INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCHES, MUMBAI

BENCH: A

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

<table>
<tr><td colspan="3">ITA 2714/MUM/2026
निर्धारणवर्ष/Assessment Year: 2012-13)</td></tr>
<tr><td>ASHISH GEMS
De-5060, Bharat Diamond Bourse Bandra Kurla Complex Bandra (East), Mumbai-400051, Maharashtra</td><td rowspan="2">Vs.</td><td>ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 19(1), MUMBAI
Piramal Chamber, Lalbaugh, Parel, Mumbai
Mumbai-400012, Maharashtra</td></tr>
<tr><td>अपीलार्थी Appellant</td><td>प्रत्यर्थी Respondent</td></tr>
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Permanent Account Number of Assessee:	**AAAFA3396D**

अपीलार्थीद्वारा/Appellant represented by:	**Shri Dr. K. Shivram (A/w) Shashi Bekal**
प्रत्यर्थीद्वारा/Respondent represented by:	**Shri Surendra Mohan; Sr. DR**

सुनवाईकीतारीख/ Date of conclusion of hearing:	**28-July-2026**
घोषणाकीतारीख/ Date of pronouncement:	**31-July-2026**

आदेश / ORDER

PER: SHRI ANIKESH BANERJEE, (JM):

The instant appeal of the assessee filed against the order of the NFAC, Delhi [for brevity "Ld. CIT(A)"], order passed under Section 250 of the Income Tax Act, 1961 (for brevity 'the Act'), for Assessment Year 2012-13, date of order 30.01.2026. The impugned order emanated from the order of the Ld. Assistant

Commissioner of Income Tax 19(1), Mumbai (for brevity 'Ld. AO'), order passed under Section 143(3) r.w.s. 147 of the Act, date of order 15.12.2019.

2. The brief facts of the case are that the assessee had filed the return by declaring income Rs. 1,24,07,629/-. The case was re-opened u/s. 147 of the Act and issued the notice u/s. 148 dated 13.03.2019 after recording the reasons and taking prior approval from the authority. In response to the notice u/s. 148, the assessee filed the return on dated 20.03.2019 and declaring total income Rs. 1,24,07,629/-. The assessee filed the objection before the Ld. AO related to the recorded reason supplied by the Ld. AO to the assessee. But finally the assessment was completed with an addition u/s. 69C amount to Rs. 2,39,91,088/- without disposal of the objection filed by the assessee . The aggrieved assessee filed an appeal before the Ld. CIT(A) by challenging both the legal grounds as well as on merit. But the Ld. CIT(A) rejected the appeal of the assessee and upheld the order of the Ld. AO. Being aggrieved, assessee filed an appeal before us.

3. The Ld. AR filed the paper book comprising **pages 1 to 57**, which have been taken on record. The Ld. AR raised an additional ground challenging the assumption of jurisdiction under Section 148 of the Act on the ground that the Ld. AO completed the reassessment without first disposing of the objections filed by the assessee against the recorded reasons for reopening under Section 147 of the Act. It was contended that the action of the Ld. AO in framing the assessment under Section 148 without adjudicating and disposing of the assessee's objections is contrary to the law laid down by the Hon'ble Supreme Court in **GKN Driveshafts (India) Ltd. v. ITO** reported in **(2002) 125 Taxman 963 (SC)**.The Ld.AR placed that the Ld.AO in the present case has failed to follow the

directions laid down by the Hon'ble Apex Court, which makes the entire re-assessment proceedings void and, therefore, is liable to be quashed.

4. Ld. AR submitted the list of dates & events which are as follows:-

Sr.No.	Particular	Date	ABP Page
1	Notice issued under section 148 of the Act	13.03.2019	25
2	Assessee filed the return u/s 148 of the Act	20.03.2019	26
3	Objection against reasons recorded for reopening	30.09.2019	31-36
4	Ld. AO without disposing objection filed by the assessee had directly issued show-cause notice	25.11.2019	44-45

Ld. AR contended that without disposing objection of the assessee, assessment under section 148 of the Act is vitiated entire proceedings. Ld. AR respectfully relied on the order of Hon'ble Bombay High Court in the case of **KSS Petron Private Limited (ITA No. 224 of 2014 order dated 3.10.2016)**. Relevant paragraph 7 to 9 is reproduced below :-

"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 werequashed 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."

5. The Ld. AR contended that the identical fact is duly adjudicated by Hon'ble Madras High Court in the case of **Jayanthi Natarajan vs. ACIT** reported in **100 taxamnn.com 511 (Madras**). Relevant paragraph 13 to 15 is reproduced below:

> *"13. The Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd., (supra), held that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the notice is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. This procedure has been carved out by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd.'s, (supra), which binds not only the assessee, but the revenue as well. It has been pointed out that on receipt of the reasons, the notice is entitled to file objections to issuance of notice for reopening and if he files such objections, the Assessing Officer is bound to dispose of the same by passing a speaking order. Thus, the procedure, which was required to be followed by the respondent is to dispose of the petitioner's objections by passing a speaking order.*

14. Admittedly, in the instant case, this has not been done by the respondent, but the respondent seeks to sustain the impugned assessment order stating that in the first few paragraphs of the order, he has dealt with objections and disposed of accordingly. Unfortunately, the manner in which the respondent has decided the issue is wholly unsustainable in law. The purpose for passing a separate speaking order on the objections is with a view to afford an opportunity to the assessee to question such an order, if he is aggrieved. The respondent by passing the impugned order has taken away such valuable right from the petitioner inasmuch as the impugned proceedings is an order of assessment under Section 143(3) of the Act. Therefore, if an order of assessment has to be challenged, necessarily an appeal has to be preferred and only in rarest of rare case, Courts would entertain challenge to assessment orders in writ proceedings. Thus, the procedure adopted by the respondent is completely flawed, which goes to the root of the matter, thereby, vitiates the entire proceedings.

15. In somewhat similar circumstances, the Division Bench of the Bombay High Court in KSS Petron (P.) Lid (supra), held that the Assessing Officer was not justified in finalizing the assessment without having first disposed of the objections of the assessee. While testing the correctness of the decision of the CIT (Appeals), which quashed the order of the Assessing Officer restored the assessment to the Assessing Officer to pass fresh orders after disposing of the objections to reopening notice in accordance with law, the Division Bench held that once the impugned order finds the assessment order is without jurisdiction, as the law laid down by the Apex Court in the case of GKN Driveshafts (India) Ltd., (supra), has not been followed, then there is no reason to restore the issue to the Assessing Officer to pass fresh/further orders and if this is permitted, itwould give license to the Assessing Officer to pass orders on reopening notice, without jurisdiction (without compliance of the law in accordance with the procedure). Further it was pointed out that to ensure that the reopening notices are disposed of expeditiously, the Parliament itself has provided in Section 153(2) of the Act, the period within which the Assessing Officer must pass orders on notice of reopening (i.e.) within one year from the end of the financial year, in which the notice was issued. Thus, on facts having found that the procedure required to be *followed had not been adhered to, it has to be held that the entire proceedings are vitiated."*

6. The Ld. DR supported the orders of the revenue authorities. However, the Ld. DR did not controvert the submissions advanced by the Ld. AR by placing any contrary facts or material on record.

7. We have heard the rival submissions, perused the material available on record, and carefully considered the judicial precedents relied upon by the parties. The additional grounds raised by the assessee challenge the very assumption of jurisdiction by the Ld. AO and arise from the facts already available on record. Since no fresh investigation of facts is required, the additional grounds are admitted for adjudication. The short issue for our consideration is whether the reassessment framed under Section 147 read with Section 143(3) of the Act is legally sustainable when the objections filed by the assessee against the recorded reasons for reopening were not disposed of by way of a separate speaking order before completion of the reassessment. The chronology of events placed on record shows that the notice under Section 148 of the Act was issued on 13.03.2019, the assessee filed objections to the recorded reasons on 30.09.2019 by the letter dated 24/09/2019, and thereafter the Ld. AO proceeded to issue the final show-cause notice dated 23.09.2019 without first passing a separate speaking order disposing of such objections. Though the Ld. DR contended that the objections were duly considered during the reassessment proceedings and that the show-cause notice records such consideration, the revenue has not been able to place on record any independent and separate speaking order disposing of the objections prior to completion of the reassessment.

8. The Hon'ble Supreme Court in **GKN Driveshafts (India) Ltd.** (supra) has categorically held that upon receipt of the recorded reasons, the assessee is entitled to file objections and the Assessing Officer is under a mandatory obligation to dispose of such objections by passing a speaking order before proceeding further with the reassessment. This procedural safeguard is intended to provide the assessee an effective opportunity to challenge the assumption of jurisdiction.The above principle has been further explained by the Hon'ble Bombay High Court in **KSS Petron Pvt. Ltd.**(supra), wherein it was held that failure to comply with the procedure prescribed in **GKN Driveshafts (India) Ltd.** (supra) renders the reassessment order without jurisdiction and that such a defect cannot be cured by restoring the matter to the Assessing Officer, as doing so would amount to granting a licence to ignore the mandatory procedure prescribed by law. The same principle has also been reiterated by the Hon'ble Madras High Court in **Jayanthi Natarajan** (supra), wherein it was held that consideration of objections within the assessment order itself or during the reassessment proceedings is not a substitute for a separate speaking order and that such failure goes to the root of the assumption of jurisdiction, thereby vitiating the entire reassessment proceedings.

9. Respectfully following the ratio laid down by the Hon'ble Supreme Court in **GKN Driveshafts (India) Ltd.** (supra), as followed by the Hon'ble Bombay High Court in **KSS Petron Pvt. Ltd**. (supra) and the Hon'ble Madras High Court in **Jayanthi Natarajan** (supra), we hold that the reassessment order passed by the Ld. AO is vitiated in law for non-compliance with the mandatory procedure governing reassessment proceedings.

10. Accordingly, **Additional Ground No. 1.1** is **allowed**, and the reassessment order passed under Section 147 read with Section 143(3) of the Act is quashed.

11. Since the reassessment itself has been held to be invalid on the legal issue, adjudication of **Additional Ground No. 1.2** and the other grounds as well as the additions made on merits would be purely academic. Accordingly, the same are left open and are not adjudicated.

12. In the result, the appeal of the assessee bearing **ITA No.2714/Mum/2026** is **allowed.**

Order pronounced in the open court on 31st day of July 2026.

Sd/- Sd/-

(BIJAYANANDA PRUSETH) (ANIKESH BANERJEE)
ACCOUNTANT MEMBER JUDICIAL MEMBER

Mumbai,दिनांक/Dated: 31/07/2026
Soumili, *PS*

<u>Copy of the Order forwarded to</u>:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, MUMBAI**