

IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE

**SHRI PARTHA SARATHI CHAUDHURY, JM
AND
DR. DIPAK P. RIPOTE, AM**

**ITA No. 1687/PUN/2017
Assessment Year : 2011-11**

The Asstt. C.I.T. Cir. 2, Solapur :Appellant

Vs.

M/s. Beekay Enterprises,
Laxmi Bhavan, 3A Murarji Peth,
Solapur – 413 001

PAN ; AABFB4783A : Respondent

**C.O. No. 41/PUN/2019
Arising out of ITA No. 1687/PUN/2017
Assessment Year : 2011-11**

M/s. Beekay Enterprises,
Laxmi Bhavan, 3A Murarji Peth,
Solapur – 413 001

PAN ; AABFB4783A : Cross Objector

Vs.

The Asstt. C.I.T. Cir. 2, Solapur : Appellant in appeal.

Assessee by : Shri S.N. Puranik
Department by : Shri Deepak Garg

Date of Hearing : 17-03-2022
Date of Pronouncement : 22-03-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the Revenue and the Cross Objection by the assessee emanates from the order of the Id. CIT(A)-7, Pune dated 24-03-2017 for A.Y. 2010-11. The grounds of appeal by the Revenue are as follows:-

- 1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A)-7, Pune is justified in restricting addition at Rs. 69,21,245/- being 20% of alleged bogus purchases from Hawala dealers of Rs. 3,46,06,232/- on account to profit out of alleged bogus purchases amounting to Rs. 3,46,06,232/-.
- 2) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A)-7, Pune is erred in restricting the disallowance @

20% of bogus purchases from Hawala traders being profit element in bogus purchases of Rs. 3,46,06,232/- which A.O. disallowed u/s 68/69C being bogus expenditure incurred to reduce the profit in the business.

- 3) The Ld. CIT(A)-7, Pune, ought to have confirmed the entire addition made by the A.O. instead restricting the same @ 20% despite the fact that entire purchases have been found to be bogus by the Assessing Officer. Restricting the disallowance to certain extent is against the principle of section 68 & 69C of the Income Tax Act, 1961.
- 4) The Ld. CIT(A)-7, Pune, ought to have dismissed the appeal of the assessee by recognizing the principle that if any expenditure (including purchases) is proved to be bogus under the Income Tax Act, 1961, the provisions of section 69C does not permit allowing partial expenditure.
- 5) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A)-7, Pune is justified in restricting the disallowance @ 20% of bogus purchases from Hawala traders when the Gujarat High Court has held that the bogus purchase was disallowed when the same has been held as bogus and the order of the High Court was confirmed by Hon'ble Supreme Court of India in the case of N.K. Proteins Ltd. in Appeal CC No. 769/2017
- 6) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A)-7, Pune is erred in not appreciating the fact that the assessee squarely covered by the judgment of the Gujarat High Court in the case of N.K. Proteins Ltd. in Appeal CC No. 242/2003.
- 7) For the facts and such other reasons as may be urged at the time of hearing, the order of the Ld. CIT(A) may be vacated and that of the Assessing Officer be restored.
- 8) The appellant craves to add, amend, alter or delete any of the above grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal."

2. The assessee has also filed a Cross Objection on the ground that assessment order passed by the Id. A.O is bad in law for not providing a copy of reasons recorded for notice u/s 148 of the Income-tax Act, 1961 (hereinafter referred to as "the Act).

3. The brief facts of the case are that the assessee has filed return of income on 15-10-2020 declaring total income of Rs. 67,09,080/-. Thereafter, a

survey action u/s 133-A of the Act was conducted on 16-01-2013 by Investigation Wing of the Department. Consequently, the assessee has declared an additional income of Rs. 1,11,06,967/- on 27-3-2015. Subsequently, the assessment u/s 143(3) r.w.s. 147 of the Act was completed on 27-3-2015 assessing total income at Rs. 4,13,15,312/- as against the returned income of Rs. 67,09,080/- by making an addition on account of inflated purchases from Hawala Parties at Rs. 3,46,06,232/- {Rs. 2,87,17,113/- (including additional income declared) plus Rs. 57,89,119/-}. Aggrieved, the assessee preferred an appeal before the Id. CIT(A) who vide his order dated 24-3-2017 restricted the total income at Rs. 69,21,245/- being 20% of alleged bogus purchases from hawala dealers and provided relief to the assessee. The Revenue is therefore, in appeal before us.

4. We have perused the case records, heard the rival submissions and analysed the facts and circumstances in this case. The Revenue has preferred this appeal against the relief provided to the assessee regarding quantum additions, whereas, the Cross Objection has been preferred by the assessee. Apart from the Grounds on merits, the assessee has raised a legal ground where he has submitted that in the re-assessment proceedings u/s 147/148 of the Act, the reasons recorded for issuance of notice u/s 148 of the Act were not furnished to the assessee. Therefore, prayed for cancellation of the assessment. We have directed the Id. D.R to bring the case records and he placed before us a letter dated 8-9-2020 from the concerned Assessing Officer i.e. Asstt. C.I.T. Cir. Solapur and therein, he has stated categorically that the assessee did request the then Assessing Officer to provide certified copies of reasons recorded and approval obtained for initiation of proceedings u/s 148 of the Act. It is also stated in the said letter, as per the case records, there is no

letter as per the Department's record regarding furnishing of reasons recorded for initiation of re-assessment proceedings u/s 147 of the Act to the assessee. The relevant letter is extracted as follows, which is made part of this order.

**“OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME-TAX,
CIRCLE, SOLAPUR,
Aayakar Bhavan, First Floor Room No. 102
Hotgi Road, Solapur**

No. SOL/ACIT/Beekay/2020-21/41

Date: 08-09-2020

To
The Additional Commissioner of Income-tax,
ITAT-I, Pune.

Sir,

Sub: Departmental appeal in the case of M/s Beekay Enterprises,
A.Y. 2010-11, ITA No. 1687/PUN/2017 – reg
Ref: Letter No. PN/CIT/ITAT-I/CSBL/2020-21

In this case, the assessee has raised a “Cross Objection (CO) before your honour stating that “the Assessing Officer” has not provided the copy of reasons recorded till the assessment completed”.

On perusal of the available case records of Beekay Enterprises for A.Y. 2010-11, it is found that there is a letter dated 07th November 2013 from Beekay Enterprises in against to the notice u/ 148. In the aforesaid letter, the assessee requested the then AO to provide the certified copy of reasons recorded and approval obtained for initiating proceedings u/s 148. **It is found by this office that the case records didn't has any letter regarding furnishing of the reasons recorded for initiating the re-opening proceedings u/s 147 to the assessee.** Further reasons recorded on the order sheet was provided to the assessee on 28-11-2019 as per the request received from assessee on 24-9-2019.

The copy of case records is submitted for your kind perusal.

Thanking you,

Yours faithfully,

Sd/-
(Prasad Menkudale)
Asstt. Commissioner of Income-tax
Circle, solapur.

Encl: as above.

Copy submitted to : The Addl CIT Range 1, Solapur

Sd/-
ACIT Circle, Solapur.”

5. Undisputedly, the assessee has made a request to the Id. A.O asking him to provide the reasons for initiation of proceedings u/s 147/148 of the Act

and such reasons recorded were not furnished to the assessee. The Id. .D.R conceded to these facts.

6. The Id. A.R before us placed strong reliance on the judgment of the Hon'ble Bombay High Court in the case of New Era Shipping Ltd. Vs. CIT (2021) 430 ITR 0431 (Bom), wherein the Hon'ble Jurisdictional High Court had considered the decision of Hon'ble Apex Court in the case of GKN Driveshafts (I) Ltd. Vs. ITO (2003) 1 SCC 72, wherein it was held that if the assessee desires to seek reasons for issuing notice u/s 148 of the Act, the Id. A.O is bound to furnish the said reasons within a reasonable time. That, following the aforestated decision, Hon'ble Jurisdictional High Court observed that it was not open to the Id. A.O to refuse furnishing of reasons for issuing notice u/s 148 of the Act. As a result of such refusal, the assessee was deprived of valuable opportunity of filing objections to the re-opening of assessment. The substantial question of law in this case was answered in favour of the assessee.

7. **Per contra**, the Id. D.R had referred to another decision of Hon'ble Supreme Court in the case of Home Finders Housing Ltd. Vs. ITO, Corporate Ward 2(3), Chennai, (2018) 94 taxmann.com 84 (SC), wherein the Hon'ble Apex Court had upheld the finding of the Hon'ble Madras High Court wherein considering the earlier decision of Hon'ble Supreme Court in the case of GKN Driveshafts (I) Ltd. (supra) and distinguishing the said judgment, it was held that even if the A.O does not pass a speaking order after reasonable objections from the assessee in respect of re-assessment proceedings u/s 147 and 148 of the Act, in respect of such violation, it would be a procedural irregularity which could be cured by remitting the matter back to the authorities. Countering this decision, the Id. A.R brought to our notice the decision of Hon'ble Karnataka

High Court in the case of Pr. CIT Vs. Ramaiah (2019) 103 Taxman.com 201 (Karnataka), wherein the facts were absolutely identical that despite repeated requests made by the assessee, the Id. A.O has completed the assessment without furnishing reasons recorded for reopening of the assessment. In this case, the counsel for the Revenue had relied on the decision in the case of Home Finders Housing Ltd. (supra) and submitted that this was a procedural lapse merely and any such lapse cannot quash the re-assessment order. On the other hand, the counsel for the assessee had placed reliance in the case of GKN Driveshafts (I) Ltd. (supra) and submitted that non-supply of the reasons recorded for re-assessment goes to the root of the matter and is the jurisdictional issue and it cannot be fitted only as a procedural lapse on the part of the A.O. The Hon'ble Karnataka High Court placing reliance on the judgment of the Hon'ble Supreme Court in the case of GKN Driveshafts (I) Ltd. (supra) observed and held that the assessee in the present case twice made a request to the Id. A.O but despite a specific request, the Id. A.O did not comply with the said request and did not supply the reasons to the assessee. That, in view of the decision of the Hon'ble Supreme Court judgment, the Id. A.O. therefore, lacked the jurisdiction in invoking the re-assessment proceedings and therefore, impugned re-assessment order deserves to be quashed. Therefore, the view of the Tribunal was upheld and the appeal of the Revenue was dismissed. The issue answered in favour of the assessee.

8. The Revenue thereafter took this matter before the hon'ble Supreme Court in Pr. CIT Vs. V. Ramaiah (supra) and the SLP filed by the Revenue against the decision of Karnataka High Court was dismissed. Therefore, in this legal analyses, the conclusion arrived at is in the case of V. Ramaiah (supra), the Hon'ble Karnataka High Court had the occasion to adjudicate similar issue

considering both the decisions i.e. Home Finders Housing Ltd. (supra) and GKN Driveshafts (I) Ltd.(supra) and had finally upheld the reasons and findings given in the case of GKN Driveshafts (I) Ltd. (supra) dismissing the appeal of the Revenue. This was further re-affirmed by the Hon'ble Supreme Court when the SLP of the Revenue had been dismissed. Reverting to the facts of the present case, admittedly, the reasons recorded for initiation of proceedings u/s 147/148 of the Act were not furnished to the assessee and therefore, is a jurisdictional lapse on the part of the Id. .A.O and therefore, the impugned re-assessment order deserves to be quashed. When the SLP preferred by the Revenue had been dismissed by the Hon'ble Apex Court in respect of the decision of the Karnataka High Court wherein they have considered both the decisions of Home Finders Housing Ltd (supra) and GKN Drivshafts (I) Ltd. (supra), in such a scenario, respectfully following the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (I) Ltd. (supra), we hold in the case of the assessee that when the reasons recorded were never communicated to the assessee inspite of requests made, the Id. A.O lacked the jurisdiction to pass re-assessment order which is hereby quashed.

9. In the result, the legal ground taken in the assessee's cross objection which goes to the root of the matter is allowed and the ground on merits therefore, becomes academic in nature. **The C.O No. 41/PUN/2019 of the assessee is allowed.**

10. Consequently, the Revenue's appeal based on quantum relief given by the Id. CIT(A) arising out of the re-assessment order which is already now

quashed, as held aforesaid, therefore, do not have any legal basis for its sustenance.

11. In the result, the **appeal of the Revenue is dismissed.**

12. In the combined result, **the C.O of the assessee is allowed and the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on this 22nd March 2022.

Sd/-

(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

sd/-

(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated : 22nd March 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned, Pune
4. The CIT(A)-7, Pune
5. The D.R. ITAT Pune.
6. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	17-03-2022	Sr.PS
2	Draft placed before author	21-03-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	22-03-2022	Sr.PS/PS
7	Date of uploading of order	22-03-2022	Sr.PS/PS
8	File sent to Bench Clerk	23-3-2022	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		