(2006) 08 DEL CK 0127

In the Delhi High Court

Case No : Writ Petition No. 4487 of 2005 , 31 August, 2006

Smt. Kamlesh Sharma APPELLANT

Vs

B.L. Meena, ITO and Others RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Citation : (2006) 205 CTR 569

Hon'ble Judges : Vipin Sanghi, J;Madan B. Lokur, J

Bench : Full Bench

Advocate : K.R. Manjani, for the Petitioner, R.D. Jolly with Vishnu Sharma, for the Appellant;

Final Decision : Disposed Off

Judgement

By the Court

The petitioner received a notice seeking reopening of his assessment under sections 147 and 148 of the Income Tax Act. On 15-10-2004, on a demand having been made by the petitioner, the reasons for reopening were supplied.

2. The petitioner filed objections dated 19-10-2004, which were apparently received by the respondent on 21-10-2004. Since then, the petitioner has been requesting for a speaking order on the objections. This request was made by the petitioner on the basis of a decision of the Supreme Court in GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, . In this judgment, the Supreme Court has said very clearly that the assessing officer has to dispose of the objections, if filed, by passing a speaking order before proceeding with the assessment. Notwithstanding the clear language of the Supreme Court, the assessing officer did not pass any speaking order but straightaway passed an assessment order on 31-1-2005 and simultaneously rejected the contention of the petitioner.

3. We are of the opinion that in view of the language of the Supreme Court in GKN Driveshafts, the assessing officer should have rejected the objections, if he

thought it appropriate to do so, before passing the final order and not simultaneously.

This position was reiterated by this court in Sita World Travels (India) Ltd. v. CIT & Anr. (2005) 274 ITR 187 .

4. We cannot appreciate how, in spite of the clear language used the Supreme court as well as this Court, the assessing officer did not comply with the requirement of law.

5. 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.

6. Under the circumstances, we set aside the assessment order dated 31-1-2005 and direct the assessing officer to deal with the objections dated 19-10-2004 filed by the petitioner within a period of eight weeks from today, Needless to say, the assessing officer should pass a speaking order.

7. 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.

Writ petition stands disposed of. List the matter for compliance on 6-10-2006.

