

# CTR ENCYCLOPAEDIA ON INDIAN TAX LAWS

---

## **NEW ERA SHIPPING LTD. vs. COMMISSIONER OF INCOME TAX & ANR.**

HIGH COURT OF BOMBAY (Goa Bench)

M. S. SONAK & DAMA SESHADRI NAIDU, JJ.

TAX APPEAL NO. 34 OF 2016

27th October, 2020

(2020) 109 CCH 0173 MumHC

(2021) 318 CTR 0400 (Bom) : (2020) 196 DTR 0137 (Bom) : (2021) 430 ITR 0431 (Bom)

### Legislation Referred to

Section 148

### Cases referred:

[CIT vs. Videsh Sanchar Nigam Ltd., \[2012\] 340 ITR 66 \(Bom\)](#)

### Counsel appeared:

D. Robinson Advocate for the Appellant.: Amira Abdul Razaq for the Respondent

### M. S. SONAK, J.

1. Heard Mr. D. Robinson for the Appellant and Ms. Amira Razaq, Standing Counsel for the Respondents.

2. On 18th August, 2016, this Appeal was admitted on the following substantial question of law :

Whether the Tribunal was justified to remand the matter to the Assessing Officer when it is the case of the appellant that no reasons for reopening have been furnished before the assessment by the Assessing Officer and consequently such assessment itself is null in view of the Judgment of the Division Bench of this Court in the case of "Commissioner of Income - Tax v/s. Videsh Sanchar Nigam Ltd." reported in [(2012) 340 ITR 66 (Bom)].

3. Ms. Robinson, the learned Counsel for the Appellant submits that in this case, after receipt of notice under Section 148 of the Income Tax Act, 1961 (IT Act), the Appellant not only objected to the reopening of the assessment, but also requested for furnish of reasons. He submits that no such reasons were furnished and the Assessing Authority proceeded to reopen the assessment and pass a fresh assessment order. He submits that the Assessing Officer (AO), in doing so, acted contrary to the ruling of the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. vs. Income Tax Officer & ors., (2003) 1 SCC 72. He submits that in virtually identical circumstances, the Division Bench of this Court in CIT vs. Videsh Sanchar Nigam Ltd., [2012] 340 ITR 66 (Bom) has held that the assessment order in such circumstances is required to be interfered with.

4. Ms. Razaq, the learned Counsel for the Respondent defends the impugned orders on the basis of the reasoning reflected therein. She submits that the reasons were ultimately furnished to the Appellant before the ITAT and, therefore, assuming that there was any

irregularity in the procedure adopted, the same was ultimately cured. For these reasons, she submits that this Appeal may be dismissed.

5. Rival contentions now fall for our determination.

6. In this case, there is absolutely no dispute that the Appellant, after receipt of the notice under Section 148 of the IT Act seeking to reopen the assessment for the Assessment Year 2004-05, requested for furnish of reasons. There is also no dispute that the AO failed to furnish such reasons, but proceeded to reopen the assessment and make assessment order.

7. In GKN Driveshafts (India) Ltd. (supra), the Hon'ble Apex Court has held that when a notice under Section 148 of the IT Act is issued, the proper course of action for the noticee is to file return and if he desires to seek reasons for issuing notice, the AO is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the AO is bound to dispose of the same by passing a speaking order. Considering the aforesaid law laid down by the Hon'ble Supreme Court, it was really not open to the AO to refuse furnish of reasons for issuing notice under Section 148 of the IT Act. As a result of such refusal, the Appellant was deprived of the valuable opportunity of filing objections to the reopening of the assessment. The approach of the AO in this case was contrary to the law laid down by the Hon'ble Apex Court in GKN Driveshafts (India) Ltd. (supra).

8. In Videsh Sanchar Nigam Ltd. (supra), the Division Bench of this Court followed the earlier decision in CIT vs. Fomento Resorts and Hotels Ltd. (Tax Appeal No.71/2006) decided on 27/11/2006 and held that though reopening of the assessment was within three years from the end of the relevant assessment year, since, the reasons recorded for reopening of the assessment were not furnished to the Assessee till completion of the assessment, reassessment order cannot be upheld. The Division Bench noted that the special leave petition filed by the Revenue against the decision of this Court in Fomento Resorts and Hotels Ltd. (supra) has been dismissed by the Hon'ble Apex Court.

9. The furnish of reasons at the stage when the matter was pending before the ITAT, cannot, in facts of the present case, cure the default in the first instance.

10. Thus, following the decision of the Hon'ble Apex Court in GKN Driveshafts (India) Ltd. (supra), the substantial question of law framed in this case is required to be answered in favour of the Assessee. As a consequence, not only the orders impugned in this appeal are required to be set aside, but it is also necessary to clarify that any other and further consequential order, if any, are also required to be set aside and are hereby set aside.

11. Mr. Robinson points out that in pursuance of the remand ordered by the ITAT's impugned order, the consequential order of assessment has been made. If so, now that we have set aside the ITAT's order, such consequential order dated 5/12/2016 is also liable to be set aside and is, hereby, set aside and the demand notice issued on the basis thereof is also liable to be set aside.

12. This Appeal is allowed in the aforesaid terms. There shall be no order as to costs.

\*\*\*\*\*