IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH; MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No. 8128/Mum/2025
(Assessment Year: 2010-11)

Income Tax Officer-41(1)(3), Mumbai Room No. 830b, KautilyaBhwan, Mumbai., Mumbai, Maharashtra, 400051.	vs.	**Manoj Hirachand Motta** A/41 Shriram Apartments, Mulund Mumbai, Mumbai, Maharashtra, 400080. **PAN: AAAPM9306P**
(Appellant)		(Respondent)

For Assessee :	Shri Mehul Shah
For Revenue :	Shri Prasma Prakash Tewari Sr.DR.

Date of Hearing :	01.07.2026
Date of Pronouncement :	13.07.2026

O R D E R

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['Ld.CIT(A)'], dated 22.09.2025, pertaining to Assessment Year (AY) 2010-11, wherein the Revenue has taken the following grounds of appeal:

"1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is right in quashing the reopening proceedings whereas the reopening proceedings may be set aside for fresh adjudication to the AO's file on merit?"

2. "Whether on the facts and circumstances of the case and in law and in view of the decision of Hon'ble High Court of Madras in the case of Home Finders Housing Ltd. (93 taxmann.com 371 Madras), the Ld. CIT(A) has erred in quashing assessment.

3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in appreciating the fact that the Hon'ble High Court of Gujarat in the case of Banaskantha District Oil seeds Growers Co-op Union Ltd. Vs. ACIT in special civil application no. 7813 of 2015 wherein the Hon'ble Court has set aside the reassessment order to the AO's file which was passed before disposing off the objection raised by the assessee?"

4. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee had never submitted proof of purchase such as photocopies of the share certificates, share certificate purchase quantity lots, share transfer forms and evidence regarding purchase of share from Chetan Dogra in 2007.

5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee fails to submit the supporting documents/evidences during assessment proceedings to claim exempt income u/s 10(38) of the Act and Ld CIT (A) erred in appreciating the facts that share of the company purchased is established as shell company/ paper company.

6. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the facts that the assessee had purchased the shares offline in 2007 and dematerialized the same and reflected in Demat account from 03/08/2009 to 16/11/2009 just before the sale of share which itself proved that the transaction is accommodation transaction."

2. Briefly, the facts of the case are that the assessee did not file the return of income originally u/s. 139(1) of the Act. Subsequently, basis information that the assessee has executed certain bulk deal in the shares of "Channel Guide India Limited" which was recorded as suspicious by FIU Unit, New Delhi, the Assessing Officer recorded his reasons stating that inspite of investing substantial amount in shares, the assessee has not filed the return of income and he has reason to believe that income to the extent of Rs. 3,05,24,248/- has escaped assessment within the meaning of Section 147 of the Act and notice u/s. 148 was issued and served on the assessee on 30.03.2017. In response, the assessee submitted that the earlier return filed manually on 28.09.2010, declaring income of Rs. 1,57,870/- be treated as return filed in response to notice u/s. 148 of the Act and the reasons for reopening the matter was sought. Thereafter, the notices u/s. 143(2) and 142(1) were issued, calling for necessary information and documentation. The submissions so filed by the assessee were considered but not found acceptable to the Assessing Officer. As per the Assessing Officer, the assessee could not produce sufficient and detailed explanation and documentary evidence in support of claim of exemption of Long Term Capital Gain ('LTCG') u/s. 10(38) on sale of shares of Channel Guide India Limited and in particular, the assessee could not substantiate the purchase of shares on 09.01.2007 and accordingly, the LTCG claimed as exempt were treated as assessee's undisclosed and unexplained income u/s. 69 of the Act and against the returned income of Rs. 1,57,870/-, the assessed income was determined at Rs. 2,70,69,564/-, vide order passed u/s. 143(3) r.w.s. 147 of the Act, dated 27.12.2017.

3. The assessee thereafter carried the matter in appeal before the ld. CIT(A) and as part of his grounds of appeal, the assessee also raised a ground of appeal stating that the Assessing Officer has erred in not furnishing reasons for reopening despite repetitive request making the entire reassessment process invalid and void.

4. In this regard, during the course of appellate proceedings, it was submitted that it is a settled legal position that where the notice was issued u/s. 148 of the Act and the assessee has filed his return of income pursuant to the said notice, it is the right of the assessee to seek copy of the reasons which are recorded by the Assessing Officer for reopening of the case. It was submitted that inspite of repeated reminder request by the assessee and in particular, reference was drawn to the assessee's letter dated 03.04.2017 and 01.09.2017, it was submitted that the Assessing Officer has not supplied the reasons to the assessee or to his authorised representative. Support was drawn from the decision of Hon'ble Supreme Court in case of *GKN Driveshafts*

(India) Ltd. v. ITO, (2003) 259 ITR 19 (SC), and the decision of Bombay High Court in case of *Commissioner of Income-tax, (Large Tax Payer Unit), Mumbai vs. IDBI Ltd. [2016] 76 taxmann.com 227 (Bombay)[19-09-2016]*, and it was submitted that in absence of the reasons not supplied to the assessee inspite of the specific request being made by the assessee, the assessment order so passed by the Assessing Officer be set aside.

5. The ld. CIT(A) recorded his findings stating that the on perusal of record, it is seen that the reassessment has been initiated by issuance of notice u/s. 148 of the Act and immediately upon receipt of the notice, the return of income was filed by the assessee and the assessee has sought a copy of the reasons recorded for reopening and for an opportunity to raise the necessary objections. The ld. CIT(A) further notes that the assessment order itself records the receipt of letters from the authorised representative soon after the notice and yet the assessment order is silent on communication of the recorded reasons and on disposal of the objections by a separate speaking order. The ld. CIT(A) further notes that the assessment records produced before him does not contain any office-note or acknowledgement evidencing supply of the recorded reasons, nor any separate speaking order disposing off objections prior to completion of assessment. The ld. CIT(A) thereafter, referred to the decision of Supreme Court in case of *GKN Driveshafts (India) Ltd (supra)* wherein, it was held that once a notice under section 148 is issued and the assessee has filed a return of income, the Assessing Officer is bound to furnish the recorded reasons within a reasonable time and upon receipt of objections from the assessee, is further bound to dispose off those objections by a separate, reasoned order before proceeding with the reassessment. It was held that this procedure is not an empty formality; it is a jurisdictional safeguard that conditions the very authority to continue with reassessment. The ld.

CIT(A) further held that the said mandate has been consistently applied by the Hon'ble Bombay High Court in various decisions and reference was drawn to the decision of *CIT v. Trend Electronics, (2015) 379 ITR 456 (Bom)*, wherein the Hon'ble Bombay High Court has held that the power to reopen a completed assessment under the Act is an exceptional power and whenever Revenue seeks to exercise such power, they must strictly comply with the prerequisite conditions, i.e., recording of reasons to indicate that the Assessing Officer had reason to believe that income chargeable to tax has escaped assessment and this recorded reasons must be furnished to the assessee when sought for so as to enable the assessee to object to the same before the Assessing Officer and in absence of reasons being furnished, when sought for would make the order passed on reassessment bad in law. It was held that the recording of reasons and furnishing of the same has to be strictly complied with as the same is a jurisdictional issue. Further, the ld. CIT(A) relied on the decision of the Hon'ble Bombay High Court in case of *Commissioner of Income-tax, (Large Tax Payer Unit), Mumbai vs. IDBI Ltd. (supra),* wherein, it followed its earlier decisions in case of *Seista Steel Construction (P.) Ltd. v. K.K. Shikare [1985] 154 ITR 547* and *CIT v. Videsh Sanchar Nigam Ltd.[2012] 340 ITR 66/21 taxmann.com 53 (Bom.),* and the assessments were quashed for breach of the protocol so laid down by the Hon'ble Supreme Court in case of *GKN Driveshafts (India) Ltd. (supra),* in terms of non-supply of reasons recorded and it was held that where the reasons so recorded have not been supplied to the assessee inspite of the specific request, the same would make the order of assessment as bad in law, being without the jurisdiction. The ld. CIT(A) accordingly, held that in the instant case, the defect alleged is two-fold firstly, the recorded reasons were not furnished to the assessee despite request and secondly, the objection filed by the assessee were not adjudicated by a separate speaking order prior to the completion of the assessment proceedings and accordingly, the assumption of jurisdiction by the Assessing Officer u/s. 147 cannot be held to be valid. It was finally held by the ld CIT(A) that on perusal of the facts of the case, it is seen that the Assessing Officer has relied upon generic information from investigation wing of the FIU to initiate reopening but does not demonstrate compliance with the mandatory procedure thereafter. It was held by the ld. CIT(A) that the assessment order does not even state that the reasons were supplied much less than the objections were disposed off by a speaking order and in this circumstances, the assumption of jurisdiction u/s. 147 fails and accordingly, the reassessment order was quashed and the ground of appeal so taken by the assessee was allowed. Further, on merits, the addition of Rs. 2,69,11,694/- were also held not sustainable u/s. 69 of the Act and same were also set aside. Against the said order and the findings of the ld. CIT(A), the Revenue is in appeal before us.

6. During the course of hearing, the ld. DR has submitted that the ld. CIT(A) has erred in setting aside the reassessment proceedings for want of the non-supply of reasons to the assessee. It was submitted that the ld. CIT(A) ought to have set aside the matter to the file of the Assessing Officer, whereby, the reasons so sought could have been supplied to the assessee and thereafter, the assessee could have got the necessary opportunity to file its objections. Further, reliance was placed on the decision of Hon'ble Madras High Court in case of *Home Finders Housing Ltd. (93 taxmann.com 371 Madras)* wherein the Hon'ble High Court held that non-compliance of procedure indicated by Supreme Court would not make order void or non est and such a violation was a procedural irregularity which could be cured by remitting matter to authority. It was submitted that the SLP filed by the assessee in this case has subsequently dismissed by the Hon'ble Supreme Court.

7. In his submissions, the ld. AR submitted that in case of *Home Finders Housing Ltd. (supra)*, the issue under consideration before the

Hon'ble Madras High Court was in relation to non-disposal of objection by the Assessing Officer prior to the conclusion of the assessment, wherein the Hon'ble Madras High Court has issued directions to set aside the matter to the file of the Assessing Officer. It was submitted that the SLP filed by the assessee was dismissed by the Hon'ble Supreme Court without a speaking order and hence, cannot be considered as affirmation by the Hon'ble Supreme Court. It was submitted that the assessee wishes to place reliance on the decision of Hon'ble Bombay High Court in case of *KSS Petron Private Limited v ACIT, in ITA No. 224 of 2014, dated 03.10.2016*, wherein the Hon'ble Bombay High Court has held that once the assessment order is held to be without jurisdiction as the law laid down by the Hon'ble Apex Court in case of *GKN Driveshafts (India) Ltd. (supra)* has not been followed, then there is no reason to restore the issue to the file of Assessing Officer to pass a fresh order and where the same is permitted, it will give a license to the Assessing Officer to pass orders on reopening without jurisdiction and which would lead to unnecessary harassment by reviving stale/old matters and it was accordingly held that where the reassessment proceedings are found to be without jurisdiction due to non-compliance with the mandatory procedure laid down in *GKN Driveshafts (India) Ltd. (supra)*, the appropriate course is to quash the reassessment proceedings rather than remand the matter to the Assessing Officer for fresh adjudication. It was submitted that the ratio laid down in the said decision squarely applies in the instant case and support the findings and the conclusions so raised by the ld. CIT(A).

8. It was submitted that in any case, the case of the assessee is that the Assessing Officer did not furnish the reasons for reopening despite making specific request and not that of non-disposal of objections by the Assessing Officer and therefore, the case of *Home Finders Housing Ltd. (supra)* relied upon by the ld. DR is distinguishable on facts of the case. Further, reliance was placed on the decision of Hon'ble Bombay High Court in case of *Commissioner of Income-tax, (Large Tax Payer Unit), Mumbai vs. IDBI Ltd.(supra)* which has been followed by the ld. CIT(A), wherein the Hon'ble Bombay High Court has held that non-supply of reasons in support of the reopening notice would make the order as bad in law. It was accordingly submitted that given that the Jurisdictional Bombay High Court has clearly laid down the law on non-furnishing of the reasons and which has been followed by the ld. CIT(A), the order so passed by the ld. CIT(A) be affirmed and the grounds of appeal so raised by the Revenue be dismissed.

9. We have heard the rival contentions and pursued the material available on record. Admittedly, pursuant to issuance and service/receipt of notice u/s 148 of the Act dated 30/03/2017, the assessee submitted that the return filed manually on 28.09.2010 be treated as return filed in response to notice u/s. 148 of the Act and has sought reasons for reopening the assessment proceedings from the Assessing officer. The Assessing officer, without supplying the reasons so recorded, issued notices u/s. 143(2) and 142(1) calling for necessary information and documentation and thereafter, the assessment proceedings were completed u/s. 143(3) r.w.s. 147 of the Act vide order dated 27.12.2017.

10. The ld. CIT(A) has returned a similar finding stating that the assessment order itself records the receipt of letters from the authorised representative soon after the notice and yet the assessment order is silent on communication of the recorded reasons and on disposal of the objections by a separate speaking order. The ld. CIT(A) further notes that the assessment records produced before him does not contain any office-note or acknowledgement evidencing supply of the recorded reasons, nor any separate speaking order disposing off objections prior to completion of assessment.

11. We therefore have a situation where pursuant to reasons so recorded and issuance of notice u/s 148, the assessee has filed his return of income and has also sought reasons for reopening of assessment proceedings. The reasons so sought were never supplied to the assessee during the course of assessment proceedings and the assessment proceedings were thereafter completed within supplying the reasons so recorded.

12. In the aforesaid undisputed factual matrix, the question that arises for consideration is whether non-supply of the reasons for reopening so recorded by the Assessing officer is a jurisdictional defect and where the same is determined, whether the same should result in quashing of the reassessment proceedings, or in the nature of procedural defect and the matter may be remanded to the file of the Assessing officer to provide the reasons so recorded and dispose off the objections where so raised by the assessee and thereafter, pass a fresh reassessment order.

13. In this regard, we refer to the decision in case of IDBI Bank Ltd *(supra),* wherein the question for consideration before the Hon'ble Bombay High Court was whether the Tribunal was right in quashing the reassessment proceedings even though the assessee was aware of the reasons of reopening and also participated in the assessment proceedings. The Hon'ble Bombay High Court upheld the order of the Tribunal wherein the Tribunal had held that non-supply of reasons in support of the reopening notice would make the order passed thereon as bad in law and held that the question so raised doesn't give rise to any substantial question of law and appeal of the Revenue was dismissed. The Hon'ble Bombay High Court held that mere inference that reasons for reopening was known to the assessee given that the assessee was aware of the fact that search was initiated is not sufficient. The Hon'ble High Court held that actual supply of reasons in support of notice for reopening of an assessment is a jurisdictional requirement, it forms the basis to examine whether the Assessing officer had at all applied his mind to the facts and had reasons to believe that income has escaped assessment, that it is these reasons which have to be made available to the assessee as it could give rise to challenge to the reopening notice and in the given facts, it was held that it is undisputed that the reasons so recorded for issuing reopening of the assessment were never communicated to the assessee and thus, the grievance of the Revenue was held not sustainable. Referring to the alternate contention of the Revenue that the decision of the Hon'ble Supreme Court in case of GKN Driveshafts came subsequently in year 2003 whereas the impugned notice was issued earlier in 1996, the Hon'ble High Court referred to its earlier decisions in case of Siesta Steel Constructions and Videsh Sanchal Nigam Ltd and held that in absence of supply of the reasons recorded for issue of reopening notice, the assessment order would be without jurisdiction and needs to be quashed and the order of the Tribunal quashing the reassessment proceedings was accordingly upheld.

14. In its subsequent decision in case of KSS Petron Private Limited *(supra)*, a more specific question came up for consideration before the Hon'ble Bombay High court as to whether the Tribunal was justified in restoring the issue to the Assessing officer after having quashed/set-aside the order passed by the Assessing officer without having disposed off the objections filed by the assessee to the reasons recorded in support of the re-opening notice u/s 148 of the Act. The Hon'ble Bombay High Court in the said case has held that once the assessment order is held by the Tribunal to be without jurisdiction as the law laid down by the Hon'ble Apex Court in case of *GKN Driveshafts (India) Ltd.*

(supra) has not been followed, then there is no reason to restore the issue to the file of Assessing Officer to pass a further/fresh order and where the same is permitted, it will give a license to the Assessing Officer to pass orders on reopening without jurisdiction (without compliance of the law in accordance with the procedure) and which would lead to unnecessary harassment by reviving stale/old matters and it was accordingly held that where the reassessment proceedings are found to be without jurisdiction due to non-compliance with the mandatory procedure laid down in *GKN Driveshafts (India) Ltd. (supra)*, the appropriate course is to quash the reassessment proceedings rather than remand the matter to the Assessing Officer for fresh adjudication after following due procedure.

15. Though the question before the Hon'ble High Court in the aforesaid case was in context of non-disposal of the objections and not in respect of non-supply of the reasons for reopening as in the instant case, however, both being the jurisdictional requirements, the findings therein are equally relevant in the instant case and in absence of reasons being supplied to the assessee, only course of action left is to quash the reassessment proceedings instead of remand the matter to the file of the Assessing officer.

16. Reliance placed by the ld DR upon the decision of the Hon'ble Madras High Court in case of Home Finders Housing Ltd. *(supra)* does not advance its case, as in the instant case, as we are guided by the decisions of the Hon'ble jurisdictional Bombay High Court in case of IDBI Bank *(supra)* and KSS Petron Pvt. Ltd. *(supra)*, which are binding upon us.

17. In light of the aforesaid discussion and respectfully following the decisions of the Hon'ble Bombay High court referred supra, where the reasons so sought by the assessee are not supplied by the Assessing officer, being a jurisdictional defect, the only course of action left is to quash the reassessment proceedings rather than remanding the matter to the file of the Assessing officer.

18. We accordingly upheld the order of the ld CIT(A) where he has held that the assumption of jurisdiction under section 147 fails on account of non-supply of the reasons so sought by the assessee and the consequent reassessment proceedings were quashed. The grounds of appeal so taken by the Revenue are thus dismissed.

19. In view of the above and in absence of any other contentions raised during the course of hearing, we do not deem it necessary to adjudicate upon any other grounds and the merits of the additions made in the reassessment order and deleted by the ld CIT(A) as the same are rendered academic and thus, dismissed as infructuous.

20. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court 13.07.2026.

Sd/- **SIDDHARTHA NAUTIYAL** **(JUDICIAL MEMBER)**	**Sd/-** **VIKRAM SINGH YADAV** **(ACCOUNTANT MEMBER)**

Mumbai, Dated: 13.07.2026
Karishma J. Pawar, SR. PS

Copy to :

1) The Appellant
2) The Respondent
3) The CIT concerned
4) The D.R, ITAT, Mumbai
5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai