

In the High Court of Judicature at Madras

Dated: 27.02.2017

Coram

The Honourable Mr.JUSTICE RAJIV SHAKDHER
and
The Honourable Mr.JUSTICE M.SUNDAR

Tax Case (Appeal) No.65 of 2017

Shri.Khimraj Sakariya
No.4, Genguraman Street,
Park Town, Chennai - 3.

..... Appellant

Vs.

The Assistant Commissioner of Income Tax
Business Circle - 5,
Chennai - 600 006.

..... Respondent

APPEAL filed under Section 260A of the Income Tax Act, 1961
against the order dated 22.07.2016 made in
I.T.A.No.1753/Mds/2016 on the file of the Income Tax Appellate
Tribunal, 'C' Bench for the assessment year 2008-09.

Against the order passed by the Commissioner of Income Tax
(appeals 5) 121, Mahatma Gandhi Road, Nungampakkam Chennai 600
034 in I.T.A. No 51/CIT(A)5/15-16 dated 20.05.2016 for the
Assessment year 2008-2009

Against the order passed by the Commissioner of Income Tax
Non Corporate Circle 5, Chennai in PAN AAXPS4614D, date of order
27.03.2015 for the assessment year 2008-2009.

Against the order passed by the Commissioner of Income Tax
Business Circle XI, II Floor, Kannammal Building, 611, annasalai
Chennai 6 in PAN/G.I.R. No AAXPS4614D date of order 30.12.2010
for the assessment year 2008-2009

For Appellant : Mr.S.Sridhar

For Respondent : Mr.T.Ravikumar

Standing Counsel for Income Tax

J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER, J.)

1. This is an appeal preferred against the order dated 22.07.2016, passed by the Income Tax Appellate Tribunal (in short, 'the Tribunal').

2. Apart from other grounds raised in the appeal, one of the grounds, which is, pressed before us is that, the authorities below, which included the Tribunal, failed to appreciate that, in reopening the assessment, the procedure prescribed by the Supreme Court in its judgment in the case of GKN Drive Shafts (India) Ltd. V. Income Tax Officer - (2003) 259 ITR 19, had not been followed.

3. This particular case relates to Assessment year 2008-09. The issue, which arose on merits was, whether or not, the subject land, which was sold, was, an agricultural land. The Assessee had claimed that the profit which he had earned on sale of land was not taxable, as the land sold was agricultural land.

4. The respondent, however, disagreed with the Assessee, and, accordingly, issued a communication dated 13.11.2010 calling upon him to explain as to why profit on sale of agricultural land(s) should not be brought to tax as capital gains. The Assessee responded by a return communication dated 06.12.2010 and, thus, in effect, maintained his stand.

5. It is, this aspect of the matter, which led to issuance of a notice under Section 148 of the Income Tax Act, 1961 (in short 'the Act'). The said notice was issued to the petitioner on 30.01.2014, to which, the Assessee filed his reply on 28.02.2014. The reasons for reopening the assessment were sought; whereupon, objections were filed on 15.12.2014.

6. Admittedly, the Revenue, without disposing of the objections articulated by the Assessee, proceeded to pass the reassessment order, on 27.03.2015. The matter, ultimately, travelled to the Tribunal.

7. The Tribunal, while dealing with appeal, appears to have overlooked the fact that the Revenue had not followed the procedure prescribed in the judgment of the Supreme Court in the matter of: GKN Drive Shafts (India) Ltd. V. Income Tax Officer - 259 ITR 19, while re-opening an assessment.

8. Before us, Mr.T.Ravikumar, learned counsel for the Revenue says that, this aspect of the matter was not raised by the Assessee before the Tribunal.

9. Mr.T.Sridhar, who appears on behalf of the Assessee, however, contends to the contrary.

10. Learned counsel for the Assessee, in support of his submission, that the Revenue had failed to follow the procedure prescribed by the Supreme Court in the aforementioned judgment, drew our attention to the grounds of appeal, generally and, in particular, i.e., ground No.2 and 4.

10.1. Furthermore, counsel for the Assessee also referred to us to ground No.9 in the appeal preferred before us.

11. We examined the record and also heard the learned counsels for the parties.

11.1. In our view, the judgment of Supreme Court in the matter of GKN Drive Shafts (India) Ltd. V. Income Tax Officer - 259 ITR 19, would be binding on the Revenue in so far the procedure prescribed therein for reopening an assessment is concerned, even though, there is no specific reference to the judgment of the Supreme Court rendered in the matter of GKN Drive Shafts (India) Ltd. V. Income Tax Officer - (2003) 259 ITR 19. In our opinion, ground No.2, raised in the appeal filed before Tribunal, would cover the submission advanced before us. In ground No.2, the Assessee has asserted that the CIT(A) had grossly erred in not considering judicially the objections raised for reopening the assessment under Section 147 of the Act, after a period of four (4) years had expired. This averment though, broad, would cover the submission made on behalf of the Assessee that the Revenue had failed to follow the procedure prescribed in the matter of GKN Drive Shafts (India) Ltd. V. Income Tax Officer - (2003) 259 ITR 19.

11.2. To our mind, the Revenue, would have no other option, but to follow the prescribed procedure.

12. Therefore, to only emphasize this position, we may extract the observations made in the matter of GKN Drive Shafts (India) Ltd. V. Income Tax Officer - (2003) 259 ITR 19 - with regard to the obligation placed on the Revenue to dispose of the objections once they are filed before it by the Assessee.

".... 5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under s.148 of the IT Act is 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 AO 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 AO is bound to dispose of the same by passing a speaking order. In the instant case, as the

reasons have been disclosed in these proceedings, the AO has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."
(emphasis is ours)

13. Thus, having regard to the aforesaid mandate of the Supreme Court, we are inclined to allow the appeal and set aside the impugned order.

13.1. It is ordered accordingly.

14. We, therefore, remand the matter to the Assessing Officer, who will, in the first instance, dispose of the objections filed by the Assessee by way of a speaking order and, thereafter, proceed further, in the matter, albeit, in accordance with law.

14.1. Needless to say that all the rights and contentions of the parties and the issues raised in the appeal are left open, as we have not decided the matter on merits.

15. However, there will be no order as to costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Assistant Commissioner of Income Tax, Business Circle - 5, Chennai - 6.
2. The Income Tax Appellate Tribunal, 'C' Bench, Chennai.
3. The income Tax Appeals 5), 121 Mahatma Gandhi Road Nungampakkam, Chennai 600034
4. The Assistant Commissioner of Income Tax, Non Corporate Circle 5, Chennai
5. The Assistant commissioner of Income Tax, Business Circle XI II Floor, Kannammal Building, 611, annasalai Chennai 6

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