

**आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई**

IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' (SMC) BENCH : CHENNAI

**श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष ।**

[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 1388/Mds/2016

निर्धारण वर्ष /Assessment year : 2005-2006.

Dr. K. Sridhara,  
Flat No.1, Bharani Lokesh Shrisha,  
Z- Block, New No.24,  
11<sup>th</sup> Street, Anna Nagar,  
Chennai 600 040.

**Vs.** The Assistant Commissioner of  
Income Tax,  
Salary Circle VI,  
Chennai.

[PAN AABPS 1905R]

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. T. Banusekar, C.A.

प्रत्यर्थी की ओर से /Respondent by : Shri. M. Murali Mohan, JCIT

सुनवाई की तारीख/Date of Hearing : 27-04-2017

घोषणा की तारीख /Date of Pronouncement : 03-05-2017

**आदेश / ORDER**

Assessee in this appeal, directed against an order dated 04.02.2016 of Id. Commissioner of Income Tax (Appeals)-15, Chennai has raised altogether eleven grounds of which ground 2 to 5 challenges the reopening done for the impugned assessment year.

Appeal has been filed with a delay of one day. Condonation has been filed. Delay is condoned and appeal admitted.

2. Ld. Counsel for the assessee submitted that the original assessment for the impugned assessment year was completed u/s.143(1) of the Act. As per Id. Authorised Representative, assessee was a salaried employee and had claimed ₹81,561/- as interest payable on a housing loan for a self-occupied property with address Flat No.1, Bharani Lokesh Shrisha, Z- Block, New No.24, 11<sup>th</sup> Street, Anna Nagar West, Chennai. Submission of the Id. Authorised Representative was that, Id. Assessing Officer had issued a notice u/s. 148 of the Act for reopening the assessment on 29.03.2012. As per Id. Authorised Representative, assessee vide his letter filed 24.04.2012 requested for the reasons for reopening. These reasons, according to him, were supplied after six months on 18.01.2013, for which assessee filed objections on 07.03.2013. Contention of the Id. Authorised Representative was that the objections were disposed of by the Id. Assessing Officer, only in his re-assessment order dated 28.03.2013, and by virtue of the judgment of Hon'ble Gujarat High Court in the case of *General Motors India P. Ltd vs. DCIT 354 ITR 244*, Assessing Officer having not passed a speaking order disposing of the objections, prior to the assessment, the whole proceedings stood vitiated. Further, according to him reason for reopening was stated to

be assessee's claim for entire housing loan interest. Ld. Authorised Representative submitted that in the reason given for reopening, Assessing Officer indicated escapement of income as 50% of the interest claim since loan was taken in joint names. However, as per Ld. Authorised Representative when the assessment was completed the interest was denied in-toto not for this reason but for a reason that assessee occupied the property for residential purpose only in March 2005. Contention of Ld. Authorised Representative was that addition made being not related to the reason given for reopening the assessment, by virtue of judgment of Hon'ble Rajasthan High Court in the case of *CIT vs. Shri Ram Singh*, 306 ITR 343, Bombay High Court in the case of *CIT vs. Jet Airways (I) Ltd* 331 ITR 236 and that of Delhi High Court in the case of *Ranbaxy Laboratories Ltd vs. CIT* 336 ITR 136 the reassessment failed. In any case, as per the Ld. Authorised Representative the reopening having been done after four years from the end of the impugned assessment year and the escapement of income being less than ₹1,00,000/-, notice issued u/s.148 of the Act was invalid.

**3.** Per contra, Ld. Departmental Representative submitted that objections to the reasons were dealt with in the assessment order. Further, according to him disallowance made was that of the same amount referred to in the reasons. As per Ld. Departmental

Representative , original assessment was only a processing under section 143(1) of the Act and by virtue of the judgment of Hon'ble Apex Court in the case of *ACIT vs. Rajesh Jhaveri Stock Brokers P. Ltd*, 291 ITR 500, the reopening was valid.

4. I have considered the rival contentions and perused the orders. Housing loan interest claimed by the assessee against the self occupied property was ₹1,15,647/- and per paper book page 4 which gives the computation of income filed. Notice for reopening was dated 29.03.2012. Reasons for the reopening given by the Id. Assessing Officer in his letter dated 18.01.2013 is reproduced hereunder:-

*PAN AABPS 1905R*

*Dated: 18.01.2013*

*To*

*Dr.K.Sridhara*

*Flat No.1, Bharani Lokesh Shrisha*

*2<sup>nd</sup> Block, New. No. 24, 11th street*

*Anna Nagar*

*Chennai - 600 040.*

*Sir / Madam,*

*Sub: Income Tax Assessment - your own for  
the A. Y. 2005-06 - reg.*

*Ref: Notice u/s.148 of the Income Tax Act,  
1961 dated 29-03-2012*

*While processing the return of income, the entire housing loan interest was allowed which should be restricted to 50% as the loan was taken in joint names. Since this is a time barring assessment, you are requested to furnish your reply on or before 01.02.2013.*

*Yours faithfully,*

*(N. MADHAVAN)*

*Deputy Commissioner of Income Tax  
Salary Circle VI(i/c), Chennai.*

Fifty percent of the amount comes to ₹57,824/- only. Section 149(1) of the Act is reproduced hereunder:-

*“(1) No notice under section 148 shall be issued for the relevant assessment year,-*

*(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);*

*(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.*

*(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment”.*

It is clear that once four years have gone by, a reopening notice can be sent only if income which has escaped assessment is more or likely to be more than ₹1,00,000/-. That apart, assessee's objection to the reasons given for re-opening were never disposed of by Id. Assessing Officer, prior to completing the assessment. He had dealt with this only in his assessment order. What was held by Hon'ble Gujarat High Court in the case of *General Motors India P. Ltd (supra)* at para 23 of the judgment is very relevant and this is reproduced hereunder:-

'23. From the aforesaid discussion, we are of the considered opinion that writ petition under Article 226 of the Constitution of India is maintainable where no order has been passed by the Assessing Officer deciding the objection filed by the assessee under Section 148 of the Act and assessment order has been passed or the order deciding an objection under Section 148 of the Act has not been communicated to the assessee and assessment order has been passed or the objection filed under Section 148 has been decided along with the assessment order. If the objection under Section 148 has been rejected without there being any tangible material available with the Assessing Officer to form an opinion that there is escapement of income from assessment and in absence of reasons having direct link with the formation of the belief, the writ Court under Article 226 can quash the notice issued under Section 148 of the Act. The writ petition filed by the petitioner is maintainable. The Assessing Officer is mandated to decide the objection to the notice under Section 148 and supply or communicate it to the assessee. The assessee gets an opportunity to challenge the order in a writ petition. Thereafter, the Assessing Officer may pass the reassessment order. We hold that it was not open to the Assessing Officer to decide the objection to notice under section 148 by a composite assessment order. The Assessing Officer was required to, first decide the objection of the assessee filed under section 148 and serve a copy of the order on assessee. And after giving some reasonable time to the assessee for challenging his order, it was open to him to pass an assessment order. This was not done by the Assessing Officer, therefore, the order on the objection to the notice under section 148 and the assessment order passed under the Act deserves to be quashed".

The judgment of Hon'ble Apex in the case of *Rajesh Jhaveri Stock Brokers P. Ltd, (supra)* is of little help to the Revenue when reopening is time barred and objection to reasons given for reopening were not dealt prior to completion of the assessment. I have no hesitation to

hold the reassessment proceedings as well the reassessment as invalid and bad in the eyes of law. It stands set aside.

5. Since assessee succeeds on the question of jurisdiction other grounds are not adjudicated.

6. In the result, appeal of the assessee is allowed.

Order pronounced on Wednesday, the 3rd day of May, 2017, at Chennai.

**Sd/-**  
**(अब्राहम पी. जॉर्ज)**  
**(ABRAHAM P. GEORGE)**  
**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:3rd May, 2017

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |