

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 224 OF 2014

KSS Petron Private Ltd., .. Appellant.
v/s.
The Assistant Commissioner of Income Tax
Circle 10 (2) .. Respondent.

Mr. B. M. Chatterji, Sr. Advocate with Ms. Shilpa Goel and Mr. R. Basu
i/b. Mr. S. H. Sharma, for the Appellant.
Mr. A. R. Malhotra with Mr. N. A.Kazi, for the Respondent.

**CORAM: M.S.SANKLECHA, &
S.C.GUPTE, JJ.**
DATE : 3rd OCTOBER, 2016.

P.C:-

Heard.

2 Appeal relates to Assessment Year 2003-04.

3 **Appeal admitted** on the following re-framed substantial
question of law:-

*“ Whether on the facts and circumstances of the case and
in law, the Tribunal was justified in restoring the issue to the
Assessing Officer after having quashed/ set aside the order
dated 14th December, 2009 passed by the Assessing Officer
without having disposed of the objections filed by the appellant
to the reasons recorded in support of the re-opening Notice dated
28th March, 2008.?”*

4 As the controversy in the present Appeal is short, at the
request of the Counsel, the Appeal is itself taken up for final disposal.

5 The regular assessment for the Assessment Year 2003-04 was completed on 10th January, 2006 under Section 143(3) of the Act, determining the Respondent-Assessee's income at Rs.2.28 Crores. Thereafter, on 28th February, 2008, a notice under Section 148 of the Act was issued, seeking to re-open the Assessment for Assessment Year 2003-04. The reasons recorded in support of the notice dated 28th March, 2008 were furnished to the appellant on 8th September, 2008. The Appellant by letter dated 27th October, 2008 objected to the reasons recorded in support of notice dated 28th March, 2008. The Assessing Officer without disposing of the objections of the appellant, completed the Assessment on 14th December, 2009 under Section 143(3) read with Section 147 of the Act. The order dated 14th December, 2009 of the Assessing Officer made addition to the appellant's income on the basis of the reasons recorded for issuing of re-opening notice dated 28th March, 2008.

6 Being aggrieved, the appellant carried the issue in appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 6th July, 2011, the CIT(A) dismissed the Appeal. Thus, confirming the order dated 14th December, 2009 of the Assessing Officer, passed without disposing of the appellant's objection for re-opening of Assessment.

7 On further Appeal, the Tribunal passed the impugned order. By the impugned order it held that the Assessing Officer was not justified in finalizing the Assessment, without having first disposed of the objections of the appellant. This impugned order holds the Assessing Officer is obliged to do in terms of the Apex Court's decision in ***GKN Driveshafts (India) Ltd., v/s. ITO 259 ITR 19***. In the aforesaid circumstances, the order of the CIT(A) and the Assessing Officer were

quashed and set aside. However, after having set aside the orders, it restored the Assessment to the Assessing Officer to pass fresh order after disposing of the objections to re-opening notice dated 28th March, 2008, in accordance with law.

8 We note that once the impugned order finds the Assessment Order is without jurisdiction as the law laid down by the Apex Court in GKN Driveshafts (supra) has not been followed, then there is no reason to restore the issue to the Assessing Officer to pass a further/fresh order. If this is permitted, it would give a licence to the Assessing Officer to pass orders on re-opening notice, without jurisdiction (without compliance of the law in accordance with the procedure), yet the only consequence, would be that in appeal, it would be restored to the Assessing Officer for fresh adjudication after following the due procedure. This would lead to unnecessary harassment of the Assessee by reviving stale/ old matters.

9 In fact, to ensure that re-opening notices are disposed of, expeditiously the parliament itself has provided in Section 153(2) of the Act a period of limitation within which the Assessing Officer must pass an order on the notice of re-opening i.e. within one year from the end of the financial year in which the notice was issued. In fact, Section 153 (2A) of the Act as in force at the relevant time itself provides that an order of fresh Assessment, consequent to the order of Tribunal under Section 254 of the Act, would have to be passed within one year from the end of the financial year in which the order under Section 254 of the Act, was passed by the Tribunal and received by the Commissioner of Income Tax.

10 The Director of the appellant has filed an affidavit dated 19th September, 2006. In the affidavit, it is stated that consequent to the

impugned order of the Tribunal dated 14th August, 2013, the Assessing Officer has not passed any order of re-assessment. Time was granted on the last occasion to enable the Respondent to respond to the affidavit dated 19th September, 2006 of the Director of the Appellant-Company. The Respondent is unable to dispute the facts stated in the affidavit dated 19th September, 2016 filed by the Director of the Appellant-Company. The time to pass a order on the notice dated 28th March, 2008, even consequent to the impugned order of the Tribunal, has lapsed.

11 Therefore, on the above facts and law, the substantial question of law is answered in the negative i.e. in favour of the Appellant-Assessee and against the Respondent-Revenue.

(S.C.GUPTE,J.)

(M.S.SANKLECHA,J.)

