

Before initiating reassessment AO must dispose of preliminary objection of assessee by passing speaking order

Summary – The High Court of Gujarat in a recent case of Torrent Power SEC Ltd., (the Assessee) held that before initiating reassessment proceeding, it is obligatory for Assessing Officer to dispose of assessee's preliminary objection by passing a speaking order only.

Facts

- The assessee-company filed return of income which was taken in scrutiny assessment and same was finalized.
- The Assessing Officer issued a notice of reopening the assessment.
- The assessee raised his objection against it through letters contending that a speaking order needs to be passed before proceeding with the assessment. However, the Assessing Officer observed that such objections would be decided at time of assessment order and ultimately, assessment proceeding had been initiated by him.
- On writ, the petitioner contended that reassessment proceeding had been initiated without dealing with the objections raised and by ignoring the order of the Supreme Court in the case of *GKN Driveshafts (India) Ltd. v. ITO* [[2003](#)] 259 ITR 19/[[2002](#)] 125 Taxman 963.

Held

- The assessee is found entitled to the reasons on which the proceedings of reopening or of reassessment are initiated. No assessee is required to undergo the cumbersome proceedings of process of reopening, unless the assumption of jurisdiction in respect of the same is based on valid legal base.
- The preliminary objections raised against the notice and also in relation to the reasons recorded must be considered and all objections raised by the assessee by speaking order needs to be disposed of.
- The Revenue authorities, are duty bound to follow the directions issued by the Supreme Court and amplified by this Court in no unclear terms which is not only the mandate under the law to be followed in its letter and spirit but the consistency in judicial matters also would warrant the revenue authorities to follow such directions. Adherence to such requirement would also eliminate the allegation of arbitrariness in the matter of reopening.
- It can be seen that the Assessing Officer in the instant case after having provided the reasons recorded and on receiving the objections from the assessee chose not to dispose of such objections by a speaking order.

- The Assessing Officer instead continued with the reassessment proceedings by issuing notice under section 142(1) and when his attention was drawn to the fact that objections have not been disposed of on the lines of various judicial pronouncements, he observed that such objections would be disposed of at the time of framing the reassessment. Such approach on the part of the Assessing Officer itself is in flagrant violation of the very direction of the *GKN Driveshafts (India) Ltd. v. ITO* [2003] 259 ITR 19/[2002] 125 Taxman 963 (SC) and as followed by this Court in the case of *Arvind Mills Ltd. v. Asstt. CWT (No. 2)* and *Garden Finance Ltd. v. Asstt. CIT* [2004] 268 ITR 48/137 Taxman 49 (Guj.). Had the directions of these authorities been followed by the Assessing Officer, it could have saved a lot of hazard to the petitioner. The Commissioner (Appeals) for the assessment year 2002-03 on the very issue recorded in the reasons of reopening and concluded in favour of the petitioner assessee. This aspect is no less significant, particularly, in wake of the developments that took place while such correspondence was exchanged between the parties.
- Therefore, the possible request made to pass a speaking order dealing with the objections and further providing a period of one month from the dispatch of such speaking order deciding the preliminary objections had not been paid heed to.
- The respondent was needed to pass a speaking order, which not only is obligatory but that would have saved enormous time and resources as the appellate authority decided the very issue under reopening in favour of the assessee. However, instead of quashing the notice itself, petitioner is to be relegated to the Assessing Officer.
- Resultantly, this petition is allowed. Impugned assessment made pursuant to the proceedings under section 148 stands quashed. Consequently, all subsequent proceedings undertaken pursuant to the issuance of impugned assessment order stand quashed and set aside.