

Reassessment order couldn't be termed as void even if requisite SC directions not complied with: Madras HC

Summary – The High Court of Madras in a recent case of Home Finders Housing Ltd., (the Assessee) held that Non-compliance of direction of Supreme Court in *GKN Driveshafts (India) Ltd. v. Income Tax Officer [2002] 125 Taxman 963* that on receipt of objection given by assessee to notice under section 148, Assessing Officer is bound to dispose of objections by passing a speaking order, would not make reassessment order void ab initio

Facts

- The assessee was a real estate promoter. It filed its *nil* return of income.
- The Assessing Officer was of the view that the income chargeable to tax had escaped assessment for the assessment year 2012-13 and, therefore, decided to invoke section 147 and issued notice under section 148 to the assessee.
- The Assessing Officer pursuant to the request made by the assessee, furnished reasons for invoking section 147. On receipt of reasons, the assessee submitted objections. The Assessing Officer without giving disposal to the objections, proceeded to hear the matter and ultimately passed the reassessment order.
- The assessee challenged the assessment order before the High Court on the ground that by not passing a specific order after receiving objections and before the assessment order, the Assessing Officer violated the law declared by the Supreme Court in *GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963/[2003] 259 ITR 19* and resultantly, the order was bad in law.
- The High Court having found that the Assessing Officer failed to follow the procedure indicated by the Supreme Court in *GKN Driveshafts (India) Ltd. (supra)*, set aside the order and directed the Assessing Officer to consider the matter afresh, after giving disposal to the objections.
- On appeal:

Held

- It is not in dispute that there is no statutory requirement to pass an order taking into account the statement of objections filed by the assessee after receiving the reasons for invoking section 147. The Supreme Court in *GKN Driveshafts (India) Ltd. (supra)* has given a procedural safeguard to the assessee to avoid unnecessary harassment by directing the Assessing Officer to pass a speaking order taking into account the objections for reopening the assessment under section 147.
- The forming of opinion to proceed further by disposal of the objections need not be a detailed consideration of all the facts and law applicable. It must show application of mind to the objections raised by the noticee. In case the objections are such that it would require a detailed examination of facts and application of legal provisions, taking into account the assessment order sought to be reopened, the string of violations, suppression of material particulars and transactions which would

require considerable time and would be in the nature of a detailed adjudicatory process, the Assessing Officer can dispose of the objections, by giving his tentative reasons for overruling the objections.

- The disposal of objections is in the value of a procedural requirement to appraise the assessee of the actual grounds which made the Assessing Officer to arrive at a *prima facie* satisfaction that there was escape of assessment warranting reopening the assessment proceedings. The disposal of such objection must be before the date of hearing and passing a fresh order of assessment. In case, on a consideration of the objections submitted by the assessee, the Assessing Officer is of the view that there is no ground made out to proceed, he can pass an order to wind up the proceedings. It is only when a decision was taken to overrule the objections, and to proceed further with the reassessment process, the Assessing Officer is obliged to give disposal to the statement of objections submitted by the assessee.
- The core question is as to whether non-compliance of a procedural provision would *ipso facto* make the assessment order bad in law and *non est*. The further question is whether it would be permissible to comply with the procedural requirement later and pass a fresh order on merits.
- In case an order is passed without following a prescribed procedure, the entire proceedings would not be vitiated. It would still be possible for the authority to proceed further after complying with the particular procedure.
- The enactments like the Land Acquisition Act, 1894, contain mandatory provisions like section 5A, the non compliance of which would vitiate the declaration under section 6 of the Act. Even after quashing the declaration for non compliance of section 5A, the Court would permit the conduct of enquiry and pass a fresh declaration within the period of limitation.
- Therefore, that non compliance of the procedure indicated in the *GKN Driveshafts (India) Ltd. case (supra)* would not make the order *void or non est* and such a violation in the matter of procedure is only an irregularity which could be cured by remitting the matter to the authority. The first issue is accordingly answered against the assessee.