon'ble Supreme Court decision in the case of **GKN DRIVESHAFTS (INDIA) LTD. Vs. INCOME TAX OFFICER AND ORS. (259 ITR 19 (SC))**, it cannot be treated only as a procedural lapse on the part of the assessing authority. He further submitted that the facts of the case before the Madras High Court in the aforesaid case were different, where the assessing authority failed to pass a preliminary order once the assessee raised the objections with regard to the reassessment proceedings.

5. Having heard the learned counsels for the parties, we are satisfied that no substantial question of law arises in the present appeal filed by the Revenue in as much as the recording of reasons for reassessment under Section 147/148 of the Income Tax Act or non-communication thereof to the assessee does not amount to a mere procedural lapse. In view of the aforesaid Supreme Court decision in **GKN DRIVESHAFT's** case, it goes to the root

of the matter and renders the reassessment order passed by the assessing authority without recording such reasons and communicating the same to the assessee, as being without jurisdiction.

6. The contention raised by the learned counsel for the Revenue that in the order sheet dated 04.11.2011 in the reassessment proceedings were duly noted by the authorised representative appearing on behalf of the assessee and therefore, such assessee should be deemed to have been made aware of the reasons for reopening does not impress us.

7. The Tribunal has clearly noted in its order after looking into the record of the case that the reasons which were placed before the learned Tribunal itself only for the first time were never communicated to the assessee during the contemporary period. Mere participation of the assessee or Authorized Representative in the reassessment proceedings does not amount to the assessee being made aware or known of the reasons for such reopening. The

reasons now quoted by the learned Tribunal in the impugned order clearly indicates that they are purportedly detailed reasons and had the assessing authority given the said reasons before hand, the assessee could have raised objections before the assessing authority and the assessee could have rebutted the material on the basis of which the impugned reassessment proceedings were undertaken by the assessing authority. The assessee in the present case twice made a request to the assessing authority, but despite the specific requests, the assessing authority did not comply with the said request and supplied the reasons to the assessee. That casts a doubt even on fact of the recording of the reasons in the contemporary period by the assessing authority. The fact that such reasons are supplied before the learned Tribunal only for the first time was enough for by the learned Tribunal to hold that in view of the decision of the Hon'ble Supreme Court, the assessing authority lacked the jurisdiction in invoking the reassessment proceedings and therefore, the impugned reassessment order deserves to be quashed.

8. The decision relied upon by the learned counsel for the Revenue is distinguishable on facts. The order which was to be passed by assessing authority as preliminary objection of assessee, once the assessee has raised the objection to such reassessment proceedings, the meeting of such objections in the main reassessment order, could be procedural aspect of the matter, but the recording of the reasons before the initiation of the reassessment proceedings and communication thereof to the assessee is sine qua non, as held by Hon'ble Supreme Court and that goes to the root of the matter and confers or deprives the assessing authority of the jurisdiction to undertake such reassessment proceedings, as the case may be.

9. In the present case, admittedly, such reasons were not supplied to the assessee during the contemporary period before going ahead with the reassessment proceedings. Therefore, the Tribunal in our opinion was perfectly justified in quashing such reassessment order.

10. We do not find any substantial question of law arising in the matter. Therefore, the appeal of Revenue stands dismissed. No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

bnv