IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B. R. BASKARAN, ACCOUNTANT MEMBER

ITA No.382/Bang/2018
Assessment year : 2009-10

Shri. Lakshmana, S/o. Late Chikkathimmaiah, Kanminike Village, Kengeri Hobli, Bengaluru South Taluk Bengaluru – 560 039. **PAN : APPPL 7076 K**	Vs.	ITO, Ward – 3(2)(3), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri. Ravishankar, Advocate
Respondent by	:	Smt. R. Premi, JCIT(DR)(ITAT), Bengaluru

Date of hearing	:	20.07.2021
Date of Pronouncement	:	28.07.2021

O R D E R

Per N.V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 01.12.2017 of CIT(A)-3, Bengaluru, relating to Assessment Year 2009-10. The assessee raised several grounds of appeal. We deem it appropriate to take up for consideration the issue with regard to the validity of the order of reassessment passed in this case on the ground that the AO has not disposed off the objections with regard to validity of reopening of assessment under section 148 of the Income Tax Act, 1961 (hereinafter called 'the Act') and the action of the AO in this regard is allegedly contrary to the law laid down by the Hon'ble Supreme Court in the case of GKN

Driveshafts (India) Ltd. Vs. ITO 254 ITR 19. The grievance of the assessee in this regard is projected in ground No. 3 n) which reads as follows:

> *n) The assessment order is further bad in law as the objections to the reasons under section 148 have not been disposed of by a speaking order and hence contrary to law and on this count also the assessment is liable to be cancelled on the facts and circumstance of the case.*

2. The assessee is an individual. He owns certain land in Survey No.55 in Kaniminiki Village, Kengeri Hobli, Bengaluru South Taluk, Bengaluru. According to the assessee, the land so held by him was an agricultural land which was situated beyond 8 kms. from the municipal limits of Bruhat Bengaluru Mahanagara Palike (BBMP). According to the assessee, the property owned by him was agreed to be sold under agreement dated 28.12.2005 and was ultimately sold by a registered sale deed dated 24.09.2008 for a consideration of Rs.10,37,500/-. According to the assessee, since the land in question was an agricultural land, no capital gain was chargeable to tax and therefore he did not file the return of income.

3. The AO however issued a notice under section 148 of the Act based on information from the Joint Director, Income Tax (Intelligence and Criminal Investigation), Bengaluru. According to the assessee, he was not served with any notice under section 148 of the Act, but the personnel of the Department visited the assessee at his village and instructed the assessee to file the return of income. Thereafter the assessee filed the return of income dated 14.09.2016. The assessee addressed a letter dated 03.10.2016 to the ITO in which the assessee submitted that it was not served with the notice under section 148 of the Act and that he had filed the return of income only on the basis of the visit of the personnel of the Income Tax Department to

his village and calling upon him to file the return of income. The assessee also submitted that he should be given a copy of the reasons recorded by the AO before issue of notice under section 147 of the Act. A copy of the reasons recorded by the AO was furnished to the assessee and thereafter the assessee addressed a letter dated 24.10.2016 to the AO. The assessee submitted that the proceedings under section 148 of the Act are invalid by pointing out that the land in question were agricultural land and outside the purview of the definition of capital asset as given in section 2(14) of the Act. Besides the above, the assessee also challenged the validity of the proceedings under section 147 of the Act on the ground that no notice under section 148 of the Act was served on the assessee.

4. The AO passed order under section 143(3) of the Act dated 30.12.2016 in which it has been mentioned that the notice under section 148 of the Act was served on the assessee on 30.12.2016 and that the land in question was a capital asset and therefore the capital gain was to be brought to tax. The AO computed capital gain by adopting the value of the property as per the guideline valuation for the purpose of registration and stamp duty at Rs.1,62,50,800/-. The property in question has been sold by the assessee as per the sale deed only for a sum of Rs.10,37,500/-, the AO invoked the provisions of section 50C of the Act in computing the long-term capital gain as above.

5. In the appeal before the CIT(A), a specific contention was raised by the assessee that as per the law laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra), the AO was required to deal with the objections regarding validity of initiation of proceedings under section 147 of the Act by a separate speaking order. Since the AO failed to pass such order, the order passed is liable to be struck out as null and void.

6. The CIT(A) agreed that the AO has not complied with the requirements of the law laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra) but sustained the order of the AO on the ground that the AO had very little time for completing the assessment proceedings and therefore could not pass a separate order as the limitation period for passing assessment order was very short. The findings of the CIT(A) in this regard are contained in paragraph 5.2 of his order which reads as follows:

> *"5.2 The appellant has also argued that the sanction of the Pr. CIT was not obtained before issue of notice u/s 148 of the Act. This argument of the appellant is also without any merits a perusal of the assessment records shows that the approval of Pr. CIT was duly obtained by the AO and the' approval was duly granted by Pr. CIT on 28.03.2016. The appellant has further argued that the AO has not disposed off its objection to the reasons recorded u/s 148 of the Act by passing a speaking order as contemplated by the decision of the Supreme Court in the case of GKN Drive shafts (India) Ltd. v. ITO [2003] 259 ITR 19. This argument of the appellant is also without any merit. The notice under Section 148 of the Act was served on the appellant through affixture on 07.04.2016. The appellant did not respond to the same. He complied with the same at the fag-end of the time limitation period for passing the order and thus only on 03.10.2016 he asked for the reasons for reopening. The reasons were provided to him immediately but he remained silent and did not make any specific objection to reopening. The argument of the appellant is that he had raised specific objection vide written submissions dt 24.10.2016. A perusal of the same shows that the same are the submissions of the appellant on the issue of his taxability and each of these arguments of the appellant has duly been dealt by the AO in his order. Further, in the case of Principal Commissioner of Income-tax-2, Vadodara v Sagar*

Developers[2016] 72 taxmann.com 321 (Gujarat) and also in case of Areva T&D India Ltd v ACIT [2007] 165 Taxman 123 (Madras), the court held that the intention of the Supreme Court in the case of GK.N Drive shafts (India) Ltd. v. ITO (supra) was never to declare the order of assessment illegal and to permanently prevent the AO from passing any fresh order of assessment, merely on the ground that the AO did not dispose of the objections before passing the order of assessment. Thus the Court held that not passing an order on the objections of the assessee cannot be fatal to the assessment proceedings and the same is a mere irregularity. Considering above the related grounds of appeal of the appellant are dismissed."

7. The sum and substance of the conclusion of the CIT(A) is that the AO could not pass a separate order on the objections with regard to proceedings under section 147 of the Act due to paucity of time available to the AO and that the non-compliance with the requirements as laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra) will not render the order of assessment null and void. In this regard, the CIT(A) has placed reliance on two decisions (1) decision of the Hon'ble Gujarat High Court in the case of Principal CIT Vs. Sagar Developers [2016] 72 taxmann.com 321 (Gujarat) and (2) decision of Hon'ble Madras High Court in the case of Avera T & D India Ltd., Vs. ACIT [2007] 165 Taxman 123 (Madras).

8. Aggrieved by the aforesaid decision of the CIT(A), the assessee has raised ground No. 3 n) before the Tribunal. We have heard the rival submissions. Learned Counsel for the assessee brought to our notice the decision of the Hon'ble Karnataka High Court rendered in the case of Deepak Extrusions (P.) Ltd. v DCIT (2017) 80 taxmann.com 77 (Karn)

wherein the Hon'ble Karnataka High Court took the view that if the AO does not dispose off the objections regarding the validity of proceedings under section 147 of the Act as laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra), then the order of assessment passed cannot be sustained. The Hon'ble Court held that if the assessee desires to seek the reasons for issuing the notice, the Assessing Officer is bound to furnish the reasons and upon the receipt of such reasons, the assessee is entitled to file the objections to the issuing of the notice and the Assessing Officer thereafter is bound to dispose of the same by passing a speaking order. If the AO does not dispose off the objections prior to proceedings with the assessment and passes an order of assessment, such order of assessment cannot be sustained and is liable to be quashed. Learned DR however placed reliance on the order of the CIT(A) from the decision referred to in the order of CIT(A). Learned Counsel for the assessee however brought to our notice that Hon'ble Madras High Court has taken a contrary view to the view taken in the case referred to by the CIT(A) in the impugned order and in this regard referred to the decision of Hon'ble Madras High Court in the case of Jayanthi Natarajan 401 ITR 215 and Pentafour Employees' Welfare Foundation 312 CTR 35 (Madras).

9. We have given a careful consideration to the rival submissions. The facts are undisputed that the assessee raised objections with regard to validity of initiation of proceedings under section 147 of the Act by his letters dated 03.10.2016 and 24.10.2016 after filing the return of income. The admitted position is the AO has not disposed off the objections by a speaking order. Under the circumstances, it is clear that the mandatory procedure of disposal of objection by the AO before proceeding with the assessment has not been followed and therefore the order of assessment

cannot be sustained and has to be quashed. The decision of the Hon'ble Karnataka High Court which is the jurisdictional High Court as far as this Tribunal is concerned in the case of Deepak Extrusions Pvt. Ltd., (supra) supports the case of the assessee. The other decisions of the Hon'ble Gujarat High Court and the Hon'ble Madras High Court referred to in the order of the CIT(A) being the decisions of the non-jurisdictional High Courts, are not binding in the light of the decision of the Hon'ble jurisdictional High Court. Consequently, we uphold the grievances projected by the assessee in ground No.3 n) and hold that the order of assessment passed is vitiated and liable to be annulled. In view of the above conclusion, we are of the view that the other issue raised by the assessee in its appeal does not require examination.

10. In the result, appeal by the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(B. R. BASKARAN)	**(N. V. VASUDEVAN)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Bangalore,
Dated : 28.07.2021.
/NS/*

Copy to:
1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.