



Amol

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

WRIT PETITION NO. 3248 OF 2022

1. **Kesar Terminals & Infrastructure Ltd,**
Oriental House,
7, Jamshedji Tata Road, Churchgate,
Mumbai – 400 020 ...Petitioner

VERSUS

1. **The Deputy Commissioner
of Income Tax Circle -1(2)(1), Mumbai,**
Room No. 535, 5th Floor, Aayakar Bhavan
M.K. Road, Mumbai – 400 020
2. **Additional/Joint/Deputy/Assistant
Commissioner of Income-tax/
Income Tax Officer,**
National Faceless Assessment Centre,
Delhi.
3. **The Principal Commissioner
of Income-tax, Mumbai – 1 Mumbai**
Room No. 330, 3rd Floor,
Aayakar Bhavan, M.K. Road,
Mumbai - 400020
4. **Union of India,**
Through the Joint Secretary
& Legal Adviser, Branch Secretariat,
Department of Legal Affairs
Ministry of Law and Justice,
2nd Floor, Aayakar Bhavan, M.K. Marg,
New Marine Lines, Mumbai - 400020 ...Respondents

WITH
INTERIM APPLICATION (L) NO. 11887 OF 2023

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Kesar Terminals & Infrastructure Ltd ...Applicant

In the matter between

Kesar Terminals & Infrastructure Ltd ...Petitioner

VERSUS

Deputy Commissioner of Income-tax
Circle-1(2)(1), Mumbai & Ors ...Respondents

APPEARANCES-

**Mr P J Pardiwalla, Senior Advocate, with Mr Fenil Bhatt, i/b,
Mr Atul K Jasani, for the Petitioner.**

Mr Suresh Kumar, for the Respondents.

**CORAM : M.S.Sonak &
Jitendra Jain, JJ.**

DATED : 27 January 2025

ORAL JUDGMENT (Per MS Sonak J):-

1. Heard learned Counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
3. This petition challenges the impugned notice dated 30 March 2021 and the impugned order dated 31 March 2022, by which the Petitioner's objections to reopening the assessment were disposed of and the assessment order made.
4. Mr Pardiwalla, the learned Senior Advocate for the Petitioner, submitted that the assessing officer could not have made such a combined order disposing of the Petitioner's objections to reopening the assessment and assessing the

Petitioner's income. He submitted that by making such a combined order, the assessing officer had breached the mandatorily prescribed procedure, and adopting such a procedure also violates the principles of natural justice and fair play. He relies on **Fomento Resorts & Hotels Ltd Vs The Assistant Commissioner of Income Tax, Central Circle, Panjim**¹ and the three decisions referred to in this decision.

5. Mr Suresh Kumar, learned Counsel for the Respondents, submits that the Petitioner has already instituted an Appeal against the impugned order and, therefore, we should not entertain the present Petition. He submitted that the impugned order disposed of the assessment proceedings and the objections lodged by the Petitioner to adhere to the statutorily prescribed timelines. He submitted that there was no infirmity in the procedure adopted, and therefore, this Petition may be dismissed, or in any event, the Petitioner may be relegated to the remedy of Appeal, which the Petitioner has already invoked.

6. The rival contentions now fall for our determination.

7. In this matter, vide assessment order dated 25 March 2016 made under Section 143(3) of the Income Tax Act, the returns filed by the Petitioner were assessed and accepted, and the claim under Section 80-IA was revised.

8. The petitioner was issued the impugned notice under Section 148 of the Income Tax Act on 30 March 2021, seeking to reopen the assessment. In compliance with the notice, the petitioner filed a return on 7 April 2021. On 12 May 2021, the

¹ MANU/MH/2513/2019

Petitioner requested the reasons for reopening, which were furnished to the Petitioner on 6 July 2021.

9. On 4 August 2021, the Petitioner filed objections to the reopening of the assessment by raising several contentions. Without disposing of such objections, on 22 November 2021, the Petitioner was issued a notice under Section 142(1) directing it to justify its claim under Section 80-IA with supporting documents.

10. On 26 November 2021, the Petitioner requested the Respondents to dispose of the objections filed by the Petitioner before proceeding any further. The Petitioner made a specific reference to the Hon'ble Supreme Court's decision in the case of **GKN Driveshaft (India) Limited Vs ITO**². The Petitioner also referred to this Court's decision in the case of **Asian Paints Ltd. vs Deputy Commissioner Of Income-Tax And Ors**³, which had provided that an assessee must be given a reasonable period of about four weeks to take any remedial course of action should the assessee's objections to the reopening be rejected by the revenue.

11. The Petitioner's objections were never disposed of, but the impugned consolidated reassessment order dated 31 March 2022 was made, in which the Petitioner's objections were also purported to be disposed of.

12. Apart from the fact that the making of such consolidated or combined orders was not approved in some decided cases, which we propose to refer to, we think that such a procedure

² 259 ITR 19

³ 296 ITR 90

also involves breaching the principles of natural justice and fair play.

13. The assessing officer in *Fomento Resorts & Hotels Ltd* (supra) made a similar combined order. Neither were the assessee's objections disposed of by a separate order, nor was the assessee granted any reasonable opportunity of questioning the order disposing of the objections. In such circumstances, the Court, after analysing the decision of the Hon'ble Supreme Court in *GKN Driveshaft* (supra) and following its earlier precedents in **KSS Petron Private Ltd Vs The Assistant Commissioner of Income Tax Circle 10 (2)**⁴ and **M/s Bayer Material Science (P) Ltd Vs Deputy Commissioner of Income-tax-10(3)**⁵ quashed the combined order on the ground of want of compliance with jurisdictional parameters.

14. Accordingly, we cannot accept Mr Suresh Kumar's contention about there being no infirmity in the impugned consolidated order dated 31 March 2022, given the above decisions referred to by us rendered in substantially similar facts.

15. The Petitioner has, no doubt, instituted an Appeal after the filing of this Petition. However, Mr Pardiwalla clarified that this was only to protect from the bar of limitation. He further pointed out that the factum of the institution of this Petition and the reason for the institution of the Appeal were clarified in the appeal memo. Further, this factum of the institution of the Appeal after the institution of this Petition was brought on record through an affidavit in a rejoinder in

⁴ Income Tax Appeal No 224 of 2014 decided on 3/10/2016.

⁵ (2016) 66 taxmann.com 335 (Bombay)

these proceedings. He submitted that since the impugned order is vitiated due to noncompliance with jurisdictional parameters, there is no point in relegating the Petitioner to the alternate remedy of Appeal. He submits that where an order is wholly without jurisdiction, the rule of exhaustion of alternate remedy can always be bypassed.

16. Since the impugned consolidated order warrants interference due to noncompliance with jurisdictional parameters, relegating the Petitioner to the alternate remedy would not be appropriate. As noted earlier, this Court has interfered with consolidated orders in almost identical circumstances, making assessments and disposing of objections. Therefore, Mr Suresh Kumar's objection based on exhaustion of alternate remedy cannot be sustained in the facts of the present case.

17. For all the above reasons, we allow this Petition and make the Rule absolute in terms of prayer clause (a), which reads as follows:-

“(a.) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other writ order or direction under Article 226 of the Constitution of India calling for the records of the case leading to the issue of the impugned notice and passing of the impugned order and after going through the same and examining the question of legality thereof quash, cancel and set aside the impugned notice (Exhibit O) dated March 30, 2021 and impugned order (Exhibit W) dated March 31, 2022;”

18. Mr Pardiwalla states that the Petitioner will withdraw the Appeal within 15 days. This statement is accepted.

19. The pending Interim Application does not survive the disposal of the Petition. Accordingly, it is also disposed of.

20. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M. S. Sonak, J)