IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10396 OF 2012

1. ZF Steering Gear (India) Ltd., a company incorporated under the provisions of the Indian Companies Act, 1956, and having its registered office at Gat No.1242/44, Village Vadu Budruk, Taluka-Shirur, District - Pune 412 216, Maharashtra
2. Mr. Dinesh Hirachand Munot, an adult natural citizen of India and the director of Petitioner No.1 carrying on trade and business at C/o. ZF Steering Gear (India) Ltd., Gat No.1242/44, Village Vadu Budruk, Taluka - Shirur, District - Pune 412 216, Maharashtra) ....Petitioners

V/s.

1. Assistant Commissioner of Income Tax, Central Circle 1(1), having his office at 4th Floor, Room No.401, PMT Building, 'C' Wing, Swargate, Pune - 37, Maharashtra
2. Union of India through Secretary, Ministry of Finance, South Block, New Delhi - 110 001 through its Legal Department, Ayakar Bhavan, Room No.242, Maharshi Karve Road, Churchgate, Mumbai - 400 020) ....Respondents

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Mr. Ravi Kadam, Senior Advocate a/w. Mr. Ashish Kamat, Senior Advocate, Ms. Aakansha Saxena and Mr. Nikhil Rajani i/b. M/s. V. Deshpande and Co. for petitioners.
Mr. Akhileshwar Sharma for respondents - Revenue.

CORAM : K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
RESERVED ON : 19th APRIL 2024
PRONOUNCED ON : 23rd APRIL 2024

JUDGMENT (PER K.R. SHRIRAM, J.) :

1 Petitioner is challenging a notice dated 26th March 2012, issued by the Assistant Commissioner of Income Tax, Central Circle 1(1), Pune,

who is respondent no.1, under Section 148 of the Income Tax Act, 1961 (the Act).

2 Rule was issued on 17th December 2012 and the Court observed that whether the unsigned notice is valid, is a question which needs consideration.

3 Various grounds have been raised but the primary ground on which the notice is challenged and is alleged to be not valid is that the notice is unsigned. According to petitioner, absence of a signature on the impugned notice is a substantial defect and afflicts the impugned notice with manifest illegality and this defect is incurable.

4 Petitioner no.2 is a Director of petitioner no.1 (hereinafter referred to as “petitioner”). Petitioner no.1 had, for Assessment Year 2005-2006, filed its return of income on 29th October 2005 alongwith various other documents as required in law. Petitioner no.1 had declared a total income of Rs.27,71,06,410/-. An assessment order under Section 143(3) of the Act was passed on 15th October 2007 by making addition of Rs.12,77,291/- to the return of income. Petitioner did not challenge the assessment order and it has attained finality.

5 On 13th October 2011 the Investigation Wing of the Income Tax Authorities conducted a search at the premises of petitioner no.1. According to petitioner, even the notice issued under Section 148 of the Act, which is

impugned in this petition, was time barred because respondents were required to issue the said notice if at all by 31st March 2012. On or about 4th April 2012 petitioner received the impugned notice. Original of the notice that was received by petitioner was shown to the Court and on the face of it, it appeared unsigned.

6 On 4th May 2012 the Chartered Accountant of petitioner addressed a letter to respondent no.1 making various allegations like the same was arbitrary or unreasonable and without application of mind etc. Petitioner no.1 requested respondent no.1 to withdraw the notice and to drop all plans to re-open the assessment under Section 147 of the Act. Petitioner also called upon respondent no.1 to provide, on without prejudice basis, reasons for re-opening of the assessment. It is alleged in the petition that this was not replied to by the Department. A reminder was sent by a letter dated 3rd September 2012 from petitioners' advocates delivered only on 3rd October 2012 once again calling upon respondent no.1 to provide the reasons for re-opening the assessment. Respondent no.1 responded by a letter dated 4th October 2012 stating that the reasons have not been provided in view of the judgment of the Hon’ble Apex Court in ***GKN Driveshafts (India) Ltd. v/s. Income Tax Officer and Ors.***[1] where the Hon'ble Apex Court has laid down as under :

> *However, we clarify that when a notice u/s. 148 of the Income-tax Act is issued, the proper course of action for the*

1 2003 (259) ITR 19 (SC)

> *notice is to file a 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 notice 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 disclose 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 above said five assessment years.*

Notwithstanding this advise from respondent no.1, petitioner admittedly did not file any return of income but instead filed this petition. Admittedly, for the first time in this petition, this defence of absence of signature has been taken. In view of non availability of reasons admittedly petitioner has not filed any objections.

7 An affidavit in reply has been filed through one Uma Shankar Prasad affirmed on 22nd November 2012 in which there is no categorical denial that the notice sent was unsigned. The stand of respondent no.1 is that even if there is an omission to sign the notice due to oversight, it does not become an incurable defect. Respondent no.1 has raised various other legal defences as well. There is an additional affidavit of Uma Shankar Prasad which was filed to which is annexed a copy of an affidavit of one Mahesh G. Jiwade, who was the Assessing Officer, who issued the impugned notice. In the second affidavit, respondents have tried to make out a case that the impugned notice was infact signed. Even their office copy is signed. Perhaps it was a human error. There is of course an affidavit

in rejoinder also filed. We do not wish to go into the factual aspects of this in our extra ordinary jurisdiction under Article 226 of the Constitution of India.

8 It is true that without the reasons to believe escapement of income, petitioner would not be able to file its objections to the notice issued under Section 148 of the Act. It is also true that this stand of illegality of the notice has been taken for the first time in the petition. In the two communications sent by petitioners' Chartered Accountant this stand has not been taken. We would hasten to add we are not giving any decision on waiver or estoppel. We are only saying that against the notice petitioner has straight away approached this Court without even complying with the requirements stated by the Hon’ble Apex Court in *GKN Driveshafts (India) Ltd.* (Supra). In our view, petitioner should have, on the basis of the ratio laid down by the Hon’ble Apex Court in *GKN Driveshafts (India) Ltd.* (Supra), filed return of income and then sought reasons for issuing the notice. In response, the Assessing Officer was bound to provide the reasons within a reasonable time. On receipt of reasons, petitioner was entitled to file objections and the Assessing Officer was bound to dispose the same by passing a speaking order. Therefore, in our view, this is not a fit case to exercise our jurisdiction under Article 226 of the Constitution of India in view of petitioner not complying with the ratio laid down by the Hon’ble Apex Court in *GKN Driveshafts (India) Ltd.* (Supra).

9 Mr. Kadam appearing for petitioners, relying on ***Prakash Krishnavtar Bhardwaj v/s. Income Tax Officer and Ors.***[2], submitted that service of a valid notice was a condition precedent and the existence thereof is a jurisdictional fact and non signing the notice would be fatal to the notice and the notice should be held to be invalid. Mr. Kadam submitted that it would not vest the Assessing Officer with any further jurisdiction to proceed to reassess the income of petitioner.

10 *Prakash Krishnavtar Bhardwaj* (Supra) was a case where to a notice issued under Section 148A(b) of the Act, petitioner had filed objections and the Revenue had passed an order under Section 148A(d) of the Act and together with that issued a notice under Section 148 of the Act and it was that notice under Section 148 of the Act which was not signed. Therefore, in that case petitioner had already responded to the initial notice received from the Revenue whereas in this case, petitioner has not even filed the return of income in response to the notice under Section 148 of the Act. Petitioner should have filed the return of income, collected reasons for re-opening and filed objections raising all contentions including that of unsigned notice which has not been done. In our view, petitioner should have raised the issue of non signing of notice in its reply dated 4th May 2012 and could have informed respondent no.1 that it shall not file return of income as the notice was invalid being unsigned. This was not done for whatever reason.

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11 In the affidavit in reply, reasons have been annexed alongwith the approval obtained under Section 151 of the Act. The reasons, for ease of reference, reads as under :

> *The assessee company is engaged in the business of production of Steering Gears. The assessment u/s 143(3) for A.Y. 2005-06 has been completed on 15/10/2007 assessing the income of assessee at Rs 27,83,83,700/-.*
>
> *A search and seizure action u/s.132 of the Income-tax Act, 1961 was conducted on 13.10.2011 in the cases of M/s. ZF Steering Gear (I) Ltd, Pune. During the course of search action, Papers /documents relating to bogus purchases were seized. In this case, a systematic pattern of siphoning of money was found. The siphoning of money was effected by inflating the purchases of the company. For inflating the aforementioned purchases, a separate software module was developed within the oracle based software of the company. By using this separate software module, certain Goods Inward Notes (in short "GIN") and corresponding Bill Passing Purchase Vouchers were generated. Further, the cheques were issued on the basis of these GINs and Purchase Vouchers to certain parties. However, no material was actually received from these parties in the stores and used in the production. In short, the assessee company has debited in its books of account certain purchases whereas in actual no such material was received and used in the production.*
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> *During the course of search, the details of such purchases which were not routed through the stores department and which were distinguished by GIN code "99" by the system installed within the company were identified. A copy of such purchase details is enclosed herewith as Annexure B. On going through these details, it is evident that assessee has booked bogus purchases amounting to Rs.25,63,55,263/- during the AY 2005-06.*
>
> *Therefore. I have reasons to believe that income to the extent of Rs.25,63,55,263/- has escaped assessment within the meaning of provisions of Sec 147 of the IT Act for A.Y. 2005-06 by the reason of failure on the part of the assessee to disclose fully and truly material facts necessary for assessment. Accordingly notice u/s 148 needs to be issued in this case for A.Y. 2005-06.*
>
> *Therefore, I request your goodself to kindly grant your approval for reopening of assessment in this case A.Y. 2005-06.*

12 Petitioner may file objections to the impugned notice dated 26th March 2012 together with the return of income within four weeks from today. In the objections to be filed, petitioner may raise all defences including those raised in this petition. The Assessing Officer shall dispose the objections but before disposing the same, shall give a personal hearing to petitioners, notice whereof shall be communicated atleast five working days in advance. The order disposing objections shall be a reasoned order dealing with all objections and if the Assessing Officer intends to rely on any judgments/orders of any Court or Tribunal, a list thereof shall be made available with the notice for personal hearing so that petitioner will be able to deal with/distinguish the same.

13 In the circumstances, without expressing any view on the merits of the matter, petition dismissed. No order as to costs.

(DR. NEELA GOKHALE, J.) **(K.R. SHRIRAM, J.)**