

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E': NEW DELHI**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 2205/Del/2015
Assessment Year: 2006-07

M/s. Ujagar Holdings Pvt. Ltd., 8-D, Hansalaya, 15, Barakhamba Road, New Delhi	Vs.	Income Tax Officer, Ward-27(2), New Delhi
GIR/PAN : AAACU1678F		
(Appellant)		(Respondent)

Appellant by	S/sh. Salil Kapoor & Sanat Kapoor, Adv. & Ms. Ananya Kapoor, Adv.
Respondent by	Sh. P. DAM Kanunjna, Sr.DR

Date of hearing	10.03.2016
Date of pronouncement	16.05.2016

ORDER

PER O.P. KANT, A.M.:

This appeal of the assessee is directed against order dated 16/02/2015 of learned Commissioner of Income-tax(Appeals)-22, New Delhi for assessment year 2006-07 raising following grounds:

1. *That the notice issued u/s 148 and the assessment order passed in pursuance to said notice are illegal, bad in law and without jurisdiction.*
2. *That in view of facts and circumstances of the case and in law the CIT(A) failed to appreciate that AO has not provided the "Reasons to believe":*
 - a) *that income has escaped assessment; and*
 - b) *that income has escaped assessment by reasons of omission or failure on the part of assessee to disclose fully and truly material facts, therefore, re-opening of the assessment u/s 147 is illegal, unjust and void ab initio at the very threshold.*
3. *That in view of facts and circumstances of the case and in law, the CIT(A) failed to consider that AO merely substituted the report of Dir (Inv) verbatim instead of showing*

any "Reasons to believe" purported to have been recorded by the AO, hence the notice u/s 148 is bad in law.

4. *That in view of facts and circumstances of the case and in law, the CIT(A) failed to consider that requisite satisfaction of Joint Commissioner was not recorded before issuing notice u/s 148.*
5. *That in view of facts and circumstances of the case and in law, the CIT(A) grossly erred in upholding the actions of AO as re-assessment order passed by AO is arbitrary, without application of mind and in gross violation of principles of natural justice.*
6. *The CIT(A) has grossly erred on facts and in law in upholding the assessment order assessing the income at Rs 20,01,190/- . The additions made by the AO and upheld by the CIT(A) are illegal, unjust and bad in law.*
7. *That in view of facts and circumstances of the case and in law, the CIT(A) & AO failed to appreciate that assessee has discharged the primary onus by providing adequate evidences and information proving genuineness of the transaction and identity and creditworthiness of the subscribers.*
8. *That in view of facts and circumstances of the case and in law, the CIT(A) & AO have grossly erred in not dealing with evidences and material placed on record showing, identity, genuineness and creditworthiness of the subscribers.*
9. *That in view of facts and circumstances of the case and in law, the CIT(A) has failed to appreciate that AO has not discharged the onus cast upon revenue after discharge of primary onus by the assessee.*
10. *That in view of facts and circumstances of the case and in law, the CIT(A) failed to appreciate that assessee was not provided with any recorded statements of parties named in the order for cross examination and confrontation.*
11. *That in view of the facts and circumstances of the case and in law , the various observations made by the AO and CIT(A) are factually incorrect , illegal , bad in law and contrary to facts on record and based on mere guesswork and surmises and conjectures .*
12. *The additions made and the observations made are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record and additions are also excessive.*
13. *The explanations given, the evidence produced and material placed has not been properly considered and judicially interpreted and the same do not justify the additions/allowances made.*
14. *That the assessee reserves the right to add, amend, alter the ground of appeal."*

2. The facts in brief are that the assessee company filed return of income on 30/06/2006 declaring income of Rs. 1,190/-, which was processed under section

143(1) of the Act on 23/06/2007. Subsequently, on receipt of information from the Investigation Wing, that the assessee obtained accommodation entry, after recording reasons to believe that income has escaped assessment, the Assessing Officer (AO) issued notice under section 148 dated 22/03/2013. In the scrutiny assessment completed, the Assessing Officer held the share application money of Rs. 20 lakh received from M/s. Karishma Industries Private Limited as unexplained and unaccounted money of the assessee and made addition accordingly. Aggrieved, the assessee challenged before the learned Commissioner of Income Tax (Appeals) initiation of reassessment proceedings under section 147 of the Act being without jurisdiction and without proper and sufficient opportunity to the assessee, which was in violation of principle of natural justice. The assessee also challenged the addition made on merit. The assessee submitted before the learned Commissioner of Income-tax(Appeals) that the AO had not provided the reasons to believe for reopening the assessment and therefore the action under section 148 of the Act was not justified. The learned Commissioner of Income-tax(Appeals), however referring to the judgment of the Honøble Delhi High Court in the case of Rajat Import-Export India Private Limited, 341 ITR 135 (Del) held that at the stage of reopening of the assessment the AO is not required to build a foolproof case for making addition to the assessee's income and all that is required to do that is to form a prima facie opinion or belief that income has escaped assessment, upheld the action of the AO under section 148 of the Act. On merit of the addition, the learned Commissioner of Income-tax(Appeals) held that the genuineness and creditworthiness of share applicant M/s Karishma Industries Ltd. was not established by the assessee, therefore, he sustained the addition of Rs. 20 lakh in the hands of the assessee. Aggrieved, the assessee is in appeal before us.

3. In ground No. 1 and 2 the assessee has raised the issue that the reasons to believe were not provided to the assessee by the AO and therefore reopening under section 147 is illegal, unjust and void-ab-initio at the very threshold.

4. The Ld. Authorized Representative (AR) of the assessee referring to pages 34 to 45 of the paper book submitted that despite repeated requests to furnish the grounds for issuance of notice under section 148 of the Act vide letter dated 04/04/2013, 22/08/2013, 06/09/2013, 23/09/2013, 21/10/2013, 30/10/2013, 07/11/2013 and 13/12/2013, no reasons were provided to the assessee, the reassessment order cannot be upheld. In support of his proposition, the learned AR relied on the judgment of the Honøble High Court of Bombay in the case of Commissioner of Income Tax Vs. Vijay Sanchar Nigam Ltd. reported in (2012) 21 taxmann.com 53 (Bombay), judgment of the Honøble High Court of Karnataka dated 14/08/2015 in the case of Kothari Metals vs. ITO in Writ Appeal No. 218/2015, decision of the Tribunal Mumbai bench in the case of Tata International Ltd. Vs. Deputy Commissioner of Income Tax reported in (2012) 23 taxmann.com 18 (Mum) and judgment of Honøble High Court of Bombay in the case of Commissioner of Income Tax Vs. Trend Electronics reported in (2015) 61 taxmann.com 308 (Bombay).

5. The learned Departmental Representative (DR), on the other hand, relied on the order of the authorities below and submitted that in the normal course of functioning of the Department, reasons must have been supplied by the Assessing Officer.

6. We have heard the rival submissions and perused the material on record. It is settled law that the Assessing Officer is duty-bound to supply the reasons recorded in the reasonable time period as held by the Honøble Supreme Court in the case of GKN Driveshaft (India) limited Vs. CIT (2003) 259 ITR 19 (SC). In the case of Commissioner of Income Tax Vs. Videsh Sanchar Nigam Ltd (supra) the Honøble High Court of Bombay has held as under:

“2. The finding of fact recorded by the Tribunal is that in the present case the reasons recorded for reopening of the assessment though repeatedly asked by the assessee were furnished only after completion of the assessment. The Tribunal following the judgment of this Court in the case of CIT vs. Fomento Resorts & Hotels Ltd., IT Appeal No. 71 of 2006 decided on 27th Nov., 2006, has held that though the reopening of the

assessment is within three years from the end of the relevant assessment year, since the reasons recorded for reopening of the assessment were not furnished to the assessee till the completion of assessment, the reassessment order cannot be upheld. Moreover, special leave petition filed by the Revenue against the decision of this Court in the case of CIT vs. Fomento Resorts & Hotels Ltd. (supra) has been dismissed by the apex Court, vide order dt. 16th July, 2007.

3. In this view of the matter, the present appeal is also dismissed with no order as to costs”

7. Similarly, in the case of M/s. Kothari Metals Vs. ITO (supra) the Honøble High Court of Karnataka expressed opinion that proceedings for reassessment could not have been taken for non-furnishing of the reasons of reopening of assessment. The relevant paragraph of the said judgment is reproduced as under:

“6. The question of non-furnishing the reasons for re-opening an already concluded assessment goes to the very root of the matter. After filing of the return in response to the notice issued under Section 148 of the Act or on request of the assessee requesting that the return of income initially filed be treated as a return of income filed in response to such notice, the assessee is entitled to be furnished the reasons for such re-opening, which can also be challenged independently. Since such reasons had not been furnished to the appellant, even though a request for the same had been made, we are of the opinion that proceedings for the re-assessment could not have been taken further on this ground alone.

8. In the case of Tata International Ltd. Vs. Deputy Commissioner of Income Tax(supra), the Tribunal after considering the decision in the case of GKN Driveshaft (India) Limited (supra) and Videsh Sanchar Nigam Ltd (supra) held that when the Assessing Officer failed to furnish reasons recorded for reopening of the assessment within a reasonable time and prior to the completion of assessment, then the assessment order passed without supply of reasons as recorded for reopening the assessment is invalid and cannot sustain. The relevant findings of the Tribunal are as under:

“8.2 Thus reassessment completed without furnishing the reasons actually recorded by the A.O. for reopening of assessment is not sustainable in law

because the A.O. is duty bound to supply the same within reasonable time as held by the Hon'ble Supreme Court in case of GKN Driveshafts (India) Ltd (supra). The subsequent supply of the reasons would not make good of the illegality suffered by the reopening of assessment. A similar view has been taken by this Tribunal in case of Fomento Resorts & Hotels Ltd vs JCIT and decided a similar issue in para 7 as under:

"7 We have considered the submissions made by both the sides, perused the orders of the authorities below and material on record. It is an admitted fact that the assessee has not filed return of expenditure tax in the normal course. The Assessing Officer issued notice purportedly u/s 11 but inadvertently on the notice, u/s 8 was mentioned in lieu of sec. 11. In this regard, we are in agreement with the findings of the ld Commissioner of Income Tax (Appeals) that this mistake was covered by the provisions of sec. 292B of the Income Tax Act, therefore, we do not find any merit in the contentions of the assessee in this regard. As far as the issuance of notice u/s 11 is concerned, the preliminary condition of not filing of return is satisfied. Therefore, in such a situation, notice can be issued, provided the same is not barred by limitation. However, after issue of notice, if the assessee asks for furnishing of reasons for issuance of such notice, the Assessing Officer is bound to furnish such reasons. The adherence to this procedure is a necessity because at the preliminary stage itself, if the proceedings can be completed if the Assessing Officer gets satisfied with the explanations given by the assessee. it is an undisputed fact that the Assessing Officer, in the present case has not supplied reasons to the assessee, therefore, the notice issued by the Assessing Officer is bad in law and consequently the assessment made in pursuance of such notice is liable to be quashed. In this view of the matter, we cancel the impugned assessment. We order accordingly."

9. The order of this Tribunal was upheld by the Hon'ble jurisdictional High Court as mentioned in the decision in the case of Videsh Sanchar Nigam Ltd (Supra). Even the SLP filed by the revenue against the decision of Hon'ble jurisdictional High Court has also been dismissed by the Hon'ble Supreme Court vide order dated 16 July 2007. Thus, it is settled proposition as laid down by the Hon'ble Supreme Court as well as Hon'ble High Court that the reasons as recorded by the Assessing Officer are required to be furnished to the assessee and the reasons recorded cannot be improved upon or amended by any correspondence, letters etc. It is an undisputed fact that the reasons actually recorded by the Assessing Officer were not furnished to the assessee till 14.06.20012 despite repeated requests and demands and therefore, the gist of reasons as furnished vide letter dated 28th June 2007 cannot be treated as reasons actually recorded by the Assessing Officer as per section 148 (2) and as

mandated by the Hon'ble Supreme Court in case of GKN Driveshafts (India) Ltd (supra). Thus, the Assessing Officer has failed to furnish the reasons recorded for reopening of the assessment within the reasonable time and rather prior to the completion of assessment, than the reassessment order passed without supply of reasons as recorded for reopening of the assessment, is invalid and cannot sustain. Accordingly, we set aside the reassessments for all 3 years under consideration being invalid."

9. In similar facts, in the case of Commissioner of Income Tax Vs. Trend Electronics(supra), the Honøble High Court of Bombay is held that where jurisdictional issues involved the same must be strictly complied with by the authority concerned and no question of knowledge being attributed on the basis of implication can arise.

10. When we advert to the facts of the case in hand, we find from the submission of the assessee that despite repeated letters requesting to provide copy of the reasons recorded or the grounds on which the assessment was reopened, no such reasons were provided to the assessee. We find that the Ld. DR could not substantiate whether any reasons were provided by the Assessing Officer to the assessee and merely relying on the fact that general practice was followed in Department of supplying reasons, it cannot be presumed that reasons were supplied in the case of the assessee. On the other hand, the assessee has filed evidences in support of its claim of request for providing grounds of initiation of the reassessment proceedings in almost every submission made before the Assessing Officer. Therefore, in our considered view, the Assessing Officer has not complied with the direction of the Honøble Supreme Court in the case of GKN Driveshaft (India) Limited providing reasons for reassessment within a reasonable time, and therefore respectfully following the decisions cited above, the reassessment completed by the Assessing Officer under section 147 of the Act cannot be sustained in the case of the assessee and quashed. We ordered accordingly.

11. Since we have quashed the reassessment being invalid; therefore, we do not propose to go into other grounds and the merits of the issue raised in the appeal.

12. In the result, the appeal of the assessee is allowed.

The decision is pronounced in the open court on 16th May, 2016.

Sd/-

(DIVA SINGH)

JUDICIAL MEMBER

Dated: 16th May, 2016.

Laptop/-

Copy forwarded to:

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

Sd/-

(O.P. KANT)

ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi