AO couldn't proceed with reassessment without disposing of objections of assessee which went to root of matter

Summary – The High Court of Bombay in a recent case of V. M. Salgaoncar Sales International., (the Assessee) held that where assessee raised objection that he was not engaged in mining activities, rather it only purchased and exported iron ore, since objection went to roof of matter in determining whether related income was 'income from business' or 'other income', Assessing Officer could not initiate reassessment without disposing objection

Facts

- The assessee was engaged in business of purchase and export of iron-ore.
- Following a Supreme Court order in year 2014, that 'income arising out of mining business is an illegal income', the Assessing Officer opined that income accrued for relevant assessment year to assessee was could not be said to be legitimate business income but it is chargeable as income from other sources.
- Therefore, the Assessing Officer issued notice under section 148 for re-opening of assessment.
- The assessee filed objection to said notice contending that it was not holding any mining business, but a business of buying iron ore processing and exporting the processed iron ore.
- However, the Assessing Officer rejected assessee's objection. The Deputy Commissioner upheld the Assessing Officer's order.
- On writ :

Held

- In the aforesaid facts, the Court was of the view that the order of the Assessing Officer does not appear to be sustainable and may require reconsideration at the hands of the Assessing Officer. However, the same was opposed to by the revenue and in support, reliance was placed upon an affidavit dated 6-5-2015 of the Deputy Commissioner, seeking to justify the order of Assessing Officer.
- It is a settled position that reopening of assessment is not to be lightly done. In fact, it leads to unsettling settled positions. Therefore, it can only be done by the revenue subject to strictly satisfying the jurisdictional requirement of sections 147 and 148. It was in the light of the above, that the Supreme Court in *GKN Driveshafts (India) Ltd.* v. *ITO* [2003] 259 ITR 19/[2002] 125 Taxman 963, has laid down a procedure/method to be followed before reassessing an assessee under section 147. The Apex Court has formulated the procedure to the effect that whenever a notice to reopen an assessment under section 148 is issued to an assessee, the reasons recorded in support of the same must be furnished the assessee on his furnishing the return of income. The assessee

would then have an opportunity to object to the reasons in support of the notice for reopening an assessment and the Assessing Officer on consideration of the objections would dispose of the objections by a speaking order. The above procedure is being consistently followed in all cases of notices issued under section 148 seeking to reopen assessments. The procedure laid down by the Apex Court is a very salutary provision as it ensures that an assessee is not dragged into a reassessment proceedings unnecessarily. Therefore, before commencing the reassessment proceedings, an Assessing Officer can have a second look at his reasons in the context of the objections of the assessee. To ensure that there is due application of mind, the Apex Court has directed that the objections be disposed of by a speaking order. Thus, the basis of the entire above procedure is an honest and objective second look at the reasons for reopening the assessment in the context of the objections.

- In the present facts, the Court find that it has been the petitioner's case at all times (including during the assessment proceedings) and in its objections that it does not own any mining leases. It is purely in the business of purchasing iron ore, processing the same and exporting the processed iron ore. In fact, the reasons recorded in support of the impugned notice also commence by introducing the assessee as a partnership firm engaged in buying iron ore, processing the same and exporting it. The objection filed by the petitioner to the reasons recorded in support of the impugned notice, also very categorically states that they do not hold any mining leases as they are only in the business of buying ores, processing it and exporting the processed iron ore. Thus, the second ground/reason recorded in support of the notice *viz*. illegal mining does not apply. However, order dated 20-2-2015, while disposing of the objections, does not deal with the above objection. On the contrary, the order dated 20-2-2015 disposes of an imaginary objection, not taken by the petitioner, by a reasoned order. The least that is expected of the Assessing Officer while disposing of the objections filed by the assessee is some application of mind to the objections raised by the assessee and in that context, take a relook at the reasons recorded in support of the reopening notice.
- On such a fundamental lapse on the part of the Assessing Officer in disposing of the objections was pointed out to us, we expected the State-revenue would withdraw the order and carve liberty to pass a fresh order dealing with the objections of the petitioner. However, to court's dismay, the revenue is still attempting to justify its order disposing of the petitioner's objections even though it is clear as daylight that the objection was chalk and the order disposing of the objections, was dealing with an imaginary ground of cheese. In fact, affidavit supporting the impugned order indicates the attitude of the revenue that right or wrong, the impugned notice for reopening is sustainable. The entire procedure laid down by the Apex Court to ensure that unwarranted reopening of assessments do not take place, is being frustrated by this attitude. The officers of the revenue should realise that they are not mere revenue collectors, but officers administering the Act and in that process must ensure that not only the assessee complies with the law but even the officers do not act *de hors* the law. In view of this attitude of the revenue, at one stage, the court was contemplating that the court admit the petition and deal with the challenge to the impugned

notice. However, on further consideration, we felt that it would send a wrong signal and the officers of the revenue, who would continue to pass orders without application of mind, on imaginary objections with impunity. Therefore, we decided to set aside the order dated 20-2-2015 of the Assessing Officer disposing of the objections to the impugned notice. However, looking at the manner in which the Assessing Officer has passed the order dated 20-2-2015 and also the affidavit dated 6-5-2015 filed in support of the order, we are of the view that the petitioner's objection would not be objectively dealt with by the Assessing Officer, who authored the order dated 20-2-2015 and the deponent of the affidavit dated 6-5-2015 resisting the petition.

- However, before closing the Court may point out that the affidavit filed by the Deputy Commissioner dated 6-5-2015, particularly paragraph 8 thereof, indicates that the stand of the revenue is that even if the assessee is only engaged in a trading activity, the impugned notice for reopening is sustainable on account of under invoicing, which is the other ground stated in the reasons in support of the impugned notice. This can hardly be an explanation for not having dealt with the objection as filed by the petitioner and in fact dealing with an imaginary objection in the order disposing of the objections. In other words, the revenue contends that even if the Assessing Officer has not dealt with the petitioner's objection property, yet the notice for reopening is sustainable on some other grounds. That is not what is expected of the Assessing Officer while dealing with the objections. In any case, the manner in which the objection of the petitioner that they do not own any mining leases has been dealt with by the order dated 20-2-2015, casts a doubt on the entire order disposing of the objections dated 20-2-2015 as to what has been the application of mind while disposing of other objections.