आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL " C " BENCH, MUMBAI

BEFORE S/SHRI B.R.BASKARAN, AM AND PAWAN SINGH, JM

आयकर अपील सं./I.T.A. No.4393/Mum/ 2011
(निर्धारण वर्ष / Assessment Year: 1989-90)

M/s CIFCO FINANCE LIMITED, Bhupen Chambers, Ground Floor, Dalal street, Mumbai-400021	**बनाम**/ Vs.	Asstt Commissioner of Income Tax, (OSD- II) CR-2, Aayakar Bhavan, M K Road, Mumbai-400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्था यी लेखा सं./जीआइआर सं./PAN. :AAACC1765F

अपीलार्थी ओर से / Appellant by	Shri Vipul Joshi
प्रत्यर्थी की ओर से/ Respondent by	Ms.Beena Santosh

सुनवाई की तारीख / Date of Hearing : 17.11.2016
घोषणा की तारीख /Date of Pronouncement: 17.11.2016

आदेश / O R D E R

Per B R Baskaran, AM:

The appeal filed by the assessee is directed against the order dated 27-04-2011 passed by Ld CIT(A)-40, Mumbai and it relates to the assessment year 1989-90.

2. The Ld Counsel appearing for the assessee submitted that the assessee has raised a legal ground challenging the validity of the assessment order, since the AO did not supply the reasons for reopening of the assessment before completion of the assessment. He submitted that the assessee had raised this legal ground during the course of first

round of proceedings before Ld CIT(A), but he dismissed the same by giving certain reasoning. He submitted that, in the second round of proceedings, the Ld CIT(A) dismissed this legal ground by holding that the same has already been dismissed in the first round of proceedings. The Ld A.R submitted that the reasoning given by Ld CIT(A) in the first round was directly contradictory to the decision rendered by Hon'ble jurisdictional Bombay High Court in the case of CIT Vs. Videsh Sanchar Nigam Ltd (2012)(340 ITR 66). Accordingly, by placing reliance on the above said decision of jurisdictional High Court, the Ld A.R contended that the impugned assessment order should be quashed.

3. On the contrary, the Ld D.R submitted that the assessee has been furnished with the reasons for reopening. She further submitted that the assessing officer has extracted the reasons in the assessment order itself. She submitted that the assessee has participated in the assessment proceedings and is aware of the reasons for reopening. The Ld D.R submitted that the assessment records are not traceable due to passage of long period of time and hence the assessee is taking advantage of the situation by raising this legal issue. She further submitted that the procedure for furnishing of reasons was prescribed by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd Vs. ITO (259 ITR 19) has been prescribed in November, 2002 and the impugned assessment order has been passed by the assessing officer 31.1.1996, i.e., prior to prescribing the procedure. Accordingly, the Ld D.R submitted that the impugned legal issue should be dismissed.

4. The Ld A.R, in the rejoinder, submitted that this legal issue was set aside to the file of the Ld CIT(A) by the Tribunal in the earlier round of proceedings, but the Ld CIT(A) simply followed his decision rendered in the first round of proceedings.

5. We have heard rival contentions and perused the record. In order to adjudicate the legal issue with regard to the non-furnishing of reasons for reopening before the completion of assessment proceedings, one requires ascertaining relevant facts from the assessment record. However, it has been submitted on behalf of the revenue that the assessment records are not traceable due to long passage of time. On the contrary, the Ld A.R has placed reliance on the observations made by the Ld CIT(A) in the first round of proceedings in order to substantiate the claim of the assessee that the reasons for reopening were not supplied to the assessee before completion of assessment. According to the assessee, the reasons were supplied only after completion of assessment.

6. With regard to the validity of assessment passed without furnishing the reasons, the Hon'ble jurisdictional Bombay High Court has rendered its decision in the case of Videsh Sanchar Nigam Ltd (supra). We notice that the order passed by Ld CIT(A) on this legal issue in the first round of proceeding was prior to the decision rendered by Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd (supra). However, in the second round, the Ld CIT(A) did not consider the binding decision of the jurisdictional Bombay High Court. Now the Ld D.R contends that the assessment has been framed prior to the decision rendered by Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd (supra).

7. Accordingly we are of the view that this issue requires fresh consideration at the end of the Ld CIT(A), as it involves consideration of factual aspects as well legal aspects. Accordingly we set aside the order passed by Ld CIT(A) and restore all the matters to his file for adjudicating them afresh, after providing adequate opportunity of being heard to the assessee.

8. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Pronounced accordingly on 17th Nov, 2016.

घोषणा खुले न्यायालय में दिनांकः 17th Nov,2016 को की गई ।

Sd sd

(PAWAN SINGH) **(B.R. BASKARAN)**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

मुंबई Mumbai: 17th Nov, 2016.

व.नि.स./ SRL , Sr. PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai