

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16139 of 2016

Sri Laxmi Narayan Agency *Petitioner*

Mr. Siddhartha Ray, Advocate

-versus-

The Income Tax Officer, Angul *Opposite Parties*
Ward, Angul and others

Mr. S.S. Mohapatra, Senior Standing Counsel

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

ORDER

03.01.2022

Order No.

04.

1. The challenge in the present petition is to a re-assessment order dated 22nd August 2016 passed by the Income Tax Officer, Angul Ward, Angul (ITO) under Section 143 (3) read with Section 147 of the Income Tax Act, 1961 (Act) for the assessment year (AY) 2011-12.

2. One of the principal grounds on which the impugned re-assessment order has been challenged is that the mandatory requirement of dealing with the objections raised by the Assessee for reopening of the assessment as spelt out by the Supreme Court of India in *GKN Driveshafts (India) Ltd. v. Income Tax Officer [2003] 259 ITR 19 (SC)* has not been followed.

3. The second ground of challenge is that the documents on the basis of which the ITO formed the reason to believe that income

had escaped assessment for the AY in question were not supplied to the Petitioner.

4. Thirdly, during the re-assessment proceedings, the Petitioner made a written request for cross-examination of the persons on the basis of whose statements the reopening was supposed to have been directed and that opportunity too was not provided to the Petitioner.

5. While issuing notice in the present petition on 10th November 2016, this Court directed that no coercive action would be taken against the Petitioner, and that interim order is continuing.

6. A counter affidavit has been filed on behalf of the Opposite Parties in which, *inter alia*, while not denying that the objections of the Petitioner to the reopening of the assessment were not separately dealt with, it is claimed that the documents “not supplied to the Petitioner were held in the fiduciary capacity”. This admittedly included the report of the Deputy Director of Income Tax (Investigation), which was not supplied prior to the re-assessment order being passed.

7. The background facts which were not in dispute are that a survey operation was conducted in the case of M/s Vertex Gold Trading Limited in Hyderabad on 12th August 2015 by the DDIT (Inv.), Unit-1(3), Hyderabad. According to the Department, and in the course of that survey operation, it was found that the

present Petitioner had made purchases of gold bullion to a tune of over Rs.93lacs and RTGS purchases of over Rs.2.6crores. The total purchases were over Rs.3.53crores whereas the Petitioner Assessee had disclosed purchases of Rs.3.26crores in the return of income. On the ground that the Petitioner had made unaccounted purchase, the assessment for the AY in question was sought to be reopened.

8. The impugned assessment order itself notes that in response to the notice issued under Section 147 of the Act, the Assessee on 30th June 2016 submitted objections to the reopening of the assessment. Admittedly, the said objections were not separately dealt with by the Assessing Officer (AO) as mandatorily required by the judgment of Supreme Court in ***GKN Driveshafts (India) Ltd.*** (*supra*). On that short ground, the reopening of the assessment is rendered bad in law and the impugned re-assessment order deserves to be set aside.

9. Further, it is seen that the reasons for reopening of the assessment merely repeats the language of the report of the DDIT (Inv.) without any independent application of mind by the AO. In ***Sabh Infrastructure Ltd. v. Asst. Commissioner of Income Tax [2017] 398 ITR 198 (Delhi)***, the Delhi High Court in similar circumstances set aside the re-assessment order. In paragraph-15 of the said decision, it has been observed that assessment proceedings, especially those under Section 143 (3) of the Act

“have to be accorded sanctity and any reopening of the same has to be on a strong and sound legal basis.” It was further emphasized that “there have to be reasons to believe and not merely reasons to suspect that income has escaped assessment.” The Delhi High Court also set out the guidelines for reopening of the assessment as under:

“(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the AO for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the Assessee is to be avoided;

(ii) the reasons to believe ought to spell out all the reasons and grounds available with the AO for reopening the assessment - especially in those cases where the first proviso to Section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the AO on the same and if so, the conclusions thereof;

(iii) where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons;

(iv) the exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the

conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed.”

10. In the present case, apart from the fact that the reopening of the assessment being bad in law for non-supplying of the vital documents on the basis of which the reasons to believe were formed, the Court finds that the reasons for reopening merely reproduces the language of the report of the DDIT (Inv.) without the AO independently applying his mind to the material on record.

11. For all of the aforementioned reasons, the Court finds the impugned re-assessment order to be unsustainable in law and the same as well as the consequential demand notices are hereby set aside. The writ petition is allowed in the above terms but, in the circumstances, with no order as to costs.

12. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin