

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****INCOME TAX APPEAL NO.494 OF 2014**

The Commissioner of Income-Tax,
(Large Tax Payer Unit), Mumbai .. Appellant.
v/s.
M/s. IDBI Ltd. .. Respondent

....
Mr. A.R. Malhotra, a/w. Mr. N.A. Kazi, for the Appellant.

Mr. Satish Mody, a/w. Ms. Aasifa Khan, for the Respondent.

....
**CORAM: M.S.SANKLECHA, &
S.C. GUPTA, JJ.**

DATE : 19 SEPTEMBER, 2016.

P.C:-

. This appeal under Section 260-A of the Income Tax Act, 1961 ("the Act") challenges the order dated 12 December 2012 passed by the Income Tax Appellate Tribunal ("Tribunal"). The impugned order relates to Assessment Year 1993-94.

2. The Revenue has urged the following question of law for our consideration:-

(A) "Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in quashing the reassessment proceedings even though the assessee was aware of the reasons of reopening and also participated in the Assessment proceedings?"

(B) “Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in deleting the depreciation disallowed by the Assessing Officer on the 'leased' assets?”

3. **Re.:- Question (A)**

(i) For the Assessment Year 1993-94, the regular assessment was completed by an order dated 26 March 1996 u/s. 143(3) of the Act. Thereafter, on 9 December 1996, the Assessing Officer issued a notice u/s. 147 read with Section 148 of the Act, seeking to reopen the assessment for the Assessment Year 1993-94. On receipt of notice, the Respondent-Assessee sought from the Assessing Officer a copy of reasons recorded for issuing reopening notice dated 9 December 1996. However, the same was not supplied. The Assessing Officer, in fact passed an Assessment Order on 26 March 1999 consequent to the impugned notice for re-assessment dated 9 December 1996 without supplying the copy of the reasons recorded.

(ii) Being aggrieved, the Respondent Assessee carried the issue in appeal to the Commissioner of Income Tax (Appeals) (CIT(A)). In its appeal, the Respondent-Assessee inter alia challenged the jurisdiction of the Assessing Officer to complete the assessment on a reopening notice under Section 148 of the Act without having supplied the copy of the reasons in support of the impugned notice to the Appellant and also on merits i.e. depreciation on leased assets. By an order dated 19 December 2003, the CIT(A) dismissed the Respondent Assessee's appeal to the extent it related to the lack of jurisdiction with the Assessing Officer to complete the assessment on a reopening notice without having furnished

a copy of the reasons in support thereof to the Assessee.

(iii) Being aggrieved, the Respondent carried the issue in appeal to the Tribunal. The Tribunal in the impugned order records the fact that it is an undisputed position that in spite of repeated requests made by the Respondent Assessee, the Assessing Officer did not supply its reasons in support of the reopening notice under Section 148 of the Act. On the aforesaid facts, the impugned order of the Tribunal by placing reliance upon the decisions of this Court in **Siesta Steel Construction (P.) Ltd. vs. K.K. Shikare**¹, **CIT vs. Fomento Resorts and Hotels Ltd.**² and upon the decision of its co-ordinate bench in case of **Tata International Ltd. vs. DCIT**³ concluded that the non-supply of reasons in support of the reopening notice would make the order passed thereon bad in law. Consequently, the impugned order allowed the appeal on issue of jurisdiction and in that view the issue on merits became academic.

(iv) Mr. Malhotra, Counsel for the Revenue, submits that the Respondent Assessee was aware of the reasons for the reassessments. Thus, there was no violation of the principles of natural justice. In the above view, it is submitted that the question as framed be admitted for consideration.

(v) We find that the question as framed proceeds on the basis that the Respondent Assessee was aware of the reasons for re-assessment. The only basis for the aforesaid submission is the submission made by the

1 [1984] 17 Taxman 122(Bom.) page 547

2 Income Tax Appeal No.71/2006.

3 ITA Nos.3359 to 3369/Mum/2009.

Revenue before the Tribunal that the Respondent Assessee is a public sector institution who was aware that search action has been initiated on certain lessees in respect of transactions with IDBI i.e. Respondent-Assessee. On the basis of the above, it is to be inferred that the reason for re-assessment was known to the Respondent Assessee. The supply of reason in support of the notice for reopening of an assessment is a jurisdictional requirement. The reasons recorded form the basis to examine whether the Assessing Officer had at all applied his mind to the facts and had reasons to believe that taxable income has escaped reassessment. It is these reasons, which have to be made available to the Assessee and it could give rise to a challenge to the reopening notice. It is undisputed that the reasons recorded for issuing reopening notice were never communicated to the Respondent Assessee in spite of its repeated requests. Thus, the grievance of the Revenue on the above count is unsustainable.

(vi) An alternative submission is made on behalf of the Revenue that the obligation to supply reasons on the Assessing Officer was consequent to the decision of the Apex Court that **GKN Driveshafts (India) Ltd. vs. Income-tax Officer**⁴ rendered in 2003 while, in the present case, the reopening notice is dated 9 December 1996. Thus it submitted at the time when the notice under Section 148 of the Act was issued and the time when assessment was completed, there was no such requirement to furnish to the assessee a copy of the reasons recorded. This submission is not correct. We find that the impugned order relies upon the decision of this Court in **Seista Steel Construction (P.) Ltd.** (supra) when it is held that in the absence of supply of reasons recorded

4 (2003) 259 ITR 19 (SC)

for issue of reopening notice the assessment order would be without jurisdiction and needs to be quashed. The above view as taken by the Tribunal has also been taken by this Court in **CIT vs. Videsh Sanchar Nigam Ltd.**⁵ viz. non-supply of reasons recorded to issue a reopening noticee would make the order of Assessment passed thereon bad as being without jurisdiction.

(vii) In the above view, the question (A) as framed does not give rise to any substantial question of law. Thus, not entertained.

5. **Re: Question (B)**

(i) Mr. Malhotra states that the question (B) would only arise if the reopening notice is held to be valid.

(ii) Thus, question (B) is not pressed.

6. In view of the above, the appeal is dismissed. No order as to costs.

(S.C. GUPTE,J.)

(M.S.SANKLECHA,J.)

5 [2012] 21 Taxmann 53 (Bombay)