IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115 **Civil Writ Petition No.29177 of 2017**
Date of decision: December 20, 2017

M/s Cogent Realtors Pvt. Ltd.
....Petitioner

versus

The Deputy Commissioner of Income Tax (TDS), Gurgaon

....Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

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Present: Mr. Ajay Vohra, Sr. Advocate with
Mr. Aniket D. Agrawal, Advocate and
Mr. Vishal Gupta, Advocate for the petitioner.

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AJAY KUMAR MITTAL, J. (Oral)

1. This order shall dispose of two writ petitions bearing CWP Nos.29177 and 29231 of 2017 as learned counsel for the petitioner(s) submitted that identical issue has been raised therein. For brevity, the facts are being extracted from CWP No.29177 of 2017.

2. The petitioner-Firm has approached this Court, by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, mandamus, prohibition or any other appropriate writ, order or direction for setting aside the

notice dated 10.03.2017 (**Annexure P-1**) and other consequential notices dated 27.03.2017, 04.08.2017, 21.08.2017, 02.11.2017 and 23.11.2017, collectively appended as Annexure P-2(colly.) issued under Section 201(1)/201(1A) of the Income Tax Act, 1961 (for short, 'the Act') for financial year 2013-14 by the respondent.

3. Learned counsel for the petitioner urged that the impugned notice/subsequent notices issued by the respondents have been challenged by submitting reply (Annexure P-3) collectively, which was followed by Annexure P-4. It was argued that the notice which has been issued is totally without jurisdiction as the Assessing Officer is not sure as to under which provision i.e. Section 194C or 194-I of the Act, the TDS was required to be deducted by the petitioner.

4. After hearing learned counsel for the petitioner and perusing the writ petition, without expressing any opinion on the merits of the controversy and in view of the judgment of the Apex Court in **GKN Driveshafts (India) Ltd. vs. Income-Tax Officer and others, (2003) 259 ITR 19 (SC),** whereby the Apex Court had held that in pursuance to notice for re-assessment issued under Section 148 of the Act, the proper course of action is to file objections and the Assessing Officer is required to decide the same by passing a speaking order before proceeding further in the matter. It was laid down as under:-

> *'We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under*

Section 148 of the Income-tax 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 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. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer 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.'

5. In view of the above, we dispose of the present writ petition by directing respondent No.1 to decide the objections filed by the petitioner before proceeding further in the matter, on or before 31.01.2018, after affording proper opportunity of hearing to the petitioner and by passing a speaking order in accordance with law.

6. Needless to say, anything observed herein shall not be taken to be expression of opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

December 20, 2017
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Whether speaking/reasoned? Yes

Whether reportable? Yes