



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 02.07.2008

+ **WP (C) 4642/2008**

M/S KESHAV SHARES & STOCKS LIMITED ... Petitioner

- versus -

INCOME TAX OFFICER AND OTHERS ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr S.R. Wadhwa

For the Respondents : Mr Sanjeev Sabharwal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the notice dated 26.03.2007 issued by the Assessing Officer, Ward No. 5(2), New Delhi under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act'). The challenge is also to the consequential assessment under Section 143 (3) of the said Act read with Section 147 made on 28.12.2007 whereby the assessee's income has been computed at Rs 2,05,11,086/- as against a returned income of Rs 4,086/-. On the basis of the said assessment, a demand on account of income tax and



raised. The petitioner states that because of the said assessment order, it was compelled to file an appeal before the Commissioner of Income Tax (Appeals) and the said appeal is pending. The stay that was prayed for by the petitioner before the appellate authority was rejected.

2. The learned counsel for the petitioner submitted that the main ground for challenging the issuance of the notice dated 26.03.2007 and the consequential assessment made on 28.12.2007 is that no speaking order was passed by the Assessing Officer prior to the making of the assessment order as was the requirement of law in view of the decision of the Supreme Court in the case of *GKN Driveshafts (India) Ltd v. Income-Tax Officer and Others*: 259 ITR 19. The learned counsel also placed reliance on a decision of this court in the case of *Smt. Kamlesh Sharma v. B.L. Meena, Income-Tax Officer and Others*: (2006) 287 ITR 337 (Delhi) and submitted that the said decision was rendered in virtually identical circumstances and entirely covers the present case.

3. The learned counsel appearing on behalf of the revenue advanced arguments to the contrary and submitted that no issue of jurisdiction could be raised at this stage. He placed reliance on the decision of the Supreme Court in the case of *Assistant Commissioner of Income-Tax v. Rajesh Jhaveri Stock Brokers P. Ltd*: 2007 (291) ITR 500 (SC).



4. He also submitted that considering the scope of inquiry at the stage of issuance of notice under Section 147 / 148 of the said Act, nothing further was required to be done by the Assessing Officer. Furthermore, it was submitted that the petitioner has, in fact, not taken any objections and, therefore, there is no question of passing a speaking order.

5. This case pertains to the assessment year 2000-2001. The return for the said assessment year was filed on 21.11.2000 showing an income of Rs 4,086/- being the petitioner's first year of business having been incorporated on 01.09.1999 as a public limited company. The return was accepted under Section 143(1)(a) of the said Act. Thereafter, on 26.03.2007, the impugned notice under Section 148 was issued by the Assessing Officer, Ward No.5(2), New Delhi. By a letter dated 10.04.2007, the assessee requested the Assessing Officer that the original return filed on 21.11.2000 be treated as the return filed under protest in response to the said notice. The assessee also requested that the reasons recorded for the purpose of issuance of the notice under Section 148 of the said Act be provided to the assessee to enable it to prepare the necessary submissions in respect of the proceedings. Thereafter, by a letter dated 24.04.2007, the Assessing Officer informed the assessee about the reasons recorded prior to the issuance of the impugned notice. The reason indicated was that the Income Tax



Assessing Officer reason to believe that M/s Keshav Shares and Stocks Limited had purchased entries amounting to Rs 20 lakhs through entry operators, namely, M/s Star Agro during the financial year 1999-00. The details of the said entry were indicated in the said letter of 24.04.2007. Thereafter, the assessee sent a letter dated 17.09.2007, wherein the assessee indicated that it had not received any amount as stated in the letter dated 24.04.2007. However, the assessee requested that the evidence / information / statement, if any, in the possession of the Assessing Officer be provided to the assessee to enable it to examine the matter and “to submit necessary documents/submission”.

6. No further correspondence took place on the issue and this was followed by the making of the assessment order on 28.12.2007 which has been indicated above.

7. In the backdrop of these facts, it would be necessary to examine the decisions cited on behalf of the parties. In ***GKN Driveshafts (supra)***, the Supreme Court indicated the procedure to be followed when a notice under Section 148 of the said Act is issued. The Supreme Court indicated that the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuance of the notice. The Assessing Officer is then bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is



Assessing Officer is bound to dispose of the same by passing a speaking order before proceeding with the assessment.

8. In the present case, what has happened is that the purported reasons have been supplied by the Assessing Officer to the assessee, but the Assessing Officer has not responded to the assessee's request for further information. As such, the letter dated 17.09.2007 can only be regarded as a part objection and part request for further information. The proper course for the Assessing Officer, in view of the Supreme Court decision, would have been to have responded to the letter dated 17.09.2007. Unfortunately, the Assessing Officer did not do so. Nor was there any separate speaking order passed in respect of the objections taken by the assessee in its letter dated 17.09.2007. As a result, it is apparent that the directives of the Supreme Court in *GKN Driveshafts (supra)* have not been followed by the Assessing Officer. The assessment order has been made without first passing a speaking order on the objections raised by the petitioner.

9. In similar circumstances, in *Smt Kamlesh Sharma (supra)*, this court took a strong view of the matter and observed as under:-

“3. We are of the opinion that in view of the language of the Supreme Court in *GKN Driveshafts* [2003] 259 ITR 19 the Assessing Officer should have rejected the objections, if he thought it appropriate to do so, before passing the final order and not simultaneously.



4. This position was reiterated by this Court in *Sita World Travels (India) Ltd. v. CIT* [2005] 274 ITR 186.

5. We cannot appreciate how, in spite of the clear language used by the Supreme Court as well as this Court, the Assessing Officer did not comply with the requirement of law.

6. Learned Counsel for the respondent submits that the objections touched upon the merits of the controversy and the failure of the Assessing Officer to deal with the objections before passing the assessment order was only a technical error. We are mentioning this only to reject this argument in view of the clear language of the Supreme Court. The Assessing Officer cannot try to hide behind niceties, which are not even legal.

7. Under the circumstances, we set aside the assessment order dated January 31, 2005, and direct the Assessing Officer to deal with the objections dated October 19, 2004, filed by the petitioner within a period of eight weeks from today. Needless to say, the Assessing Officer should pass a speaking order.

8. For not following the law laid down by the Supreme Court and stressed by this Court, we impose costs upon the respondent of a sum of Rs. 3,500 to be paid to the petitioner. The costs be paid within a period of four weeks from today.”

10. We are of the view that the present case is entirely covered by the decision in *Smt Kamlesh Sharma (supra)* inasmuch as the directives of the Supreme Court in *GKN Driveshafts (supra)* have not been followed by the Assessing Officer.

11. The decision cited by the learned counsel for the revenue in the case of *Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers P. Ltd (supra)* does not, in any way, enable us to detract from the position indicated above and especially the directions given



Rajesh Jhaveri (*supra*) was not concerned with the procedure to be adopted by the Assessing Officer for passing a speaking order before proceeding with the assessment. In fact, the decision in *GKN Driveshafts* (*supra*) has not even been noticed in *Rajesh Jhaveri*'s case apparently, because the issue of procedure did not at all arise in *Rajesh Jhaveri*'s case. Consequently, the latter decision would have no application to the facts and circumstances of the present case.

12. In view of the foregoing discussion, we set aside the assessment order dated 28.12.2007 and direct the Assessing Officer to pass a speaking order on the objection as taken in the letter dated 17.09.2007 and to proceed with the assessment only thereafter.

This writ petition is disposed of accordingly. No order as to costs.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER), J

July 02, 2008

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