

19.07.2022.
p.b.
Sl. No.9.

W.P.A. 15188 of 2022

Saroj Jalan
Vs.
Union of India & Ors.

Mr. Avra Mazumder,
Mr. Binayak Gupta,
Ms. Megha Agarwal.

.....for the petitioner.

Mr. Soumen Bhattacharji.

.....for the respondent.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned assessment order dated 31st March, 2022 under Section 147 read with Section 144B of the Income Tax Act, 1961 relating to the assessment year 2014-15, on the ground that there is violation of the law laid down by the Hon'ble Supreme Court in the case of GKN Driveshaft reported in 259 ITR 19 while passing the impugned assessment order. It appears from record that the aforesaid impugned assessment order has been passed on the basis of a notice dated 31st March, 2021 under Section 148 of the Income Tax Act, 1961. It appears from record that against the aforesaid notice under Section 148 of the Act, petitioner had filed an objection to the same on 8th July, 2021 after receiving the recorded reason. It is the case of the petitioner that without considering and

disposing his aforesaid objection, the impugned assessment order has been passed while it is binding upon the assessing officer in view of the aforesaid decision of the Hon'ble Supreme Court in the case of GKN Driveshaft (supra) to first dispose of the objection of an assessee against the notice under Section 148 of the Act by passing a speaking order before proceeding further with the impugned reassessment proceeding.

Mr. Mazumder, learned advocate appearing for the petitioner in support of his contention and on the proposition of law that any reassessment order passed without disposing the objection of an assessee by passing a speaking order against notice under Section 148 of the Act is bad in law and is in clear violation of the law laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (supra), has relied on the decision in the case of IOT Infrastructure And Energy Services Ltd. Vs. Assistant Commissioner of Income Tax reported in 2010 (3) TMI 706 Bombay High Court and particularly on paragraph 3 of the said decision which is quoted hereunder:-

“During the course of the hearing of these proceedings, counsel appearing on behalf of the Revenue has fairly stated on instructions of the Assessing Officer who is present in the court that the direction contained in the judgment of the Supreme Court in GKN Driveshaft

(India) Ltd. (2003) 259 ITR 19 were not complied with. In our view, there is absolutely no or justification for the Assessing Officer not to deal with the objections filed by the assessee to the reopening of the assessment particularly in view of the binding principle of law laid down by the Supreme Court in that regard. In the circumstances, during the course of the hearing, we have suggested to the learned counsel that it would be appropriate for this court to set aside the order of reassessment dated December 23, 2009 and the noting by the Assessing Officer dated December 21, 2009 disposing of the objections and to remit the proceedings back to the Assessing Officer. Counsel appearing on behalf of the assessee has no objection thereto.”

Mr. Mazumder also relies on this proposition of law on a decision of the Hon’ble Madras High Court in the case of M/s. Jayanthi Natarajan Vs. Assistant Commissioner of Income Tax reported in 2017 (9) TM 1042 Madras High Court particularly on paragraphs 15 and 17 of the said judgment which are quoted hereunder:-

“15. – In some what similar circumstances, the Division Bench of the Bombay High Court in KSS Petron Private Ltd. (supra), held that the Assessing Officer was not justified in finalizing the assessment without having first disposed of the objections of the assessee. While testing the correctness of the decision of the CIT (Appeals),

which quashed the order of the Assessing Officer restored the assessment to the Assessing Officer to pass fresh orders after disposing of the objections to reopening notice in accordance with law, the Division Bench held that once the impugned order finds the assessment order is without jurisdiction, as the law laid down by the Apex Court in the case GKN Driveshafts (India) Ltd. (supra), has not been followed, then there is no reason to restore the issue to the Assessing Officer to pass fresh/further orders and if this is permitted, it would give license to the Assessing Officer to pass orders on reopening notice, without jurisdiction (without compliance of the law in accordance with the procedure). Further it was pointed out that to ensure that the reopening notices are disposed of expeditiously, the Parliament itself has provided in Section 153(2) of the Act, the period within which the Assessing Officer must pass orders on notice of reopening (i.e.) within one year from the end of the financial year, in which the notice was issued. Thus, on facts having found that the procedure required to be followed had not been adhered to, it has to be held that the entire proceedings are vitiated.”

“17- The law declared by the Hon’ble Supreme Court is of binding character and is a source of law and to itself, which will bind all authorities. GKN Driveshafts (India) Ltd. (supra), lays down a law and failure to comply would render the assessment order as without jurisdiction (Nand

Kishore Vs. State of Punjab reported in (1995) 6 SCC 614 and Nair Services Society Vs. State of Kerala reported in (2007) 4 SCC 1).”

Mr. Bhattacharji, learned advocate appearing for the respondent income tax authority, by the order of this Court dated 15th July, 2022, was asked to produce the record to establish as to whether the impugned assessment order and the aforesaid objection of the petitioner against notice under Section 148 of the Act was considered and disposed of or not to which Mr. Bhattacharjee could not produce any specific record to show that before passing the impugned assessment order the aforesaid objection of the petitioner dated 8th July, 2021 was considered and disposed of. It is highly unfortunate that the assessing officer concerned through Mr. Bhattacharjee has produced irrelevant record in total non-application of mind since those documents have no relevance to the queries asked by this Court by the order dated 15th July, 2022.

Considering the facts and circumstances of this case as appears from record and submission of the parties and the aforesaid judgments relied upon by the petitioner, I am of the considered view that the impugned assessment order dated 31st March, 2022 being Annexure P-11 to the writ petition passed is in clear violation of the law laid down by the Hon’ble Supreme Court in the case of GKN

Driveshafts (India) Ltd. (supra) and the same is not sustainable in law since it was passed without considering and disposing objection of the petitioner by passing a speaking order which he was obliged to do in view of the decision of the Apex Court in the case of GKN Driveshafts (supra) before proceeding any further in the impugned reassessment proceeding.

In view of the discussion made above impugned assessment order is quashed and the matter is remanded back to the assessing officer concerned to first dispose of the aforesaid objection of the petitioner against impugned notice under Section 148 of the Income Tax Act by passing a reasoned and speaking order and after giving an opportunity of hearing to the petitioner or its authorised representatives and any further proceeding with the impugned assessment proceeding will depend upon the final outcome of the aforesaid objection of the petitioner which has to be considered accordingly and by passing a reasoned and speaking order.

With this observation and direction, this writ petition being WPA No.15188 of 2022 stands disposed of.

(Md. Nizamuddin, J.)