IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (Lodg) NO.396 OF 2015

Prism Cement Limited. ...Petitioner
vs.
1.The Deputy Commissioner of Income Tax & Ors. ...Respondents

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Mr.Nitesh Joshi with Mr.B.Damodar i/b. Kanga & Co., for the Petitioner.

Mr.N.C.Mohanty, for the Respondents-Revenue.

CORAM: M. S. SANKLECHA &
G. S. KULKARNI, JJ.

DATED: 5th MARCH,2015.

P.C.:-

At the request of the Counsel, the petition itself is taken up for final disposal at the stage of admission.

2. Mr.Joshi, learned Counsel for the petitioner, on instructions, undertakes to withdraw the appeal filed to Commissioner of Income Tax (Appeals) from the Assessment Order dated 31.10.2014 in respect of the Assessment Year 2008-09. The appeal would be withdrawn by Monday the 9.3.2015.

2. On the aforesaid undertaking, we took up the petition for consideration. Mr.Mohanty, learned Counsel for the respondent-Revenue, on instructions, fairly states that the Assessment order passed on 31.10.2014 by the Assessing Officer was before the disposal of the objections to the reasons in support of the notice dated 28.8.2014 seeking to reopen the assessment for the Assessment Year 2008-09. It is conceded by the Revenue that passing of order without disposing of the objections is not appropriate in the face of the decision of the Supreme Court in the case "*GKN Driveshafts (India) Ltd. v. ITO, (259 ITR 19)*".

3. We would like to place on record our appreciation for the fair manner in which the Commissioner of Income Tax has accepted the position that the impugned order is in the face of the order of the Apex Court. This would be the expected conduct on the part of the State, yet we find that these days such fairness is not always forthcoming on the part of the Revenue. Therefore, the need to place on record our above appreciation.

4. In the above view, we set aside the order of Assessment dated 31.10.2014 and restore the issue to the Assessing Officer for disposing of the objection to the reasons for reopening filed by the petitioner. For the purpose of computation of period of limitation to complete the Assessment on issue of reopening of notice period from 31.10.20144 till the date would be excluded. The

Order dated 31.10.2014 of the Assessing Officer is set aside and the proceedings are restored to the Assessing Officer for disposing of the petitioner's objections before proceeding further in accordance with law.

5. Petition disposed of in the above directions. No order as to costs.

(G. S. KULKARNI, J.) (M. S. SANKLECHA, J.)