

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

Vs.

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

PAN : AGHPG 4212 H

[Appellant]

[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 coordinate 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.

The order is pronounced in the open court on 30.08.2018.

Sd/-

[KULDIP SINGH]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 30th August, 2018

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	