

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

INCOME TAX APPEAL NO. 284 OF 2022

BETWEEN:

SRI VENKATARAMANAPPA
AGED ABOUT 80 YEARS
KANMINIKE VILLAGE
Kengeri Hobli
BANGALORE SOUTH TALUK
BANGALORE -560039
PAN: BBAPV2308C

...APPELLANT

(BY SRI. A SHANKAR, SR. COUNSEL A/W
SRI CHANDRASEKHAR V., ADV.)

AND:

THE INCOME TAX OFFICER
WARD -3(2)(3)
BMTc BUIDLING
KORAMANGALA
BANGALORE - 560095.

...RESPONDENT

(BY SRI. E I SANMATHI, SR. STANDING COUNSEL A/W
SRI NIRMAL MATHEW, STANDING COUNSEL)

THIS INCOME TAX APPEAL UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 17/09/2021 PASSED IN ITA NO.304/BANG/2018, FOR THE ASSESSMENT YEAR 2009-2010, PRAYING I) TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT; II) TO HOLD THE TRIBUNAL ORDER TO THAT EXTENT HELD

AGAINST THE APPELLANT AS BAD IN LAW, IN THE COMMON ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BENGALURU 'A' BENCH IN ITA NO. 304/BANG/2018, DATED 17/09/2021 FOR THE ASSESSMENT YEARS 2009-2010 ANNEXURE-A AND CONSEQUENTLY SET ASIDE THE OBSERVATION OF THE TRIBUNAL AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDER ON **18.06.2026** COMING ON THIS DAY, **S.G.PANDIT J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
AND
HON'BLE MR. JUSTICE RAJESH RAI K

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE S.G.PANDIT)

This Income Tax Appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') is filed by the assessee, Sri. Venkataramanappa, challenging the order of the Income Tax Appellate Tribunal "C" Bench, Bangalore (hereinafter referred to as 'the Tribunal') dated 17.09.2021, by which the Tribunal partly allowed the appeal filed by the assessee and remanded the matter back to the assessing officer (hereinafter referred to as 'AO') with a direction to pass a separate order disposing the objections filed by the assessee against reopening of the assessment for the assessment year(hereinafter referred to as 'AY') 2009-10.

2. The brief facts of the case are as under:

The case of the assessee was sought to be reopened under Section 147 of the Act for the AY 2009-10. Thus, a notice under Section 148 of the Act was issued to the assessee on 29.03.2016. In response to the same, the assessee filed detailed objections against reasons stated for reopening of the assessment for the AY 2009-10 on 24.10.2016. Admittedly, without disposing the objections filed to the reopening of the assessment for the AY 2009-10, the AO passed the reassessment order under section 143(3) of the Act read with section 147 of the Act on 30.12.2016. Aggrieved by the same, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) (hereinafter referred to as 'CIT(A)'), which was dismissed vide order dated 01.12.2017.

3. Challenging the order of the CIT(A), the assessee filed an appeal before the Tribunal. The Tribunal, vide impugned order dated 17.09.2021 has partly allowed the appeal filed by the assessee. The Tribunal has set aside the reassessment order dated 30.12.2016 and

remanded the matter back to the AO with a direction to dispose of the objections filed by the assessee against reopening of the proceedings and in case, objections are rejected, to pass the assessment order. Aggrieved by the aforesaid direction, the assessee is in appeal before this Court under Section 260A of the Act.

4. The appeal was admitted on 26.07.2022 to examine the following questions of law: -

- i. Whether the Tribunal was justified in holding that the non-disposing of the objections to reopening of assessment by a separate speaking order would not render the order a nullity and the said finding is contrary to the decision of this Hon'ble Court and thus has passed a perverse order, on the facts and circumstances of the case.*
- ii. Whether the Tribunal was justified in not following the decision of the co-ordinate Bench of the Bangalore Tribunal in the case of the co-owner and thus has passed a perverse order on the facts and circumstances of the case.*
- iii. Whether the Tribunal was justified in law in not adjudicating the grounds on the other legal issues as well as the grounds on the merits of*

the matter which are reproduced in para No.21 of this appeal memo on the facts and circumstances of the case.

5. Heard learned senior counsel Sri. A Shankar for Sri. Chandrashekhar V, learned counsel for the assessee and Sri. E I Sanmathi along with Sri. Nirmal Mathew, learned standing counsel for the Revenue.

6. Learned senior counsel for the assessee, Sri. A Shankar has submitted that the Tribunal has erred in remanding the proceedings to the file of the AO. The learned senior counsel has submitted that the Hon'ble Apex Court in **GKN DRIVESHAFTS (INDIA) LTD. V. ITO, (2003) 1 SCC 72** has laid down the law that, if and when, any objections are filed by the assessee against the reasons stated to reopen the proceedings, the AO is duty bound to dispose of the objections, prior to passing the assessment order. In the case on hand, it is submitted that, admittedly, the AO has not disposed of the objections filed by the assessee and has proceeded to pass the reassessment order. Thus, it is submitted that the non-disposal of the objections filed by the assessee renders the

assessment order passed by the AO a nullity. Further, by placing reliance on decisions of the Coordinate bench of this Court in ***M/S. DEEPAK EXTRUSIONS PVT. LTD V DCIT (2017 SCC ONLINE KAR 1566); DEPUTY COMMISSIONER OF INCOME-TAX v/s HEWLETT PACKWARD FINANCIAL SERVICES (INDIA) (P.) LTD. ((2026) 183 taxmann.com 596 (Karnataka)*** and an unreported judgment passed in ***W.A.No.919/2019*** disposed of on ***24.01.2023 (THE ASST. COMMISSIONER OF INCOME TAX AND OTHERS v/s. M/S. MPHASIS LTD., BAGAMANE WORLD TECHNOLOGY CENTER,)*** it is submitted that, although the Tribunal was right in setting aside the reassessment order, the Tribunal erred in remanding the matter back to the AO. Further, with regard to substantial question of law No.2, it is submitted by the learned senior counsel that the Tribunal has set aside the entire proceedings insofar as the co-owner of the property is concerned vide Order dated 28.07.2021 in ***ITA No.382/Bang/2018 (SHRI. LAKHMANA vs ITO)***. Whereas, insofar as the assessee is

concerned, the issue is remanded back to the AO. In that regard, it is submitted that the Tribunal ought to have maintained consistency and thus, the findings of the Tribunal are perverse. Thus, it is submitted that the appeal filed by the assessee be allowed and the substantial questions of law be answered in favour of the assessee.

7. *Per contra*, learned senior standing counsel for the revenue, Sri. E I Sanmathi would support the order passed by the Tribunal and submit that the Tribunal has rightfully remanded the matter back to the AO with a direction to pass a separate order disposing the objections filed by the assessee against reopening of the assessment. It is submitted by the learned counsel for the revenue, by placing reliance on the decision of a Coordinate bench of this Court in ***M/S SWADESH TRADING CO. VS DCIT (Writ Appeal No. 828 of 2019 (T-IT))*** that the Tribunal has rightly remanded the matter back to the AO and that mere non-disposal of the objections to the reasons for reopening of the assessment for the AY 2009-10 would not

render the entire proceedings a nullity. Thus, it is prayed that the appeal filed by the assessee be dismissed.

8. Having heard the learned counsel for the parties and having perused the appeal papers as well as the materials on record, we are not inclined to interfere with the order passed by the Tribunal for the reasons recorded hereunder:

It is not in dispute that a notice under Section 148 of the Act was issued to the assessee on 29.03.2016 for the AY 2009-10. In response to the same, the assessee filed the return of income and sought for reasons recorded for reopening of the proceedings, which was given to the assessee. The assessee filed detailed objections to the reasons recorded for reopening the proceedings on 24.10.2016. Admittedly, without disposing of the objections filed by the assessee, the AO has passed the reassessment order on 30.12.2016. The Hon'ble Apex Court in **GKN DRIVESHAFTS** (supra) has held that the AO is duty bound to dispose of the objections filed by the assessee, prior to passing the assessment order. The

relevant extract of the judgment in **GKN DRIVESHAFTS** (supra) is produced hereunder:

*"5. 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.**"*

(emphasis supplied)

9. Thus, it is not in dispute that the reassessment order dated 30.12.2016 has to be set aside for the reason that the AO has not disposed the objections filed by the assessee. The issue in this *lis* pertains to whether the

entire proceedings ought to set aside or the matter ought to be remanded back to the AO to dispose the objections filed by the assessee and if the objections are rejected, the AO be permitted to pass the assessment order afresh.

10. During the course of hearing, 4 decisions by the Coordinate benches of this Court were brought to the notice of this Court. Firstly, in **M/S. DEEPAK EXTRUSIONS PVT. LTD** (supra), vide judgment dated 15.03.2017, a Coordinate Bench of this Court, in an identical fact situation, set aside the assessment order passed by the AO by placing reliance on **GKN DRIVESHAFTS** (supra) and observed that the AO shall be at liberty to proceed with the matter in accordance with law. Secondly, in **M/S SWADESH TRADING CO.** (supra), the Coordinate bench of this Court, vide judgment dated 03.09.2019, set aside the assessment order by taking note of **M/S. DEEPAK EXTRUSIONS PVT. LTD** (supra) and **GKN DRIVESHAFTS** (supra) and proceeded to direct the AO to decide the objections raised by the assessee therein before undertaking the assessment. Thirdly, vide

judgment dated 24.01.2023, a Coordinate bench of this Court in **ACIT VS M/S MPHASIS LTD. (Writ Appeal No. 919/2019 (T-IT))**, although took note of the decisions in **M/S. DEEPAK EXTRUSIONS PVT. LTD** (supra) and **GKN DRIVESHAFTS** (supra), refused to interfere with the impugned order of learned single judge therein, holding that disposing of objections by the assessee is a mandatory procedure. Lastly, by judgment dated 12.02.2025 in **DCIT VS HEWLETT PACKARD FINANCIAL SERVICES (INDIA)(P.)(LTD) (Writ Appeal No. 989/2023 (T-IT))**, a Coordinate bench of this Court took note of the decisions in **M/S. DEEPAK EXTRUSIONS PVT. LTD** (supra) and **GKN DRIVESHAFTS** (supra) and proceeded to void the entire reassessment proceedings.

11. A reading of the afore-stated judgments would indicate that the common issue in all four judgments was whether the reassessment order could survive despite non-compliance with the procedure prescribed in **GKN DRIVESHAFTS** (supra). The Coordinate benches have

uniformly held that the non-disposal of the objections would vitiate the reassessment order. However, none of those judgments framed, considered or answered the legal question whether, after setting aside the reassessment order, the proper course is to restore the proceedings to the stage of consideration of objections or to quash the reassessment proceedings in its entirety. The consequential relief granted in those cases, whether remand or quashing, was not preceded by any discussion of the principles governing that choice, nor was the issue argued or analysed. Therefore, those directions cannot be treated as laying down a binding ratio on the question now before this Court. It is settled by a long line of decisions of the Hon'ble Apex Court that a decision is only an authority for what it actually decides and not for what logically follows from it. A reference may be made to the decision of the Hon'ble Apex Court in **M.P. GOPALAKRISHNAN NAIR V. STATE OF KERALA** reported in **(2005) 11 SCC 45** in that regard. Consequently, the mere fact that different Benches granted different consequential reliefs

does not, by itself, give rise to a conflict in precedent warranting reference to a larger Bench.

12. The same principle will be aptly applicable to the contentions of the assessee with regard to the second substantial question of law as well. The contention of the assessee that the Tribunal ought to have followed its earlier order dated **28.07.2021** passed in **ITA No.382/Bang/2018 (SHRI LAKSHMANA V. ITO)**, pertaining to the co-owner, does not merit acceptance. A perusal of the said order indicates that although the Tribunal had set aside the reassessment proceedings, it had not independently examined or adjudicated the legal issue as to the proper course to be adopted after setting aside the reassessment order on account of non-compliance with the procedure prescribed in **GKN DRIVESHAFTS** (supra). The question whether the matter ought to be remanded to the AO for disposal of the objections or whether the reassessment proceedings themselves were liable to be quashed was neither framed nor consciously considered by the Tribunal in its earlier

Order dated 28.07.2021. Thus, it cannot be stated that the Tribunal's findings in the impugned Order are perverse for not following its previous Order in the case of the co-owner, i.e. **SHRI LAKSHMANA V. ITO**.

13. Adverting to the issue at hand, the notice issued under Section 148 of the Act is the statutory foundation for the assumption of jurisdiction to reopen the assessment. The requirement of furnishing reasons, inviting objections from the assessee and deciding such objections by a speaking order before proceeding further, as mandated in **GKN DRIVESHAFTS** (supra), is undoubtedly a mandatory procedure intended to ensure fairness and to afford the assessee an effective opportunity to question the reopening. Nevertheless, the failure to comply with that safeguard does not, in the opinion of this Court, obliterate the jurisdiction validly assumed upon issuance of the notice under Section 148 of the Act. The defect lies in the continuation of the reassessment proceedings without complying with a

mandatory procedure and not in the initial assumption of jurisdiction itself.

14. If the contention urged on behalf of the assessee is accepted, every failure on the part of the Assessing Officer to dispose of the objections before completing the reassessment would inevitably result in the entire reassessment proceedings being rendered void, notwithstanding that the proceedings had been validly initiated under Section 148 of the Act. Such a consequence neither follows from the decision in **GKN DRIVESHAFTS** (supra) nor is it consistent with the purpose behind requiring the AO to decide the objections. The object of the procedure prescribed in **GKN DRIVESHAFTS** (supra) is to ensure that the AO considers the assessee's challenge to the reopening before proceeding further. That object would stand fully achieved by restoring the proceedings to the stage immediately after the filing of objections and requiring the AO to first pass a speaking order thereon before proceeding further in accordance with law.

15. In the facts of the present case, therefore, the order of reassessment cannot be sustained. However, this Court is not persuaded to accept the contention that the reassessment proceedings themselves are liable to be quashed. Thus, we are of the opinion that the Tribunal was justified in setting aside the assessment order and remitting the matter back to the AO to dispose of the objections filed by the assessee.

16. For the reasons recorded above, the Substantial Question of Law No.1 and 2 are answered against the assessee and in favour of the Revenue. In light of our findings above, Substantial Question of Law No.3 does not arise for consideration. Thus, the Income Tax Appeal stands dismissed.

**Sd/-
(S.G.PANDIT)
JUDGE**

**Sd/-
(RAJESH RAI K)
JUDGE**

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