

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.327 of 2017

Shri Rakesh Kumar Saraogi, a citizen of India, S/o Late Mr Satynarayan Saraogi, aged about 53 years and R/o Anandam World City, Near GDA Colony, Kachna, Distt. Raipur (C.G.) and sole proprietor of M/s Madan Construction having its office at Main Road, Shankar Nagar, Raipur (C.G.)

---- Petitioner

Versus

1. Commissioner of Income Tax, Raipur, Aaykar Bhavan, Civil Lines, Raipur (C.G.)
2. Assistant Commissioner of Income Tax, Central Circle-1, Aaykar Bhavan, Civil Lines, Raipur.

---- Respondents

Writ Petition (T) No.350 of 2017

Raipur Resort & Properties Pvt. Ltd., a company duly incorporated under the Companies Act, 1956 having its office at Main Road, Shankar Nagar, Raipur (C.G.) 492 001, through its Director Shri Rakesh Saraogi, S/o Late Shri Satyanarayan Saraogi, aged about 53 years, R/o Anandam World City, Near GDA Colony, Kachna, Distt. Raipur (C.G.)

---- Petitioner

Versus

1. Commissioner of Income Tax, Raipur, Aaykar Bhavan, Civil Lines, Raipur (C.G.)
2. Assistant Commissioner of Income Tax (ACIT), Central Circle-1, Aaykar Bhavan, Civil Lines, Raipur (C.G.), Vanijya Kar Bhavan, Civil Lines, Raipur (C.G.)

---- Respondents

Writ Petition (T) No.360 of 2017

R.K. Structures Pvt. Ltd., A company duly incorporated under the Companies Act, 1956 having its office at Ganjpara, Raipur 492 001 through one of its Directors Manoj Saraogi, S/o Late Shri Satyanarayan Saraogi, aged about 56 years, R/o Shubham Karoti, Main Road, Shankar Nagar, Raipur (C.G.)

---- Petitioner

Versus

1. Commissioner of Income Tax, Raipur, Aaykar Bhavan, Civil Lines, Raipur (C.G.)
2. Assistant Commissioner of Income Tax (ACIT), Central Circle-1, Aaykar Bhavan, Civil Lines, Raipur (C.G.), Vanijya Kar Bhavan, Civil Lines, Raipur (C.G.)

---- Respondents

Writ Petition (T) No.362 of 2017

Silverleaf Infrastructure Pvt. Ltd., A company duly incorporated under the Companies Act, 1956 having its office at Subhash Road, Ganjpara, Raipur, through one of its Directors Shri Rakesh Saraogi, S/o Late Shri Satyanarayan Saraogi, aged about 53 years, R/o Anandam World City, Near GDA Colony, Kachna, Distt. Raipur (C.G.)

---- Petitioner

Versus

1. Commissioner of Income Tax, Raipur, Aaykar Bhavan, Civil Lines, Raipur (C.G.)
2. Assistant Commissioner of Income Tax (ACIT), Central Circle-1, Aaykar Bhavan, Civil Lines, Raipur (C.G.), Vanijya Kar Bhavan, Civil Lines, Raipur (C.G.)

---- Respondents

AND

Writ Petition (T) No.359 of 2017

Silverbricks Infrastructure Pvt. Ltd., A company duly incorporated under the Companies Act, 1956 having its office at Subhash Road, Ganjpara, Raipur, through one of its Directors Shri Rakesh Saraogi, S/o Late Shri Satyanarayan Saraogi, aged about 53 years, R/o Anandam World City, Near GDA Colony, Kachna, Distt. Raipur (C.G.)

---- Petitioner

Versus

1. Commissioner of Income Tax, Raipur, Aaykar Bhavan, Civil Lines, Raipur (C.G.)
2. Assistant Commissioner of Income Tax (ACIT), Central Circle-1, Aaykar Bhavan, Civil Lines, Raipur (C.G.), Vanijya Kar Bhavan, Civil Lines, Raipur (C.G.)

---- Respondents

For Petitioners:	Mr. Neelabh Dubey, Advocate.
For Respondents:	Mrs. Naushina Afrin Ali, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/07/2018

1. Since common question of law and fact is involved in these writ petitions, they are heard together and are being disposed of by this common order.

(For the sake of convenience, W.P.(T)No.327/2017 is taken as a lead case.)

2. The petitioners in this batch of writ petitions questioned the order dated 2-8-2017 passed by the Assistant Commissioner of Income Tax, Raipur, called as a rebuttal order to the objections raised against reopening of the case under Section 147 of the Income Tax Act, 1961 (for short, 'the IT Act') stating inter alia that the petitioners were assessed for the assessment year 2010-11 and regular assessment order was passed on 12-3-2013 and first time, they were served with notice dated 18-7-2017 under Section 142(1) of the IT Act on 21-7-2017. After receipt of notice, the petitioners moved an application pointing out defects in the re-assessment proceeding and sought reasons to believe recorded under Section 147 read with Section 148 of the IT Act. After receipt of the said application, the Assistant Commissioner of Income Tax/Assessing Officer passed impugned order rejecting the application. Questioning legality, validity and correctness of the said order, the instant writ petitions have been preferred by the petitioners.

3. Return has been filed by the respondents stating inter alia that notice under Section 148 of the IT Act was issued on 27-3-2017 duly served to the petitioners themselves and the petitioners were also served with e-mail, thereafter, the petitioners made objections to the reopening of assessment which was considered and rejected by the impugned order as such, each and every objection and reasons recorded for reopening of case was already made part of rebuttal order. Therefore, the question of not providing copy of reasons recorded before the initiation of reopening proceeding is misleading and should not be entertained and as such, the writ petitions deserve to be dismissed.
4. Mr. Neelabh Dubey, learned counsel appearing for the petitioners, would submit that the petitioners were never served with notice under Section 148 of the IT Act and first time, notice under Section 142(1) of the IT Act was served to them on 21-7-2017 to which they moved application seeking reasons to believe recorded under Section 148 of the IT Act, but no such reasons were supplied, rather a detailed order running into 11 pages was served to them rejecting their application, as such furnishing of reasons to believe is *sine qua non* for reopening the assessment as mandated by the Supreme Court in the matter of **GKN Driveshafts (India) Ltd. v. Income Tax Officer and others**¹. Therefore, the impugned order be set aside and the writ petitions be allowed.
5. Mrs. Naushina Afrin Ali, learned counsel appearing for the respondents, would submit that the petitioners were served with

¹ (2003) 1 SCC 72

notice under Section 148 of the IT Act and while deciding the representation, reasons to believe is a part of rebuttal order as such, the statutory compliance has strictly been made and no such ground is available for quashing the rebuttal/impugned order dated 2-8-2017, as such, the writ petitions deserve to be dismissed.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. In order to adjudicate the dispute brought before this Court, it would be appropriate to consider the provisions contained in Sections 147 and 148 of the IT Act. Section 147 of the IT Act provides for income escaping assessment. Section 147 states as under: -

“147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx”

8. Thus, Section 147 of the IT Act requires recording of reasons to believe. Notice under Section 148(1) of the IT Act has to be issued where income has escaped assessment under Section 147 of the IT Act. Section 148(1) of the IT Act reads as follows: -

“148. (1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 :

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx”

9. The Supreme Court in **GKN Driveshafts (India) Ltd.** (supra) while considering the provisions contained in Section 148 of the IT Act has held that where the notice is received by the assessee under Section 148(1) of the IT Act, proper course of action for the assessee / aggrieved party by issuance of notice is to file return and if he so desires, to seek reasons for issuing notices, and in that event the assessing officer is bound to furnish reasons within a reasonable time. Their Lordships observed as under: -

“5. 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.”

10. The decision of the Supreme Court in **GKN Driveshafts (India) Ltd.** (supra) was considered by the Delhi High Court in the matter of **Haryana Acrylic Manufacturing Company v. The Commissioner of Income Tax IV and another**² and Their Lordships of the Delhi High Court held that it is mandatory for the Assessing Officer to supply reasons for reopening the assessment and this has to be done within a reasonable time. It was observed as under: -

“... a notice under Section 148 without the communication of the reasons therefore is meaningless inasmuch as the Assessing Officer is bound to furnish the reasons within a reasonable time. In a case, where the notice has been issued within the said period of six years, but the reasons have not furnished within that period, in our view, any proceedings pursuant thereto would be hit by the bar of limitation inasmuch as the issuance of the notice and the communication and furnishing of reasons go hand-in-hand. The expression within a reasonable period of time as used by the Supreme Court in *GKN Driveshaft (India) Limited* (supra) cannot be stretched to such an extent that it extends even beyond the six years stipulated in Section 149.”

11. Similarly, the Bombay High Court in the matters of **Commissioner of Income-Tax v. Trend Electronics**³ and **Commissioner of**

2 (2009) 308 ITR 38

3 (2015) 379 IR 456

Income-Tax v. Videsh Sanchar Nigam Limited⁴ held as under: -

“It is axiomatic that power to reopen a completed assessment under the Act is an exceptional power and whenever revenue seeks to exercise such power, they must strictly comply with the prerequisite conditions viz., reopening of reasons to indicate that the Assessing Officer had reason to believe that income chargeable to tax has escaped assessment which would warrant the reopening of an assessment. These 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 the same before the Assessing Officer. Thus, in the absence of reasons being furnished, when sought for would make an order passed on reassessment bad in law. The recording of reasons (which has been done in this case) and furnishing of the same has to be strictly complied with as it is a jurisdictional issue. This requirement is very salutary as it not only ensures reopening notices are not lightly issued. Besides in case the same have been issued on some misunderstanding/ misconception, the Assessee is given an opportunity to point out that the reasons to believe as recorded in the reasons do not warrant reopening before the reassessment proceedings are commenced. The Assessing Officer disposes of these objections and if satisfied with the objections, then the impugned reopening notice under Section 148 of the Act is dropped/ withdrawn otherwise it is proceeded with further. In issues such as this, i.e., where jurisdictional issue is involved the same must be strictly complied with by the authority concerned and no question of knowledge being attributed on the basis of implication can arise. We also do not appreciate the stand of the revenue, that the Respondent-Assessee had asked for reasons recorded only once and therefore seeking to justify non-furnishing of reasons. We expect the State to act more responsibly.”

12. From the principle of law laid down in aforesaid judgments, it is quite vivid that if the assessee makes a request for supply of reasons recorded under Section 147 of the IT Act after receipt of notice under Section 148 of the IT Act, the Assessing Officer is obliged to furnish reasons enabling the assessee to file objections and the Assessing Officer is, then also obliged to take decision on such objections within reasonable time by a reasoned and speaking order.

4 (2012) 340 ITR 66 (Bom)

13. Reverting to the facts of the present case, it is the case of the petitioners that they have been served with notice for the first time on 21-7-2017 and they were never served with notice under Section 148 of the IT Act and therefore, they are entitled for reasons to believe recorded under Section 147 of the IT Act. On the other hand, reasons to believe as recorded under Section 147 of the IT Act were not supplied straightway to the petitioners despite request made by the petitioners, though rebuttal order contains reasons recorded in para 2 and thereafter, the learned assessing authority considering the application in great detail also came to the conclusion that the objections raised to the proceeding initiated holds no water. Their Lordships of the Supreme Court in **GKN Driveshafts (India) Ltd.** (supra) clearly recorded that the Assessing Officer is bound to furnish the reasons within a reasonable time and on receipt of reasons, the noticee/assessee is entitled to file objections to the issuance of the notice and the objections have to be disposed of by a speaking order. The course outlined by Their Lordships in **GKN Driveshafts (India) Ltd.** (supra) has not been followed in its letter and spirit and without supplying the reasons to believe which is mandatorily to be supplied as held by the Supreme Court, the learned Assessing Officer rejected the objections. The application filed seeking reasons to believe has been treated as objections to the reasons to believe though no reasons to believe were supplied to the petitioners and rebuttal order came to be passed without supplying reasons to believe which runs contrary to the decision rendered by

the Supreme Court in GKN Driveshafts (India) Ltd. (supra) and followed by the Delhi High Court and the Bombay High Court in the above-stated judgments. In the considered opinion of this Court, the course adopted by the learned Assessing Officer rejecting the application for furnishing reasons to believe without supplying the reasons to believe, is contrary to the above-stated judgment of the Supreme Court.

14. As a fallout and consequence of the aforesaid discussion, the rebuttal order dated 2-8-2017 is quashed and the Assessing Officer is directed to furnish reasons to believe within a period of six weeks and thereafter, the petitioners will file objections within four weeks and thereafter, the Assessing Officer consider and dispose of the objections by a speaking order within reasonable time, in accordance with law.
15. The writ petitions are allowed to the extent outlined herein-above leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge