Jose

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.110 OF 2022

TEOFILO FERNANDO ANTONIO PINTO … Petitioner

Versus

UNION OF INDIA,
MINISTRY OF FINANCE AND ANR. ... Respondents

Mr. Parag Rao with Ms. Meghana Naik, Advocates *for the Petitioner*.

Ms. Susan Linhares, Central Government Standing Counsel *for the Respondents*.

CORAM: M.S. SONAK &
BHARAT P. DESHPANDE, JJ.

DATED: 4th October, 2022

P.C.:

1. Heard Mr. Parag Rao for the Petitioner and Ms. S. Linhares for the Respondents.

2. This petition was filed to challenge the impugned notice dated 31.03.2021 by which the Respondents proposed to reopen the assessment of the Petitioner for the Assessment Year 2015-16.

3. Mr. Rao submitted that the Petitioner applied for the reasons for reopening and after they were furnished, filed their objections consistent with the procedure prescribed in ***GKN Driveshafts (India) Ltd vs. ITO***[1].

1 2003 (1) SCC 72

He further submits that even before such objections could be disposed of, the Respondents issued notice dated 25.02.2022 under Section 142(1) of the I.T. Act seeking to proceed with the reassessment and calling for information.

4. Mr. Rao submits that the procedure adopted by the Respondents is contrary to the law laid down in *GKN Driveshafts (India) Ltd.* (supra). He submits that even otherwise, there was no case made out for reopening of the assessment in this matter.

5. Ms. Linhares submits that this petition is premature because the Respondents were in the process of considering the Petitioner's objections and disposing them of by making a speaking order. She submits that if the Respondents are permitted to consider and dispose of the Petitioner's objections, then, until the decision thereof is communicated to the Petitioner, the Respondents will not proceed with the reassessment.

6. In terms of *GKN Driveshafts (India) Ltd.* (supra), the Respondents are required to dispose of the objections which an assessee may file to the reopening of the assessment, by passing a speaking order. Now that the Respondents are ready to consider the Petitioner's objections and pass a speaking order, there is no necessity to entertain this petition. This is more so because until such speaking order is made, there is no question of the Respondents proceeding with the proposed reassessment for the Assessment Year 2015-16.

7. Accordingly, the Respondents are at liberty to consider the objections raised by the Petitioner and dispose of the same in accord with law and on their own merits by passing a speaking order. This speaking order will have to be communicated to the assessee.

8. If the Petitioner's objections are to be overruled or rejected, then, the Respondents will refrain from proceeding with the reassessment for a period of four weeks from the date of communication of the speaking order.

9. This Court has no examined the rival contentions on merits, and therefore, all contentions of all parties are left open.

10. The petition is disposed of in the above terms.

11. There shall be no order for costs.

BHARAT P. DESHPANDE, J. **M.S. SONAK, J.**

JOSE FRANCISCO DSOUZA Digitally signed by JOSE FRANCISCO DSOUZA Date: 2022.10.04 19:29:57 +05'30'