



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 12<sup>TH</sup> DAY OF FEBRUARY, 2025**

**PRESENT**

**THE HON'BLE MR JUSTICE KRISHNA S DIXIT**

**AND**

**THE HON'BLE MR JUSTICE G BASAVARAJA**

**WRIT APPEAL NO. 989 OF 2023 (T-IT)**

**BETWEEN:**

1. THE DEPUTY COMMISSIONER OF INCOME TAX  
CIRCLE - 3(A)(2), BMTC BUILDING,  
80N FEET ROAD, KORAMANGALA,  
BENGALURU-560 095.
2. THE ASST. COMMISSIONER OF INCOME TAX  
CIRCLE-2(1)(2),  
AAYKAR BHAVANA, MUMBAI,  
MAHARISHI KARVE ROAD, MUMBAI,  
MAHARASTHTRA-400 020.
3. THE PR. COMMISSIONER OF INCOME TAX  
CIRCLE-3,BMTC BUILDING, 80 FEET ROAD,  
KORAMANGALA, BENGALURU-560 095.

...APPELLANTS

(BY SRI. RAVI RAJ Y V., ADVOCATE &  
SRI. M DILIP.,ADVOCATE)

**AND:**

HEWLETT PACKWARD FINANCIAL  
SERVICES (INDIA) PVT LTD  
24, SALARPURIA ARENA,  
HOSUR MAIN ROAD, ADUGODI,  
BENGALURU-560 030.

...RESPONDENT

(BY SRI. T SURYANARAYANA., SENIOR COUNSEL A/W  
MISS. MAHIMA GOUD.,ADVOCATE)





THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO A) SET ASIDE THE ORDER PASSED BY THE LEARNED SINGLE JUDGE IN WP NO.2392/2019 DATED 01/06/2023 AND B) PASS SUCH OTHER SUITABLE ORDERS.

THIS WRIT APPEAL, COMING ON FOR ORDERS THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT  
and  
HON'BLE MR JUSTICE G BASAVARAJA

**ORAL JUDGEMENT**

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

The Revenue is in Intra-Court Appeal for laying a challenge to a learned Single Judge's order dated 01.06.2023 whereby Respondent – Assessee's W.P.No.2392/2019 (T-IT) having been favorued, the following relief has been accorded:

*"13.Accordingly, the order of reassessment dated 30.12.2018 vide Annexure-K is set aside. Consequently, the notice dated 30.12.2018 at Annexure-L and the notice dated 30.12.2018 at Annexure-M are set aside. Further the notice issue under Section 148 at Annexure-D is also set aside."*

2. Learned Sr. Panel Counsel appearing for the Revenue submits that non-passing of orders on Assessee's objection to reopening of Assessment proposal is only a



curable irregularity as distinguished from legal illegality and therefore, the Assessment Order could not have been voided once for all; instead, according to him, the matter ought to have been remitted for consideration afresh. He further submits that not passing the order rejecting the objections cannot render the Assessment Order itself null & void especially when the Assessee had failed to file return of income in response to Notice issued under Section 148 of the Income Tax Act, 1961 nor filed Reply/Preliminary Objection in time. He also falters in the learned Single Judge placing reliance on the decisions namely *DEEPAK EXTRUSIONS (P) LTD., v. DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE*<sup>1</sup> & *GKN DRIVESHAFTS (INDIA) LTD., v. INCOME TAX OFFICER*<sup>2</sup>.

3. Learned Sr. Advocate Mr. T Suryanarayan appearing for the Assessee resists the Appeal making submission in justification of the impugned order and the

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<sup>1</sup> 80 TAXMANN.COM 77 (KAR)

<sup>2</sup> 259 ITR 19 (Sc)



reasons on which it has been constructed. He points out that passing of order on the Preliminary Objections is a sine qua non for making the Assessment Order in the light of Apex Court decision in *GKN DRIVESHAFTS*. He opposes even the proposal of the Revenue for remand on the ground that the prescribed limitation period has expired on 31.03.2018.

4. Having heard the learned counsel for the parties and having perused the Appeal Papers, we decline indulgence in the matter broadly agreeing with the views of learned Single Judge. The submission of learned Sr. Advocate appearing for the Assessee that the reasons for issuing Notice under Section 143(2) of the 1961 Act are once communicated and Objections filed by the Assessee have not been considered, then the proceedings of re-Assessment are liable to be voided, is supported by the decision in *GKN DRIVESHAFTS supra*, wherein the Apex Court has observed as under:

*"We see no justifiable reason to interfere with the order under challenge. However, we clarify*



*that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer 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 assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the abovesaid five assessment years."*

5. Learned Single Judge at Paragraph Nos. 11 & 12 of the impugned order has rightly observed as follows:

*"11. In the present case, it needs to be kept in mind that the proceedings under Section 148 will have the effect of reopening the assessment. It is in this context, the Court has to decide while construing the effect of non-following of the procedure under **GKN Driveshafts (supra)**. Admittedly, the reasons for reopening having been communicated as per Annexure-F and reply to such reasons having been furnished by the petitioner, the Assessing Officer is bound to dispose off the same by passing a speaking order before proceeding to pass an order under Section 143(3) read with Section 147 of the Act. In light of the limitation expiring on 31.12.2018, the practical difficulties of the Assessing Officer could be of no reason to condone the non-adherence to the procedure in **GKN***



**Driveshafts (supra).** The effect of non-following such procedure has been dealt with by the judgment of the Division Bench of this Court in **Deepak Extrusions**, wherein the Division Bench of this Court has rightly held that the mandatory procedure of disposal of objections by the Assessing Officer not having been followed, the order of assessment cannot be sustained. If that were to be so, the assessment order issued under Section 143(3) read with Section 147 requires to be set aside and the question of issuing notice under Section 148 would not arise.

12. The contention of the learned counsel for the revenue relying on the judgment of the Madras High Court in the case of **Home Finders (supra)** cannot be accepted in light of the declaration of the Division Bench of this Court in the case of **Deepak Extrusions** stating that the procedure prescribed in **GKN Driveshafts (supra)** is a mandatory procedure which would vitiate the assessment order and the same having been concurred with in another judgment of the Division Bench in **W.A.No.919/2019** disposed off on 24.01.2023. It is impermissible for this Court to accept the contention of the revenue and pass orders contrary to that of the Division Bench orders referred to above. Even otherwise, a perusal of the observations made by the Apex Court in **GKN Driveshafts (supra)** clearly records a finding that the Assessing Officer is bound to dispose off the objections filed by passing a speaking order."



In the above circumstances, this Appeal being devoid of merits is liable to be rejected and accordingly it is, costs having been made easy.

**Sd/-  
(KRISHNA S DIXIT)  
JUDGE**

**Sd/-  
(G BASAVARAJA)  
JUDGE**

Bsv  
List No.: 1 Sl No.: 6