



IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI AMARJIT SINGH, JM

ITA No.4001/Mum/2012

(Assessment Year :2003-04)

Income Tax Officer -6(1)(4) R. No.508, 5 th Floor, Aayakar Bhavan M.K. Road, Mumbai – 400 020	Vs.	M/s. Asahi Infrastructure Projects Ltd., 102, Gajanan Market, Old Cotton Market Akola – 444 001
PAN/GIR No.		AADCA9648Q
Appellant)	..	Respondent)

Revenue by	Shri Anil Thakrar
Assessee by	Shri Chaitanya Anjaria
Date of Hearing	03/08/2018
Date of Pronouncement	27/08/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the Revenue against the order of CIT(A)-14, Mumbai dated 20/03/2012 for A.Y.2003-04 in the matter of order passed u/s. 143(3) r.w.s. 147 of the IT Act.

2. Following grounds have been taken by the Revenue:-

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in quashing the order u/s147/143(3) of the Act without appreciating the facts that no request was made by the assessee during the course of Reassessment proceedings for providing the reasons recorded for reopening of the case and therefore ,the decision of Hon'ble Supreme Court in the case of GKN Driveshaft Ltd can not be invoked."

2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made of Rs 82,97,290/- on account of non-genuine purchase without appreciating the fact that the transactions shown by the assessee with M/s Laxmi Exports are mere accommodation entries and nothing else."*

3. *"The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored".*

4. *"The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

3. Rival contentions have been heard and record perused.
4. Facts in brief are that assessee is engaged in the business of reseller of iron and steel and also construction work. AO got information from Sales Tax department regarding assessee having made purchases from bogus suppliers. Accordingly, after issue of notice to the alleged suppliers, AO added entire amount of such purchases in assessee's income. Assessee challenged reopening as well as merit of the addition.
5. By the impugned order CIT(A) held that reopening was not valid.

The precise observation of CIT(A) was as under:-

5.1 In these grounds, the appellant has challenged the Assessing Officer's action in passing the order U/S 143(3) read with section 147 without following the principles of natural justice. The appellant in this regard has submitted that the Assessing Officer was requested to state the reasons recorded for re-opening of the assessment vide issue of notice u/s. 146. The appellant pleads that no such reasons were provided. The appellant further states that the Assessing Officer did not provide the reasons recorded for reopening the assessment. The Assessing Officer had thereby violated the principles of National Justice and proceeded to complete assessment which is bad in law. The Assessing Officer had not followed the guidelines laid down by the Honorable Supreme Court in the case of M/s. GKN Driveshaft Ltd, 259 ITR 19 (SC) where it is held that:-

I. Once the assessee applies for reasons for reopening of the assessment, the Assessing Officer is bound to give the reasons recorded within the reasonable time.

II. The assessee can thereafter file its objections against the reasons recorded for reopening the assessment.

III. After receiving the objections from the assessee, the Assessing Officer has to pass a speaking order and thereafter he can proceed with the assessment.

5.2 The order of the Honorable Supreme Court is the law laid down. Hence the order passed by the Assessing Officer is liable to be quashed as the Assessing Officer violated the principles and guidelines laid down by the Honorable Supreme Court in the case of M/s. GKN Driveshaft Ltd (supra). Furthermore, High Courts in the following cases have struck down the reopening or not giving fair and proper opportunity or for not dealing with objections of the assessee:- . . .

- (i) Ajantha Pharma 267 ITR 250 (BOM)
- (ii) CIT w/s. Kelvinator of India Ltd. 255 ITR 1 (DEL) (PB)
- (iii) Jindal Photo Films Ltd. 234 ITR 170 (DEL) and
- (iv) Maharashtra Sugar Mills Ltd. 263 ITR 180 (BOM)

5.3 The appellant has further stated that vide letter dated 10.12.2010 of the Learned Assessing Officer (Copy furnished), the Appellant was required to confirm its dealing with M/s. Laxmi Exports and M/s. Swati International during the period relevant to A.Y. 2003-04, 2004-05 and 2005-06, and produce relevant copies of bank account(s) reflecting the payments made to the said parties. However, still as up-to 10.12.2010, the AO had not given the reasons for reopening the case U/S 148. Vide the same letter dated 10.12.2010, the appellant was also asked to produce the party M/S Laxmi Exports along with copy of ledger A/C of the appellant in the books of M/S Laxmi exports, relevant copies of Bank account statement of M/S Laxmi exports reflecting the receipts from the appellant and copies of acknowledgements of filing of returns of income by M/S Laxmi Exports for A.Y.2003-04, 2004-05 and 2005-06 on 15.12.2010. The appellant furnished its submission dated 15.12.2010 and notified it to the Learned Income Tax Officer, that the said party i.e. M/s. Laxmi Exports was not available at the address known to the Appellant and requested the Learned Income Tax Officer to intimate the address available with him, if any. No such information was provided to the Appellant.

5.4 The Learned Assessing Officer had apparently received intimation from DDIT(Invt). unit(III)(2), Mumbai that there was a survey proceeding on M/S Laxmi Exports. However, no fair opportunity was accorded to the Appellant to cross examine the said party, nor any access was given to the evidence, if any, on which basis the Learned Income Tax Officer passed the said re-assessment order. The Learned AO, after having received the Appellant's submission on 15.12.2010, immediately, on the very next day

i.e. on 16.12.2010 passed the said impugned order although he had sufficient time up-to 31.12.2010 and could have given rightful opportunity to the Appellant by making available the information regarding the said M/S Laxmi Exports.

5.5 The above submissions of the appellant were examined and were forwarded to the Assessing Officer for his comments and sending of a report by 06.01 2012 in the matter, vide this office letter dated 20.12.2011. No reply was however received from the Assessing Officer up to 06.01.2012. Therefore a reminder vide this office letter dated 06.02.2012 was sent to submit the comments and report in the matter by 20.02.2012. The Assessing Officer again did not respond in the matter. Hence another final opportunity was given and reminder was sent vide this office letter dated 28.02.2012 to submit the comments by 05.03.2012. In this letter it was also mentioned that if the report is not received by the said date i.e. 05.03.2012. then it shall be presumed that the AO has nothing to say in the matter and the case would be decided ex-parte on merits. No response however has been received from the AO till date.

5.6 In the light of these facts, therefore, it is evident that the facts narrated by the appellant as above are correct and hence the action of the AO in passing the assessment order under section 147 without following the guidelines as laid down by the Honorable Supreme Court in the case of GKN Drive Shaft Ltd (supra) is unjustified. The AO neither supplied the reasons recorded to the appellant, nor the information, if any which he had in his possession. Also, the appellant was not given any opportunity to cross examine the said party M/s. Laxmi Exports. Given these facts, the order passed by the Assessing Officer deserves to be held invalid and is liable to be quashed. I hold accordingly.

6. It is clear from the above findings of CIT(A) that AO has not followed guidelines laid down by the Hon'ble Supreme Court in the case of GKN Driveshaft Ltd., accordingly, we do not find any infirmity in the order of CIT(A) for holding that reopening was not valid.

7. Similarly, with regard to merit of the addition, the CIT(A) observed as under:-

6.7 It would also be very pertinent to note that the relevant purchases from M/s. Laxmi Exports for Rs.82,97,284/- comprised of 436.055 MT of MS Beams.

This entire quantity of 436.055/- MT of MS Beams was in turn sold to Champion Steel Industries for Rs.84,26,672/- thereby resulting in a profit of Rs. 1,29,3887- to the Appellant. Thus the understanding of the Assessing Officer is questionable, because he has not appreciated as to how it is possible to sell something which, as per his opinion had not existed and furthermore make profits on the same and end up paying taxes on it. Relevant extracts of purchase and sale registers along-with copies of bills/ invoices and confirmation from Champion Sleet Industries in this regard have been furnished by the appellant and the same were also submitted before the AO during the course of assessment proceedings. In view of above facts it is thus contended by the appellant that the addition of Rs 82,97,294/- made by the AO deserves to be deleted on merits also.

6.8 I have considered the above submissions of the appellant. As already stated in the previous ground, the above submissions were forwarded to the AQ for his comments and report. But in-spite of being reminded twice and in-spite of the fact that in the last reminder it was also mentioned that "if the report is not received by the due date, then it shall be presumed that the AO has nothing to say.in the matter and the case would be decided ex-parte on merits", no response has been received from the AO till date. It is thus evident that the facts narrated by the appellant as above are correct and the purchases of Rs. 82,97,290/- made by the Appellant from M/S Laxmi Exports cannot be held to be bogus. Hence the addition of Rs. 82,97,290/- made by the AO is also not. justified. Same is hereby deleted.

8. The finding recorded by CIT(A) are as per material on record, accordingly we do not find any reason to interfere in the order of CIT(A).

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this 27/08 /2018

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated
Karuna Sr.PS

27/08/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai