IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : 'A' NEW DELHI

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER

AND

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

I.T.A No. 4806/Del/10

Asstt. Year : 2001-2002

Shri Balwant Rai Wadhwa, 132, Anand Vihar, Pitampura, New Delhi – 110 034.	Vs.	ITO Ward 18 (2), New Delhi.
(Appellant)		**(Respondent)**

Appellant by: Shri Salil Agarwal, Advocate

Respondent by: Mrs. Anusha Khurana, Sr. DR

ORDER

PER RAJPAL YADAV : JM

The assessee is in appeal before us against the order of Ld. CIT(A) dated 29th September, 2010 passed in asstt. year 2001-02. The grounds of appeal taken by the assessee are not in consonance with

Rule 8 of the ITAT Rules. They are descriptive and argumentative in nature. In brief, assessee has raised four folds submissions. In his first fold of submission, he pleaded that since Ld. AO failed to serve the effective notice u/s 148 within a period of 6 years from the end of the asstt. year as provided u/s 149 (1)(b) of the Income Tax Act is not justified to pass the impugned asstt. order. In his second fold of submission, he has pleaded that reopening of asstt. is bad in the eyes of law. In his third fold of grievance, he pleaded that AO is not justified in making an addition of ₹ 49 lacs on account of alleged unexplained gifts received by the assessee. The assessee further pleaded that AO has erred in charging the interest u/s 234 (A) and 234(B) of the Income Tax Act.

2. Ld. Counsel for the assessee at the very outset submitted that first preliminary issue in dispute is squarely covered in favour of the assessee by the decision of Hon'ble Jurisdictional High Court rendered in the case of Haryana Acrylic Mfg. Co. vs. CIT 308 ITR 38. He submitted that in this case the assessee has challenged reopening of asstt. by way of a writ petition in the Hon'ble High Court. One of the issues agitated before the Hon'ble High Court was that a notice u/s 148 was served upon the assessee though within 6 years from the end of the

asstt. year but it was not accompanied with the copy of the reasons recorded by the AO, then it would not be a valid service. It was also submitted that if such notice was served beyond the period of 6 years then the asstt. would be construed as not reopened within the period of limitation provided u/s 149 (1)(b) of the Income Tax Act. The Ld. Counsel for the assessee while taking us through page 60-61 of the report submitted that Hon'ble High Court has held that notice u/s 148 is to be served within 6 years and the reasons recorded by the AO would go hand in hand with such notice. If reasons are not supplied to the assessee within the period of 6 years then it would be construed that asstt. has not been validly reopened. Ld. Counsel for the assessee further contended that in the present case, AO sought to reopen the asstt. just two days prior of the expiry of the 6 years. He has served notice u/s 148 on 28th March, 2008. Such notice could be served upon the assessee upto 31st March, 2008. The reasons were not supplied to assessee by the AO by 31st March,. 2008 rather these were supplied to the assessee vide letter dated 15th May, 2008. For buttressing his contention, he took us through the copy of notice as well as reasons available on pages No. 5, 11 and 12 of the paper book. On the strength of Hon'ble Delhi High Court's decision, he contended that assessment has to be declared as invalid.

3. Ld. DR on the other hand contended that in the case of Haryana Acrylic a regular asstt. u/s 143(3) was made. In the present case, it is only 143(1). Thus there is no regular assessment in the present case. She further contended that observations made by the Hon'ble High Court were in respect of the issue whether AO has supplied the reasons or not. The Hon'ble High Court was considering the ratio laid down by the Hon'ble Supreme Court in the case of GKN Drive Shaft reported in 259 ITR 19. The Hon'ble High Court has observed that reasons are to be given in a reasonable time. Apart from this one aspect Hon'ble High Court has find a number of other issues and then declared the assessment invalid. Ld. Counsel for the assessee in rebuttal submitted that no doubt the Hon'ble High Court has examined the dispute in that case with a number of angles but one of the angle was in respect of non supply of reasons within 6 years.

4. We have duly considered the rival contention and gone through the record carefully. Admittedly the reasons were not supplied to the assessee by 31st March, 2008 i.e. within a period of 6 years from the end of the asstt. year. The question before us is whether valid service of

notice has been served upon the assessee within the limitation provided u/s 149 (1) (b) of the Act. According to this section the notice ought to be served within 6 years from the end of the asstt. year. The contention of the assessee is that Hon'ble Delhi High Court has held that if the reasons recorded by the AO for reopening of assessment has not been supplied or served within 6 years then it will be construed that no valid notice has been served upon the assessee within 6 years. The authoritative observation made by the Hon'ble High Court in this connection read 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."

5. A plain reading of the above exposition of law at the end of Hon'ble Jurisdictional High Court make 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 6 years. If it has not been done then validity u/s 148 could not be upheld. It is not in the income tax proceeding alone. In any proceeding say, civil or criminal, if a summon is issued to the defendant /

respondent, is not accompanied with the copy of plaint or complaint then it is to be construed that no valid service of notice has been effected upon the defendant or the respondents whichever may be the case. The notice could be served at any point of time before the expiry of 6 years, if AO has reasons to believe that income has escaped assessment but, such reasons are also to be communicated to the assessee before the expiry of the limitation otherwise validity of such notice could not be sustainable. Being a subordinate authority to the Hon'ble High Court, we are bound to follow the authoritative exposition of law at the end of Hon'ble High Court . In view of the above discussion, we allow ground No. 2 of the assessee wherein he has pleaded that notice u/s 148 has not been served within the period of limitation upon the assessee. The assessment is not sustainable. It is quashed.

6. Since on the strength of Hon'ble Delhi High Court's decision, we have held that a valid service of notice has not been effected upon the assessee and the asstt. order is not sustainable, we do not deem it necessary to examine the other issues, whether reopening is justified or not. In other words whether AO has reasons to believe that income has escaped assessment or not. We also do not deem it necessary to examine whether assessee has established that he has received

genuine gifts or not. Both these issues are academic in view of our finding on ground No. 2 taken by the assessee.

7. In the result ,the appeal of the assessee is allowed.

Order pronounced in the open court on 14th January, 2011.

Sd/-

[SHAMIM YAHYA] [RAJPAL YADAV]

ACCOUNTANT MEMBER JUDICIAL MEMBER

Dated: 14th January, 2011

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Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4. CIT (A)

5. DR, ITAT

TRUE COPY By Order,

Deputy Registrar, ITAT, Delhi Benches