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

INCOME TAX APPEAL NO. 1867 OF 2013

Commissioner of Income Tax-24 ..Appellant

Vs.

M/s Trend Electronics ..Respondent

....

Mr. Arvind Pinto, Advocate for Appellant.
Mr. P.J. Pardiwalla, Senior Advocate i/b L.J. Law for Respondent.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 16 SEPTEMBER 2015

P.C.:

This appeal under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 25 March 2013 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The impugned order is in respect of Assessment Year 2008-09.

2. Following questions of law are urged by revenue for our consideration:

> "1) Whether on the facts and in the circumstances of the case and in law, the Tribunal

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was correct in applying the ratio of the Apex Court in GNK Driveshafts (India) Ltd. Vs. ITO 259 ITR 19 (SC) when the facts are contrary to the facts of the instant case?

2) Whether on the facts and in the circumstances of the case and in law, the Tribunal had ignored the fact that in the proceedings before the AO in subsequent hearings prior to assessment, the firm had neither sought for the reasons recorded, since by interference, they were already aware of the same?"

3. The respondent-assessee filed it's return of income for the Assessment Year 2008-09 declaring total income of Rs.7.67 lakhs. This return of income was processed under Section 143(1) of the Act accepting the returned income.

4. On 26 March 2010, the Assessing Officer initiated reassessment proceedings by issuing notice under Section 148 of the Act seeking to reopen the assessment for the Assessment Year 2008-09. On receipt of notice, the respondent-assessee by letter dated 28 April 2010 sought copy of recorded reasons for reopening of

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assessment in respect of notice dated 26 March 2010 under Section 148 of the Act. The Assessing Officer by letter dated 29 April 2010 directed the respondent-assessee to file it's return of income and also informed the respondent-assessee that the reasons would be furnished after the return of income is filed. The respondent-assessee thereafter by letter dated 7 May 2010 informed the Assessing Officer that return of income filed on 29 September 2008 under Section 139 of the Act be treated as the return of income consequent to notice under Section 148 of the Act. The Assessing Officer thereafter completed the reassessment proceedings on 30 December 2010 under Section 143(3) r/w 147 of the Act without having given a copy of the reasons recorded for issue of reopening notice dated 26 March 2010 to the respondent-assesse.

5. Being aggrieved, the respondent-assessee preferred an appeal to Commissioner of Income Tax (Appeals) (the 'CIT(A)'). However, the appeal was not entertained by the CIT(A) who confirmed the action of the Assessing Officer and order dated 30 December 2010.

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6. A further appeal was preferred by the respondent to the Tribunal. The impugned order of the Tribunal records the undisputed fact that the respondent-assessee had sought for reasons for reopening notice dated 26 March 2010 from the Assessing Officer. The reasons were admittedly not furnished to the respondent-assesee before the completion of the reassessment proceedings. The impugned order places reliance upon the decision of Apex Court in ***GNK Driveshafts (India) Ltd. Vs. ITO***[1] wherein it has been specifically provided that the Assessing Officer is bound to furnish reasons for issuance of reopening of notice when sought for by the assessee. Further, reliance was placed upon the decision of this Court in ***CIT Vs. Videsh Sanchar Nigam Ltd.***[2] wherein this Court has held that failure to furnish the recorded reasons for issue of reopening notices to the assessee before completion of the assessment proceedings would make the reassessment order passed in pursuance of such a notice bad in law. In the above circumstances, the appeal of the respondent-assessee was allowed by the Tribunal.

1 259 ITR 19
2 340 ITR 66

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7. Mr. Pinto, the learned Counsel for the revenue submits that the respondent-assessee had only asked for reasons once and did not further ask for reasons. Further he submits that as the respondent-assessee had participated in the proceedings before the Assessing Officer, it must be implied that reasons were furnished.

8. We find that the impugned order merely applies the decision of the Apex Court in GNK Driveshafts (India) Ltd. (supra). Further it also follows the decision of this Court in Videsh Sanchanr Nigam Ltd. (supra) in holding that an order passed in reassessment proceedings are bad in law in the absence of reasons recorded for issuing a reopening notice under Section 148 of the Act being furnished to the assessee when sought for. It is axiomatic that power to reopen a completed assessment under the Act is an exceptional power and whenever revenue seeks to exercise such power, they must strictly comply with the prerequisite conditions viz. Reopening of reasons to indicate that the Assessing Officer had reason to believe that income chargeable to tax has escaped assessment which would warrant the reopening of an assessment.

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These recorded reasons as laid down by the Apex Court must be furnished to the assessee when sought for so as to enable the assessee to object to the same before the Assessing Officer. Thus in the absence of reasons being furnished, when sought for would make an order passed on reassessment bad in law. The recording of reasons (which has been done in this case) and furnishing of the same has to be strictly complied with as it is a jurisdictional issue. This requirement is very salutary as it not only ensures reopening notices are not lightly issued. Besides in case the same have been issued on some misunderstanding/misconception, the assessee is given an opportunity to point out that the reasons to believe as recorded in the reasons do not warrant reopening before the reassessment proceedings are commenced. The Assessing Officer disposes of these objections and if satisfied with the objections, then the impugned reopening notice under Section 148 of the Act is dropped/withdrawn otherwise it is proceeded with further. In issues such as this, i.e. where jurisdictional issue is involved the same must be strictly complied with by the authority concerned and no question of knowledge being attributed on the basis of

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implication can arise. We also do not appreciate the stand of the revenue, that the respondent-assessee had asked for reasons recorded only once and therefore seeking to justify non-furnishing of reasons. We expect the state to act more responsibly.

9. In view of the fact that the order of the Tribunal has only applied the settled position of law in allowing the respondent-assessee's appeal. No substantial question of law arises for our consideration.

10. Accordingly appeal dismissed. No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**

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CERTIFICATE

Certified to be true and correct copy of the original signed Order.

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