

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

BEFORE SHRI G.C. GUPTA, VICE PRESIDENT AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA Nos.1068/Del/2008 to 1073/Del/2008  
Assessment Years : 1999-2000 to 2004-05

M/s Jagat Talkies  
Distributors,  
1489, Chandni Chowk,  
Delhi – 110 006.  
PAN : AAAFJ5470B.  
(Appellant)

Vs. Deputy Commissioner of  
Income Tax,  
Circle-29(1),  
New Delhi.

(Respondent)

Appellant by : Shri Kaanan Kapur and  
Shri Bhushan Kapur, Advocates.  
Respondent by : Shri T.Vasanthan, Senior DR.

Date of hearing : 07.05.2015  
Date of pronouncement : 10.06.2015

ORDER

PER G.C. GUPTA, VP :

This bunch of six appeals preferred by the assessee for the assessment years 1999-2000 to 2004-05 is directed against the order of learned CIT(A)-XXV, New Delhi. Since identical issue is involved in all these appeals, the same are being disposed of with this consolidated order.

2. The identical grounds of appeal No.1 to 4 of the assessee in all these appeals are as under:-

*"1. That the learned CIT(A) has erred in confirming the action of learned Assessing Officer, that completing assessment u/s 143(3)/148 of the Income Tax Act, 1961 was in order.*

2. *That the learned CIT(A) has erred in law and on facts in confirming A.O.'s action of issuing the notice u/s 148 which was without jurisdiction as the condition precedent to the exercise of jurisdiction u/s 148 i.e. the 'recording of reason was totally absent.*

3. *That the learned Assessing Officer had not given reasonable opportunity to appellant before making assessment u/s 143(3)/148 of the Income Tax Act, 1961.*

4. *That the orders passed by the learned CIT(A) and Assessing Officer are against the principle of natural justice."*

3. The learned counsel for the assessee submitted that in this case, the assessee is in second round of litigation before the Tribunal. In the first round of litigation, the Tribunal, vide its order dated 05.01.2009, has passed the *ex parte* appellate order by recording "*none*" present on behalf of the assessee appellant and has restored the issue of legality of reassessment proceedings initiated by issue of notice under Section 148 of the Income-tax Act, 1961 for a fresh decision to the file of the Assessing Officer in the light of the decision of Hon'ble Apex Court rendered in the case of *GKN Driveshafts (India) Ltd. Vs. ITO & Others* – [2003] 259 ITR 19 (SC). With regard to the other grounds of appeal raised by the assessee, the Tribunal has noted in its order that no adjudication is called for regarding the other grounds of the assessee in any of these years as the Assessing Officer has to frame *de-novo* assessments in all these years and, hence, at this stage, no adjudication is called for regarding the other grounds of the assessee. The learned counsel for the assessee submitted that the assessee preferred a writ petition against the order of the Delhi Tribunal dated 05.01.2009 before Hon'ble Delhi High Court and, the Hon'ble High Court, vide its order dated 09.05.2011, allowed the writ petition of the assessee and set aside the order of the Tribunal dated 05.01.2009 and directed the Tribunal to decide the aforesaid appeals afresh and

consequently, the appeals of the assessee were fixed for hearing before the Tribunal.

4. The learned counsel for the assessee submitted that the assessee had specifically requested the Assessing Officer for the copy of the reasons leading to reopening of the assessment in these cases under Section 148, but the Assessing Officer had ignored the request of the assessee and proceeded with the assessment proceedings. The assessee has filed a four page letter dated 23.06.2006 addressed to the Assessing Officer wherein a request has been made in the concluding part of the letter to supply the reasons for reopening the cases under Section 148 of the Act. He submitted that in view of the failure of the Assessing Officer in supplying the reasons recorded while reopening the assessments in this case by issue of notice under Section 148, the entire reassessment proceedings were bad in law and liable to be quashed. The learned counsel for the assessee submitted that an affidavit regarding non-receipt of reasons for reopening of assessment under Section 148 was filed. He referred to paragraph 4.6 of the impugned order passed by the learned CIT(A) wherein he has recorded that it appears from the records that the request for providing reasons for issuing the notice under Section 148 was made by the appellant. The CIT(A) further recorded that it is also apparent from the assessment records that there was no formal communication of the reasons for issuing notice under Section 148 by the Assessing Officer to the assessee. However, the CIT(A) decided the issue against the assessee on the plea that it was not correct to say that the assessee remained ignorant about the reasons for the issue of notice under Section 148 of the Act. The learned counsel for the assessee has relied on a series of decisions as under :-

(i) GKN Driveshafts (India) Ltd. Vs. ITO and Others – [2003] 259 ITR 19 (SC).

- (ii) Haryana Acrylic Manufacturing Company Vs. CIT and Anr. – [2009] 308 ITR 38 (Delhi).
- (iii) CIT Vs. Videsh Sanchar Nigam Limited – [2012] 340 ITR 66 (Bom).
- (iv) CIT Vs. Fomento Resorts and Hotels Ltd. – judgment dated 27.11.2006 in Tax Appeal No.71 of 2006 (Bombay High Court).
- (v) Shri Balwant Rai Wadhwa Vs. ITO – order dated 14.01.2011 in ITA No.4806/Del/2010 (ITAT, Delhi 'A' Bench).
- (vi) Industrial Development Bank of India Vs. DCIT – order dated 12.12.2012 in ITA No.1391 and 1394/M/2004 (ITAT, Mumbai 'D' Bench).
- (vii) S. Prasad Raju Vs. DCIT – [2005] 96 TTJ (Hyd) 832.
- (viii) Tata International Ltd. Vs. DCIT – [2012] 52 SOT 465 (Mum).
- (ix) Virendra Dev Dixit and Smt. Kamla Devi Dixit Vs. ACIT – [2011] 331 ITR 483 (All).
- (x) Kamal Corporation Vs. Commissioner, Trade Tax – [2009] 20 VST 157 (All).
- (xi) Rajesh Babubhai Damania Vs. CIT – [2001] 251 ITR 541 (Guj.).
- (xii) Hira Lal Vs. Ratan Lal – AIR 1944 All 293.

5. The learned counsel for the assessee submitted that the decision of Hon'ble Delhi High Court in *Haryana Acrylic Manufacturing Company*

(supra) clinches the issue in favour of the assessee, wherein it is held that the requirement of recording the reasons and communicating the same to the assessee, enabling the assessee to file objections and the requirement of passing a speaking order are all designed to ensure that the Assessing Officer does not reopen assessments which have been finalized on his mere whim or fancy and that he does so only on the basis of lawful reasons. Thus, a deviation from these directions would entail the nullifying of the proceedings. The Hon'ble High Court, for this reason, quashed the notice under Section 148 as well as all proceedings subsequent thereto including the assessment order of the Assessing Officer.

6. The learned DR has opposed the submissions of the learned counsel for the assessee. He submitted that the CIT(A) has passed a detailed and speaking order on the issue of validity of issuance of notices under Section 148 of the Act. He submitted that the finding of the CIT(A) as recorded in paragraph 6.4 of his appellate order was that it was not correct to say that the assessee remained ignorant about the reasons for the issue of notice under Section 148 of the Act. The CIT(A) has recorded certain facts, i.e., that the assessee has not filed any return for A.Y. 1998-99 although its total income was in excess of maximum amount not chargeable to income tax and that, as per provisions of Section 139(1), it was required to furnish the return of income in the prescribed form etc. and that, under the provisions of Section 147 read with Explanation 2(a) thereto, where no return of income is furnished, although the total income exceeds the maximum amount not chargeable to income tax, the case is deemed to be one where income chargeable to tax has escaped assessment and the Assessing Officer is required to assess such income under Section 147 of the Act. The learned DR referred to paragraph 9.1 of the learned CIT(A)'s order wherein it was recorded that the observation of the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Ltd.*

(supra) does not suggest that non-communication of the reasons would result in the assessment proceedings and the assessment order becoming void or bad in law where the return of income under Section 139(1) itself was not filed. The CIT(A) further noted that it is important to note that the said observation was made by the Hon'ble Apex Court in the context of an assessee who has filed the return of income under Section 139(1) of the Act. Learned DR relied on the decision of Hon'ble Gujarat High Court in *Sahkari Khand Udyog Mandal Ltd. Vs. ACIT* in Special Civil Application No.3955 of 2014 dated 31.03.2014 in support of the case of the Revenue. The learned DR submitted that the assessee has cooperated with the Assessing Officer in the assessment proceedings and, therefore, it should not be open to the assessee now to plead that it was not supplied the copy of the reasons recorded for reopening of the assessment. The learned DR also relied on the *ex parte* order of the Tribunal dated 05.01.2009 wherein the Tribunal has restored the matter to the file of the Assessing Officer for a fresh decision. He relied on the order of the Assessing Officer and the learned CIT(A).

7. We have considered the rival submissions carefully and have gone through the order of the Assessing Officer and the learned CIT(A). We find that the basic facts in this case are not in dispute. The reassessment proceedings were initiated in this case by issue of notices under Section 148 of the Act for the relevant assessment years. The assessee has specifically requested for the reasons leading to the reopening of assessment under Section 148 and has also filed a four page letter dated 23.06.2006 addressed to the Assessing Officer during the course of assessment proceedings wherein, apart from dealing with the queries of the Assessing Officer, a request was made in the concluding part of the letter to supply the reasons for reopening of the assessment under Section 148 of the Act. The assessee has also filed an affidavit to this effect regarding non-receipt of reasons for

reopening of the case under Section 148 of the Act. The CIT(A) has given a finding in paragraph 6.4 of his appellate order that it appears from the records that the request for providing reasons for issuing the notice under Section 148 was made by the appellant. The CIT(A) further recorded that it is also apparent from the assessment records that there was no formal communication of the reasons for issuing notice under Section 148 by the Assessing Officer to the assessee. This finding recorded by the learned CIT(A) could not be controverted before us on behalf of the Revenue. In these facts of the case, the only issue which requires adjudication is that whether the non-communication of the reasons recorded for issuing notice under Section 148 of the Act, inspite of a specific request made by the assessee for providing reasons for issuing the notice under Section 148, renders the whole reassessment proceedings vitiated and void in law. The Tribunal, vide its order dated 05.01.2009, has set aside the issue of validity of notice under Section 148 for the relevant assessment years and has restored the same to the file of the Assessing Officer for a fresh decision in the light of the decision of Hon'ble Apex Court rendered in the case of *GKN Driveshafts (India) Ltd.* (supra). We find that the Hon'ble Supreme Court, in its judgment dated 25.11.2002 in *GKN Driveshafts (India) Ltd.* (supra), held that when a notice under Section 148 of the Act is issued, the proper course of action for the notice is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish the reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the case of the assessee before us, we find that the assessee has requested for furnishing of the reasons recorded for issuance of notice under Section 148 of the Act and the Assessing Officer has not furnished the reasons to the assessee. The plea of the learned DR, that this decision of Hon'ble Apex Court in *GKN Driveshafts (India) Ltd.*

(supra) is distinguishable, as, in this case, the assessee has filed the return of income, is not sustainable. We find that filing of return of income or otherwise is not decisive to the issue of legality of the notice of reassessment by issue of notice under Section 148 of the Act. The decision of Hon'ble Gujarat High Court in *Sahkari Khand Udyog Mandal Ltd.* (supra), relied upon by the learned DR, is of no help to the case of the Revenue. We find that the Department in this case has supplied the assessee the copy of the reasons recorded by the Assessing Officer for issuing such notice. The Hon'ble High Court has concluded in this case that the Assessing Officer shall supply the reasons recorded by him for issuing such notice within 30 days of the filing of the return of income by the assessee without waiting for the assessee to demand such reasons. In the case of the assessee before us, it is an admitted fact that the Department has failed to supply the assessee the copy of reasons recorded by the Assessing Officer for issuance of notice under Section 148 of the Act. The reliance of the learned DR on the order of the Tribunal in the case of the assessee dated 05.01.2009, wherein the issue of legality of issue of notice under Section 148 was restored by the Tribunal to the file of the Assessing Officer, is also misplaced for the reason that the said order of the Tribunal dated 05.01.2009 was set aside by the Hon'ble Delhi High Court vide their order dated 09.05.2011, wherein it directed the Tribunal to decide the aforesaid appeals afresh. The case law cited by the learned counsel for the assessee supports the case of the assessee that once it is found that the copy of the reasons recorded for issuance of notice under Section 148 of the Act was not given to the assessee, inspite of a specific request made by the assessee in this behalf, the proceedings of assessment thereafter, including the assessment order passed, shall be vitiated and void. The decision of Hon'ble Delhi High Court in *Haryana Acrylic Manufacturing Company* (supra) is binding on the Tribunal, wherein it is held that the requirement of recording the reasons and communicating the same to the assessee, enabling the



assessee to file objections and the requirement of passing a speaking order, are all designed to ensure that the Assessing Officer does not reopen the assessments which have been finalized on his mere whim and fancy, and that he does so only on the basis of lawful reasons and, a deviation from these directions would entail the nullifying of the proceedings and, the order of assessment in this case was accordingly quashed. Respectfully following the decision of Hon'ble Jurisdictional High Court in *Haryana Acrylic Manufacturing Company* (supra), we decide the issue in favour of the assessee and hold that in view of the fact that the assessee was not given the copy of the reasons for issuing notice under Section 148 of the Act by the Assessing Officer inspite of a specific written request of the assessee for providing the same, the whole reassessment proceedings and the resultant order of assessment passed under Section 143(3)/148 of the Act have become vitiated entailing in nullifying proceedings and, accordingly, the orders of assessment under Section 143(3)/148 are quashed and, the grounds of appeal No.1 to 4 of the assessee in all these appeals are allowed.

8. In view of our decision quashing the reassessment proceedings itself, we are not adjudicating the other grounds of appeal of the assessee raised by it in all the appeals on merits.

9. In the result, all the appeals of the assessee are allowed.  
Decision pronounced in the open Court on 10<sup>th</sup> June, 2015.

Sd/-

**(INTURI RAMA RAO)  
ACCOUNTANT MEMBER**

Sd/-

**(G.C. GUPTA)  
VICE PRESIDENT**

VK.

Copy forwarded to: -

1. Appellant : **M/s Jagat Talkies Distributors,  
1489, Chandni Chowk, Delhi – 110 006.**
2. Respondent : **Deputy Commissioner of Income Tax,  
Circle-29(1), New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar