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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1456/2019, C.M. APPL.6692-6693/2019**

RAMAKANT (HUF) THROUGH KARTA Petitioner
Through : Ms. Rachna Agrawal, Advocate with
Sh. Ramakant, *karta* of HUF.

versus

INCOME TAX OFFICER, WARD 34(2) NEW DELHI & ANR.
..... Respondents
Through : Sh. Asheesh Jain, Sr. Standing Counsel
with Sh. Sanjay Kumar, Jr. Standing Counsel and
Sh. Dushyant Sarna, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **13.02.2019**

The petitioner's grievance is that final reassessment order in this case – for AY 2011-12 was made without dealing with the objections preferred by it, to the notice under Sections 147/148 of the Income Tax Act, 1961 [hereafter “the Act”].

The petitioner complains that the initial notice under Section 147 of the Act, proposing to reopen assessment for the concerned AY – issued on 31.03.2018 was not served upon it; however, it became aware of this development on account of a notice under Section 142(1) on 06.08.2018 and it preferred its return and sought a copy of the “reasons to believe” which was furnished on 27.12.2018. The petitioner filed its objections to the notice on 16.11.2018; in the meanwhile, it asked for the reassessment notice to be kept in abeyance in response to two notices under Section 142(1) of the Act.

The Assessing Officer (AO) appears to have proceeded with the reassessment and finalized it pursuant to which an order was made on 23.12.2018.

Ms. Rachna Agrawal, learned counsel for the petitioner contends that the impugned assessment order as well as the notice under Sections 147/148 of the Act are liable to be quashed since the objections to the notice were in the first instance not dealt with by a speaking order by the Revenue which it was obligated to do. She relied upon the judgment of the Supreme Court reported as *GKN Driveshafts India Ltd. v. ITO* 2003 (259) ITR 19.

This Court is of the opinion that *GKN (supra)* afforded an opportunity to the assessee to present its picture on the aspects on which the AO proposed to reopen a completed assessment. At the same time, it affords the AO to take a second look, as it were, and decide whether to drop the notice and any other proceeding. This requirement is not in fact spelt out by the statute; in fact, the earlier decision of the Supreme Court in *R.K. Upadhyaya v. Shanabhai. P. Patel* (1987) 166 ITR 163 (SC), analysing the provisions, does not mention the assessee's right to be informed about the rationale for the reassessment. In any event, the statute does not recognize the right *per se*. In these circumstances, the fact that the assessment was completed without passing a speaking order on the objections may be an irregularity, it cannot be called illegal or unimposable.

In the present case, the record in fact shows that there was an order dated 30.11.2018 (sent to the assessee on 06.12.2018) disposing

of the objections filed by him on 16.11.2018. The assessee disputes that this was sufficient compliance with *GKN (supra)*. But in the view that we have taken, that itself does not invalidate the reassessment. The petitioner has the statutory right to appeal to the CIT(A) in which case it can urge all the grounds available to it on the merits of the reassessment order.

The writ petition is disposed of in the above terms along with the pending applications.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 13, 2019/ajk