

\$~43

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 593/2019 & CM No. 2670/2019**

SURENDRA KUMAR JAIN

..... Petitioner

Through: Mr. Piyush Kaushik and Mr. S.P.
Singh, Advocates

versus

**PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-III,
NEW DELHI & ANR.**

..... Respondents

Through: Ms. Vibhooti Malhotra, Senior
Standing Counsel

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER
29.07.2019

%

Dr. S. Muralidhar, J.:

1. On 18th March, 2019, the following order was passed by this Court:

“The matter has been listed before this Court as the DB-II has not assembled today.

Learned counsel for the petitioner submits that the Assessment for the Year 2011-2012 pertaining to the petitioner has been re-opened. While the reasons to believe have been served upon the petitioner, but before the objections could be decided, a final order has been passed. Reliance has been placed on various judgments of this Court, including the judgment passed in the case of **Smt. Kamlesh Sharma v. B.L. Meena, Income-Tax Officer and Others**, reported at [2006] 287 ITR 337(Del).

Notice to show cause as to why the petition be not admitted. Notice in the stay application as well. Counsel for the respondent enters appearance. He submits that the submission sought to be

urged, in fact, is not an absolute Rule. He submits that the reasons to believe have already been supplied to the petitioner. He seeks time to file reply.

List before the Roster Bench on 10.04.2019.

Till the next date of hearing, no coercive action shall be taken against the petitioner.”

2. The short point involved in the present petition is whether the Assessing Officer (AO) could have proceeded to finalise the reassessment pursuant to notices issued under Section 147/148 of the Income Tax Act, 1961 (the ‘Act’) without the procedure laid down by the Supreme Court in ***GKN Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19 (SC)*** being complied with?

3. This Court has emphasised in several decisions that the procedure outlined by the Supreme Court in ***GKN Driveshafts (India) Ltd. (supra)*** is sacrosanct. In other words, where in response to a notice issued under Section 147 by the AO, the Assessee seeks the reasons to believe that prompted the re-opening, and files objections thereto, those objections have to be considered on their merits and only a reasoned order has to be passed thereon by the AO. Importantly, this has to happen prior to the AO proceeding with the re-assessment.

4. In ***Sabh Infrastructure Ltd. v. ACIT, (2017) 398 ITR 198 (Del)***, in similar circumstances, this Court observed that held as under:

“19. Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under Sections 147 and 148 of the Act and despite

numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:

.....

(iv) The exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed."

5. In the present case, the AO has not chosen to dispose of the objections, filed by the Petitioner against the reopening of the assessment but has proceeded to the stage of passing the reassessment order itself.

6. In almost an identical fact situation in *Smt. Kamlesh Sharma v. B.L. Meena, Income-Tax Officer* (*supra*), where the AO did not pass any speaking order but straightaway passed an assessment order, and simultaneously rejected the contention of the Petitioner, this Court observed:

"3. We are of the opinion that in view of the language of the Supreme Court in *GKN Driveshafts* [2003] 259 ITR 19 the Assessing Officer should have rejected the objections, if he thought it appropriate to do so, before passing the final order and not simultaneously.

4. This position was reiterated by this Court in *Sita World Travels (India) Ltd. v. CIT* (2004) 140 Taxman 381 (Del).

5. We cannot appreciate how, in spite of the clear language used by the Supreme Court as well as this Court, the Assessing Officer did not comply with the requirement of law."

7. This Court has, therefore, no hesitation in setting aside reassessment order dated 29th December, 2018 for the Assessment Year AY 2011-12. Consequently, a direction is issued to the AO to once again take up for consideration, the Petitioner's objections to the reopening of the assessment for the aforementioned AY and dispose of those objections by a reasoned order not later than four weeks from today. The said order shall be communicated to the Petitioner not later one week thereafter.

8. Thereafter, the AO will proceed in accordance with law as far as the reassessment proceedings are concerned.

9. It will be open to the Petitioner to seek appropriate remedies if his objections to the reopening of the assessment are rejected by the AO.

10. The writ petition and application are disposed of in the above terms.

11. Copy of this order be given *dasti* under the signature of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 29, 2019/PB