

## S. 147 Reassessment without disposal of preliminary objections not sustainable

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### **Reassessment order u/s 147 without first disposing of the preliminary objections raised by the assessee can not be sustained and is this liable to be quashed**

Supreme Court in **GKN Driveshafts (India) Ltd. vs. ITO & Ors. (2003) 259 ITR 19** had devised the process to be followed while carrying out assessment u/s 147. It clarified that when a notice u/s 148 is issued, the assessee upon submission of return of income can claim reasons for issue of notice u/s 148, which the assessing officer is bound to submit within a reasonable period. Upon receipt of the reasons, assessee has the right to file his objections to the issuance of notice u/s 147. The assessing officer is bound to dispose off such objections by way of a speaking order.

However, it has sometimes been observed that assessing officers, without first disposing off assessee's objection by way of a separate speaking order, have proceeded with assessment proceedings.

The question under consideration is "What is the legal standing of the assessment proceedings which have been completed in violation of the procedure set by Supreme Court in aforementioned case?" Or to be more specific, "whether assessing officer can proceed with assessment proceedings without first disposing of the preliminary objections raised by the assessee?"

Gujarat High Court while addressing this issue in the case of **MGM EXPORTS vs. DEPUTY COMMISSIONER OF INCOME TAX 2010) 323 ITR 331** held that the Court has come to the conclusion that the position in law is well settled and the AO is accordingly required to decide the preliminary objections and pass a speaking order disposing of the objections raised by the petitioner. That until such a speaking order is passed, the AO cannot undertake reassessment.

2. Applying the aforesaid settled legal position to the facts of the case it is apparent that the action of the respondent authority in framing thereassessment order, without first disposing of the preliminary objections raised by the petitioner, cannot be sustained.

3. Accordingly, the reassessment order dt. 16th Dec., 2008 is hereby quashed and set aside and the respondent authority shall dispose of the preliminary objections by passing a speaking order and only thereafter proceed with the reassessment proceedings in accordance with law.

