

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA Nos. 3860 & 3861/Del/2016
(Assessment Years : 2010-11 & 2011-12)

Sh. Chand Singh C/o. M/s. RRA TAXINDIA D-28, South Extension, Part-I, New Delhi PAN : DEVPS 2076 J (APPELLANT)	Vs.	DCIT Circle – 1(1), Gurgaon (RESPONDENT)
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Assessee by	Dr. Rakesh Gupta, Adv. Sh. Somil Agarwal, Adv.
Revenue by	Sh. Mahesh Thakur, Sr. D.R.

Date of hearing:	24/06/2021
Date of Pronouncement:	05/07/2021

ORDER

PER ANIL CHATURVEDI, AM :

Both the appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-I, Gurgaon dated 14.06.2016 for Assessment Years 2010-11 & 2011-12 respectively.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is an individual who filed his original return of income for A.Y. 2010-11 on 31.03.2012 declaring total income of Rs. 20,12,920/-. Initially assessment was framed u/s 143(3) vide order dated 28.02.2013 determining the total income at Rs.20,12,920/-. Thereafter, AO on the basis of the information as per Form-26AS noted that assessee had received Rs. 2,17,64,344/- on 10.06.2009 from the Land Acquisition Office. He accordingly issued notice u/s 148 of the Act on 13.06.2013 after recording the reasons and served on the assessee. In response to the aforesaid notice assessee *inter alia* vide letter dated 30.12.2014 submitted that the original return filed for the A.Ys. 2010-11 & 2011-12 be considered to be the return of income in response to notice u/s 148 and also requested the AO to provide copy of the reasons recorded for initiating the proceedings u/s 148 of the Act. Thereafter, AO framed assessment u/s 147 r.w. 143(3) of the Act vide order dated 28.03.2015 determining the total income at Rs.1,10,72,240/-.

4. **As far as A.Y. 2011-12 is concerned**, assessee filed his return of income on 31.03.2012 declaring total income at Rs.58,20,290/-. The returned income was accepted in the assessment framed u/s 143(3) vide order dated 28.02.2013. Thereafter, AO on the basis of information received in Form 26AS noted that assessee had received Rs.4,15,17,529/- on 13.12.2010 from the Land Acquisition Officer. He accordingly issued notice u/s 148 of the Act dated 13.06.2013. Thereafter AO framed assessment u/s 147 r.w. 143(3) of the Act vide order dated

28.03.2015 determining the total income at Rs. 2,11,85,500/-. Aggrieved by the aforesaid orders, assessee preferred appeal before the CIT(A) who vide orders dated 14.06.2016 in Appeal No.122/2015-16 and 121/2015-16 for A.Ys. 2010-11 & 2011-12 respectively, dismissed the appeals of the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds in Appeal No.3860/Del/2016 for A.Y. 2010-11:

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and passing the impugned re-assessment order u/s 147/143(3) and that too without complying with the mandatory conditions as envisaged u/s 147 to 151 of Income Tax Act, 1961.*
2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in assuming jurisdiction and passing the impugned reassessment order u/s 147/143(3) is bad in law and against the facts and circumstances of the case.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.90,59,320/- on account of interest received on enhanced compensation u/s 28 of Land Acquisition Act.*
4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.90,59,320/- on account of interest received on enhanced compensation u/s 28 of Land Acquisition Act is bad in law and against the facts and circumstances of the case.*
5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B, 234C and 234D of Income Tax Act, 1961.*

6. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

5. Similar grounds has been raised by the assessee in Appeal No.3861/Del/2016 for A.Y. 2011-12.

6. Before us, at the outset, Learned AR submitted that the facts in both the appeals are identical except for the year and the amounts involved and therefore submissions made by him while arguing appeal for one assessment year would be equally applicable to the other. Learned DR did not controvert the aforesaid submission made by the Learned AR.

7. Before us, Learned AR submitted that in the present case for A.Y. 2010-11, the original assessment was framed u/s 143(3). Thereafter notice u/s 148 was issued on 13.06.2013. He submitted that the assessee in response to the aforesaid notice vide letter dated 30.12.2014 objected to the initiation of reassessment proceedings and sought the reasons recorded for reopening of the assessment. He submitted that the reasons recorded for reopening of assessment was furnished and on its receipt, assessee filed objection on 27.02.2015 objecting to the initiation of reopening. He submitted that the AO without passing speaking order on the objections filed, completed the reassessment on 28.03.2015. Learned AR submitted that the AO did not follow the procedures laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts India Ltd. vs. ITO (2003)

259 ITR 19. He submitted that as per the law laid down by the Hon'ble Apex Court in the case of GKN Driveshafts India Ltd. (supra), the Assessing Officer is required to dispose of the objections placed to the reopening of the assessment with a speaking order and failure to apply with the aforesaid law laid down by Hon'ble Apex Court would render the assessment order to be without jurisdiction. In support of his aforesaid contention, he relied on the following decisions; (i) Jayanthi Natarajan vs. ACIT, (2018) 401 ITR 0215 (Mad); (ii) Pr. CIT vs. Tupperware India (P) Ltd., (2016) 236 Taxman 494 (Del); (iii) Ferrous Infrastructure Pvt. Ltd. vs. DCIT, (2015) 120 DTR 0281 (Del) and various other decisions that are placed in the paper book. He also relied on the decision rendered by the Pune Bench of Tribunal in the case of Abhijeet Deshpande vs. DCIT in ITA No. 492/2018 vide order dated 03.05.2019. He therefore submitted that when AO has not followed the law laid down by the Hon'ble Apex Court, the order passed by the AO may be set aside. On the merits of the addition made by the AO, he relied on the decision of Tribunal in the case of ITO vs. Gordhan in ITA No.3996/2018 order dated 15.01.2019 of Delhi Benches, ITA No. 5391/Del/2017 order dated 02.12.2020 in the case of Ram Kishan vs. ITO and the decision rendered in the case of Jaswant Singh (ITA No.567/Chd/2018, order dated 18.01.2019) rendered by the Chandigarh Tribunal.

8. Learned DR on the other hand supported the order of lower authorities and further submitted that non disposal of the objections of re-assessment proceedings by a separate and

speaking order is merely procedural irregularity and therefore the matter may be set aside to AO. On the merits of the issue, he relied on the decision rendered in the case of Mahender Pal Narang vs. Central Board of Direct Taxes reported in (2020) 120 taxmann.com 400 (Punjab & Haryana High Court). He further submitted that against the aforesaid order passed by Hon'ble Punjab & Haryana High Court, assessee had filed SLP before the Hon'ble Apex Court which was dismissed and the same is reported in (2020) 126 taxmann.com 105 (SC).

9. We have heard the rival submissions and perused the materials on record. Before us, Learned AR is challenging the reassessment proceedings. It is an undisputed position that the assessee had objected to the reassessment proceedings for A.Y. 2010-11 vide letter dated 27.02.2015. It is also an undisputed fact that no separate speaking order disposing of the objections raised by the assessee has been passed by the AO and he has proceeded to pass the assessment order u/s 147 r.w. 143(3) vide order dated 28.03.2015. We find that Hon'ble Supreme Court in the case of GKN Driveshafts India Ltd. (supra) has held that when a notice u/s 148 of the Income Tax Act has issued, the proper course of action for the noticee is to file 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 noticee 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. Thus the procedure that was

required to be followed by the AO was to dispose of the assessee's objections by passing a speaking order. In the present case it is an undisputed fact that there was a failure by the AO to comply with the mandatory requirement of disposing of the objections raised by the assessee to the reopening of assessment in terms of the law laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts India Ltd. (supra). We further find that Hon'ble Bombay High Court in the case of CIT vs. Trend Electronics (2015) 379 ITR 456 (Bom), after considering the decision of Hon'ble Bombay High Court in the case of CIT vs. Videsh Sanchar Nigam Ltd. (2012) 340 ITR 66 (Bom) has held that 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 AO. It has further held that the recording of reasons and furnishing of the same has to be strictly complied with as it is a jurisdictional issue and in the absence of reasons being furnished when sought for would make an order passed on reassessment bad in law. We also find that the Hon'ble Mad High Court in the case of Jayanthi Natarajan (supra) has held that when the procedure required to be followed has not been adhered to, the entire reassessment proceedings were vitiated. We, therefore, relying on the aforesaid decision in the case of Jayanthi Natarajan (supra) and Trend Electronics (supra) hold that since the procedure required to be followed has not been followed the entire assessment proceedings are vitiated and therefore we hold the assessment order passed by the AO to be bad in law and thus set it aside. Since we have set aside the reassessment order the

grounds raised on merits require no adjudication as they have been rendered academic. **Thus the Appeal of the assessee is allowed.**

10. As far as A.Y. 2011-12 is concerned, both the parties before us have submitted that the issue involved in A.Y. 2011-12 is identical to that of A.Y. 2010-11. We have hereinabove, while deciding the appeal for A.Y. 2010-11 have allowed the appeal of the assessee. We for similar reasons also allow the appeal of assessee for A.Y. 2011-12. **Thus the appeal for A.Y. 2011-12 is allowed.**

11. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 05.07.2021

Sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Date:- 05.07.2021
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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI