आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

WTA Nos. 01 to 06/RPR/2019

निर्धारण वर्ष / Assessment Years : 2008-09 to 2013-14

Madan Lal Jain
Jawahar Chowk,
Durg (C.G)-491 001
PAN : ANEPJ6339C

.......अपीलार्थी / Appellant

बनाम / V/s.

The Wealth Tax Officer,
Ward-2(2), Bhilai (C.G.)

......प्रत्यर्थी / Respondent

WTA Nos. 03 & 04/RPR/2020

निर्धारण वर्ष / Assessment Years : 2011-12 & 2013-14

Shri Pawan Kumar Jain
C/o. M/s. Saheli Jewellers,
Gandhi Chowk,
Durg(C.G.)-491 001
PAN : AIUPJ9384N

.......अपीलार्थी / Appellant

बनाम / V/s.

The Wealth Tax Officer,
Ward-2(2), Bhilai (C.G.)

......प्रत्यर्थी / Respondent

WTA Nos. 07 & 08/RPR/2019

निर्धारण वर्ष / Assessment Years : 2011-12 & 2013-14

Smt. Manjula Devi Jain
C/o. M/s. Saheli Jewellers,
Gandhi Chowk,
Durg(C.G.)-491 001
PAN : ACGPJ3733K

.......अपीलार्थी / Appellant

बनाम / V/s.

The Wealth Tax Officer,
Ward-2(2), Bhilai (C.G.)

......प्रत्यर्थी / Respondent

WTA Nos. 05 to 08/RPR/2020

निर्धारण वर्ष / Assessment Years : 2008-09 to 2010-11 & 2012-13

Smt. Manjula Devi Jain
C/o. M/s. Saheli Jewellers,
Gandhi Chowk,
Durg(C.G.)-491 001
PAN : ACGPJ3733K

.......अपीलार्थी / Appellant

बनाम / V/s.

The Wealth Tax Officer,
Ward-2(2), Bhilai (C.G.)

......प्रत्यर्थी / Respondent

WTA No.02/RPR/2020

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Sunil Kumar Shrishrimal
C/o. M/s. Saheli Jewelers,
Gandhi Chowk,
Durg (C.G.)-491 001
PAN : AJCPS2009Q

.......अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Wealth Tax-2(1),
Raipur (C.G.)

......प्रत्यर्थी / Respondent

Assessee by	:	S/Shri G.N Purohit, Adv. Eshan Tripathi, Adv.
Revenue by	:	S/Shri P.K Mishra, CIT-DR G.M Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing	: 25.07.2022
घोषणा की तारीख / Date of Pronouncement	: 29.07.2022

आदेश / ORDER

PER BENCH:

The captioned appeals filed by the aforementioned assessee's are directed against the respective orders of the Commissioner of Wealth-tax (Appeals)-II, Raipur [for short 'CWT(A)'], which in turns arises from the respective orders passed by the A.O u/s.16(3) r.w.s. 17(1) of the Wealth-tax Act, 1957 (for short 'the Act') for the respective assessment years. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order.

2. We shall first take up the appeal filed by the assessee in WTA No.01/RPR/2019 for the assessment year 2008-09 wherein the impugned order has been assailed by the assessee on the following grounds of appeal:

> "1. That the notice issued under section 17 of the Wealth Tax Act for reopening the assessment is illegal and bad in law. Same should be quashed.
>
> 2. Without prejudice to the above ground the completion of assessment without disposing of objections raised against reopening of the assessment is bad in law. The entire assessment framed under section 16(3) read with Section 17 of the Wealth Tax Act should be annulled.
>
> 3. The learned Wealth Tax Officer is not justified in adding Rs.10,34,711/- for building at Gandhi Chowk in the net wealth. The building being commercial building is exempt from Wealth Tax.
>
> 4. The learned Wealth Tax Officer is not justified in making addition of Rs.30672569/- for the land at Santarabadi. The above land is stock-in-trade of the assessee not chargeable to Wealth tax.
>
> 5. The assessee craves permission to add, amend or raise a fresh ground of appeal at the time of hearing."

3. Observing that the wealth of the assessee chargeable to tax had escaped assessment the case of the assessee for the year under consideration i.e AY 2008-09 was reopened by the A.O under Section 17 of the Act. Notice u/s.17 of the Act dated 25.03.2015 was issued to the assessee calling upon him to file his wealth tax return for the year under consideration. In compliance, the assessee filed his wealth tax return for the assessment year 2008-09 on 02.06.2015 declaring a net wealth of Rs.2,00,835/-. After filing of his wealth tax return the assessee requested for a copy of the "reasons to believe" on the basis of which his case was

reopened by the AO under Sec. u/s.17 of the Act. Copy of the "reasons to believe" were made available by the A.O to the assessee and the same reads as under:

<u>Reasons for issuing of notice u/s 17(1) of the W.T. Act, 1957</u>

<u>Shri Madanlal Jain, A.Y. 2008-09 [PAN:ANEPJ6339C]</u>

1. On perusal of records of the assessee it was noticed that the assessee has shown Gold Jewellery of 3728.860 Gms. In the Balance Sheet for A.Y. 2012-13. The same is shown at Rs. 21.13 lakhs (approx. 5670/- per 10 gm.). The rate for A.Y. 2003-04 as on 31.03.2003 was Rs. 5310/-. Thus it is old gold. However, the rate as on 31.03.2008 for gold was Rs. 12125/- per 10 gms. The value of old gold therefore was Rs. 4523107/- as on 31.03.2008. The same is an asset taxable under the Wealth Tax Act.

2. The assessee has shown one flat at Rishabh City Prime valuing Rs. 868000/- and one house at Mahavir Colony valuing Rs. 173500/- in the Balance Sheet. As per WT Act , 1957, one (of assessee's choice) out of two houses is exempt. However, since the assessee has not filed any Wealth Tax Return till date, hence no benefit can be claimed. As such all the three are taxable under the Wealth Tax Act.

3. The assessee has shown the following lands in the Balance Sheet filed for AY 2012-13:

a) Land at Gandhi Chowk	Rs. 300120/-
b) Land at Chandkhuri	Rs. 7000/-
c) Land at Chandkhuri-2	Rs. 17755/-
d) Land at Santarabari, Durg	Rs. 1524127/-
e) Land at Santarabari, Durg	Rs. 130716/-

Also, no proof of exemption is filed regarding these lands. Thus the assessee has land taxable under the Wealth Tax Act, which has not been offered to tax. The market value of which will be much higher than that shown at cost, looking to the Collector's guidelines.

Looking to the above facts, there is undervaluation of atleast :-

As per para 1 :	Rs. 4523107/-
As per para 2 :	Rs. 1041500/-
As per para 3 :	<u>Rs. 1979718/-</u>
	Rs. 75,44,325/-

Therefore, I have reason to believe that the wealth of the assessee has escaped assessment u/s 17 of the W.T. Act, 1957 for the A.Y. 2008-09.

Gehalanaji
ITO 2(2), Bhil

Objecting to the very basis on which his case had been reopened, the assessee vide his letter dated 15.02.2016 filed objections with the A.O, Ward-2(2), copy of which has been placed at Page 7 of assessee's paper book (APB). However, the A.O without disposing off the objections that were raised by the assessee proceeded with the assessment and vide his order passed u/s.16(3) r.w.s. 17(1) dated 29.03.2016 determined the wealth of the assessee at Rs.4,12,20,521/- after making the following additions:

Sl. No.	Particulars	Amount
1.	Gold Jewellery	-
2.	Flat at Rishabh City Prime	-
3.	Land at Gandhi Chowk	1,03,47,117/-
4.	Lands at Santrabadi	3,06,72,569/-
5.	Total	4,10,19,686/-

4. Aggrieved, the assessee carried the matter in appeal before the Commissioner of Wealth-tax (Appeals) but without any success.

5. The assessee being aggrieved with the order of the Commissioner of Wealth-tax (Appeals) has carried the matter in appeal before us.

6. Shri G.N Purohit, Ld. Senior Advocate for the assessee appellant at the very outset of the hearing of appeal assailed the validity of the order that was passed by the A.O u/s.16(3) r.w.s.17(1) dated 29.03.2016, for the reason that the same was passed without disposing off the objections that

were filed by the assessee qua the validity of the reopening of his case u/s.17 of the Act. It was averred by the Ld. AR that as the A.O without disposing off the objections that were raised by the assessee before him could not have proceeded with the assessment proceedings, therefore, the order passed by him u/s.16(3) r.w.s.17(1) of the Act, dated 29.03.2016 suffered from a serious irregularity which goes to the very validity of the jurisdiction that was assumed by him for framing the impugned assessment. In support of his aforesaid contention the Ld. AR had relied on the judgment of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO & Ors. (2003) 259 ITR 19 (SC). Alternatively, the Ld. AR placed his contentions qua the merits of the case. It was claimed by the Ld. AR that as the property owned by the assessee at Gandhi chowk, Durg was a commercial property, therefore, the same would not fall within the definition of "asset" u/s.2(ea)(i)(5) of the Act. As regards the land situated at Santrabadi, Durg, it was submitted by the Ld. AR that the same was purchased by the assessee vide different registered sale deeds (Page 15-244 of APB). It was claimed by the Ld. AR that as the aforesaid pieces of land were purchased by the assessee with an intention of holding the same as stock-in-trade of a project which he had intended to venture into, therefore, the same could not be brought within the realm of the definition of "asset" as contemplated in Section 2(ea)(i)(2) of the Act.

7. Per contra, the Ld. Departmental Representative (for short 'DR') admitted that a perusal of the assessment record revealed that the objections filed by the assessee had not been disposed off by the A.O. It was, however, submitted by the Ld. DR that as the copy of the "reasons to believe" were made available to the assessee, therefore, no infirmity did emerge from the order of the A.O who had validly framed the assessment vide his order passed u/s.16(3) r.w.s. 17(1) of the Act, dated 29.03.2016.

8. We have heard the ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his aforesaid contentions.

9. Admittedly, it is a matter of fact that objections filed by the assessee qua the validity of the reasons on the basis of which his case was reopened had not been disposed off by the A.O before framing the impugned assessment vide his order passed u/s. 16(3) r.w.s. 17(1) dated 29.03.2016. As held by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra), an A.O is statutorily bound to dispose off by way of a speaking order the objections that are raised by an assessee qua the "reasons to believe" before further proceeding with and framing the assessment. For the sake of clarity the relevant observations of the Hon'ble Apex Court are culled out 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."

Considering the aforesaid position of law so laid down by the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. (supra), as the A.O in the present case had prior to framing of the impugned assessment not disposed off the objections of the assessee qua the "reasons to believe" on the basis of which the case was reopened under Sec. 17 of the Act, therefore, we restore the matter to his file with a direction to reframe the assessment after disposing off the objections that were so raised by the assessee in the original course of proceedings before him. As we have in terms of our aforesaid observations restored the matter to the file of the AO for fresh adjudication, therefore, we refrain from adverting to and therein adjudicating the other contentions advanced by the assessee qua the merits of the case which he would remain at a liberty to raise before the AO in the course of the set-aside proceedings.

10. In the result, appeal of the assessee in WTA No.01/RPR/2019 is allowed for statistical purposes.

WTA Nos. 02 to 06/RPR/2019, WTA Nos. 03 & 04/RPR/2020, WTA Nos. 07 & 08/RPR/2019 & WTA Nos. 05 to 08/RPR/2020

11. As the facts and issues involved in the captioned appeals remains the same as were there before us in ITA No.01/RPR/2019, therefore, the order therein passed shall apply mutatis-mutandis for disposing off the appeals of the assesee in WTA Nos. 02 to 06/RPR/2019, WTA Nos. 03 & 04/RPR/2020, WTA Nos. 07 & 08/RPR/2019 & WTA Nos. 05 to 08/RPR/2020. Accordingly, the respective assessments framed by the AO under Sec. 16(3) rws 17(1) of the Act are restored to his file, with a direction to reframe the assessment after disposing off the objections to the 'reasons to believe' that were in the course of the original assessment proceedings raised by the assessee before him. Resultantly, in these cases also the appeals filed by the respective assessee's are allowed for statistical purposes in terms of our aforesaid observations.

WTA No.02/RPR/2020
A.Y. 2013-14

12. Now, we shall take up the appeal filed by the assessee in ITA No.02/RPR/2020 for the assessment year 2013-14. Before us the assessee has assailed the impugned order on the following grounds of appeal:

> "1. That the notice issued u/s.17 of Wealth Tax Act, 1962 for reopening the assessment is illegal and bad in law. Same should be quashed.
>
> 2. Without prejudice to the above ground the completion of Assessment without providing reasons recorded for issue of notice u/s.17 of Wealth Tax Act, 1962 is bad in law. The entire assessment framed u/s.16(3) r.w.s.17 Wealth Tax Act, 1962 should be annulled.
>
> 3. The learned DCWT is not justified in adding Rs.463799/- for land at Chandkhuri and Dewada in the net wealth. The land being rural is exempt from Wealth tax.
>
> 4. The learned DCWT is not justified in adding Rs.453794 for building at Gandhi Chowk, Durg in the net wealth. The building being commercial building is exempt from wealth tax.
>
> 5. The learned DCWT is not justified in adding Rs.22751839/- for various lands and building in the net wealth. These lands and building are stock in trade of assessee not chargeable to wealth tax.
>
> 6. The assessee reserve right to add, amend or alter ground of appeal at the time of hearing."

13. At the very outset of the hearing of the appeal, it was submitted by the Ld. AR that in this case assessment was completed by the A.O without providing to the assessee a copy of the "reasons to believe" on the basis of which his case was reopened u/s.17 of the Act. It was submitted by the Ld. AR that though the assessee had duly complied with the notice u/s.17 of the Act and filed his return of wealth, but the AO despite specific request had not made available to him copy of the "reasons to believe" on the basis of which the case was reopened. It was submitted by the Ld. AR that as the failure on the part of the A.O to furnish the copy of "reasons to believe" to the assessee had divested the latter of his statutory right of objecting to the

very basis of reopening of his case u/s.17 of the Act, therefore, the impugned assessment framed by him was liable to be quashed on the said count itself. In support of his aforesaid contentions the Ld. AR had placed reliance on the judgments of the Hon'ble High Court of Bombay in the case of Agarwal Metals and Alloys Vs. ACIT & Ors. (2012) 346 ITR 64 (Bom.) and that of the Hon'ble High Court of Delhi in the case of Pr. CIT Vs. Jagat Talkies Distributors (2017) 85 taxmann.com 189 (Del.).

14. The Ld. DR on being confronted with the aforesaid claim of the assessee fairly admitted that the A.O despite request of the assessee had failed to make available a copy of the "reasons to believe" to him.

15. Controversy involved in the present appeal lies in a narrow compass, i.e., sustainability of the assessment framed by the A.O without making available a copy of the "reasons to believe" to the assessee who after filing his return of wealth in compliance to notice u/s 17 of the Act had specifically requested for the same. After having given a thoughtful consideration to the issue in hand, we are of the considered view that the failure on the part of the A.O to make available to the assessee a copy of the "reasons to believe" which formed the very basis for reopening of his case goes to the very root of the validity of jurisdiction that was assumed by him for framing the impugned assessment. We, say so, for the reason that as the assessee despite specific requests for a copy of the "reasons to believe" was not

provided with the same by the A.O, thus, remained divested of his statutory right of objecting to the very basis on which his case had been reopened under section 17 of the Act. As stated by the Ld. AR, and rightly so, as held by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra), the assessee after obtaining copy of the "reasons to believe" is vested with a statutory right to file his objections before the A.O, which the latter is required to dispose off on the basis of a speaking order. As in the case before us there has been a complete violation of the applicable principle of law by the A.O, who had despite specific request by the assessee failed to communicate the "reasons to believe" for reopening of his assessment u/s.17 of the Act, therefore, the very assumption of jurisdiction by him and framing of the impugned assessment cannot be sustained and is liable to be struck down on the said count itself.Our aforesaid view is supported by the judgment of the Hon'ble High Court of Bombay in the case of Agarwal Metals and Alloys Vs. ACIT & Ors. (supra). In its aforesaid order, the Hon'ble High Court had after taking cognizance of the fact that the A.O in the case before them had failed to communicate the "reasons to believe" on the basis of which the case of the assessee was reopened quashed the assessment by treating the same as having been passed in a brazen violation of the governing principles of law. The relevant observations of the Hon'ble High Court are culled out as under:

> "4. On these admitted facts, it is evident that there has been a complete violation of the applicable principles of law by the Assessing Officer. The Assessing Officer was required to communicate the reasons for reopening the assessment which he has failed to do. The Assessing Officer despite the judgment of the Supreme Court in GKN Driveshafts (India) Ltd., [2003] 259 ITR 19 (SC) has failed to provide an opportunity to the assessee to submit his objections to the reopening of the assessment. In the affidavit-in-reply, it has been submitted that the assessee was well aware of the reasons for the reopening of the assessment as the reasons were on the record for the assessment year 2007–08. This is clearly a specious explanation. According to counsel appearing on behalf of the Revenue, during the course of the assessment year 2007–08, it has been found that the petitioner has been engaged in under invoicing and it is on that basis that the assessment for the assessment year 2004–05 is sought to be reopened. Even if the submission of the learned counsel were to be correct, reasons have to be communicated to the petitioner. There has admittedly been no communication of reasons to the petitioner. In these circumstances, we are inclined to quash and set aside the impugned order of assessment which has been passed in a brazen violation of the governing principles of law. However, in order to obviate the bar of limitation, we intend to incorporate a protective stay in order to enable the Assessing Officer to proceed further in accordance with law."

Also, a similar view had been taken by the Hon'ble High Court of Delhi in the case of Jagat Talkies Distributors (supra). In its aforesaid order, the Hon'ble High Court relying on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Trend Electronics, ITA No.1867 of 2013, had held, that on account of the failure of the A.O to furnish reasons for reopening of the assessment u/s.148 of the Act to the assessee the re-assessment proceedings would stand vitiated in law. Accordingly, respectfully following the aforementioned judgments of the Hon'ble High Courts the assessment framed by the A.O being devoid and bereft of valid assumption of jurisdiction is herein quashed.

16. In the result, appeal of the assessee in WTA No.02/RPR/2020 is allowed in terms of our aforesaid observations.

17. In the combined result all the appeals of the assessee are allowed/allowed for statistical purpose in terms of our aforesaid observations.

Order pronounced in open court on 29th day of July, 2022.

Sd/-	Sd/-
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 29th July, 2022
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The concerned CWT (Appeals), Raipur (C.G)
4. The concerned Pr. CWT, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	25.07.2022	Sr.PS/PS
2	Draft placed before author	25.07.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		