

**THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 08.02.2013

+ **W.P.(C) 711/2013**

**M/S JAY BHARAT MARUTI LTD**

..... Petitioner

versus

**ASSTT. COMMISSIONER OF  
INCOME TAX AND ORS**

..... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr R. Santhanam with Mr A.P. Sinha, Advocates.

For the Respondent : Ms Anshul Sharma, Proxy for Mr Abhishek Maratha, Sr.  
Standing Counsel.

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE R.V.EASWAR**

**JUDGMENT**

**BADAR DURREZ AHMED, J (ORAL)**

This writ petition is directed against the notice dated 30.08.2011 issued by the respondent under section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act') pertaining to the assessment year 2007-08. It is also directed against the order dated 28.01.2013 whereby the respondent has rejected the objections raised by the petitioner pursuant to the receipt of the purported reasons behind the proposed reopening of the assessment for the said assessment year 2007-08.



2. On going through the order dated 28.01.2013 we find that the same has been passed without any application of mind. To say the least, it is a cut-and-paste job. This is apparent from the fact that the paragraph 3 is merely a repetition of the provisions of section 147 and 148 of the said Act. Thereafter, paragraphs 4, 5 upto 5.6 comprise of quotations and extracts from Supreme Court and High Court decisions. Paragraph 5.7 is perhaps a reference to the case at hand. However, we find that the words mentioned therein could apply to any case. It appears to be a generic paragraph which is perhaps applied by the respondent to several such cases. In order to appreciate this fact we are reproducing the paragraph 5.7 hereinbelow: -

“5.7 In this case, the belief of the AO has been held in good faith and not on the basis of any rumour. In fact the reasons for issue of notice existed at the time of issue of notice and the reasons are genuine. They were in fact communicated to the assessee also. The reasons recorded are quite detailed. As is evident from the perusal of the reasons recorded, they in fact record the satisfaction of the AO that the income has escaped assessment on the basis of the reasons elucidated and the material on record as relied upon by the AO at the time while recording his satisfaction that the income had in fact escaped assessment.”

3. Apart from the aforesaid paragraph there is no discussion of the points raised by the petitioner in its objections. In fact, portions of the objections furnished by the petitioner have been copied verbatim as would be apparent from paragraph 2 of the order which reads as under: -

“2. Notice u/s. 148 was issued after recording the reasons under section 147 of the Act on 30.08.2011 and duly served.



In response to the same, assessee has submitted written submission dated 27.09.2011 wherein the assessee submitted that the notice is illegal and without jurisdiction. We object the reassessment proceedings. The return already filed by u/s 139 for A Y 2007-08 may please be treated as return filed in pursuance of the notice now received. Further, it was also requested to enable us to make objections both on facts and in law to the proposed reassessment, please give us reasons recorded for reopening the assessee and also the order of sanction obtained for the purpose and on receipt of the same we shall make detailed submission and objection, both on facts and in law after which we wish to be heard in person for which adequate opportunity be granted to determine the justifiability or otherwise of the action for reassessment in terms of the decision of GKN Driveshaft Ltd. Vs. CIT (2003) 259 ITR 19 (SC) and not issue on merits be taken up for any decision before the validity of action for reassessment is decided. The reasons recorded under section 147 were provided to the AR of the Assessee Company. The assessee filed an objection against the issuance of notice under section 148 vide written submission.”

It is apparent on going through the above extract that the respondent has not even bothered to change the words such as “we”, “us”, etc. which the petitioner had used in its objections/ reply. This shows that the respondent had not even applied his mind and not even bothered to correct the contents of paragraph 2 so as to put it into second person or third person in the grammatic sense.

4. For the aforesaid reasons, after hearing the counsel for the parties at the stage of admission itself we feel that such an order cannot be permitted to stand as it smacks of non-application of mind. The passing of an order dealing with the objections filed by the assessee is not an



empty formality. The assessing officer has to apply his mind to the objections raised and has to deal with the objections in the order. This has not been done in the present case. Consequently, order dated 28.01.2013 is set-aside. The matter is remitted to the respondent to pass a fresh order after taking into account the objections filed by the petitioner as also after giving the petitioner an opportunity of hearing. The order be passed by the respondent within three weeks. We have not commented at all on the merits of this petition with regard to the validity of the notice dated 30.08.2011. That issue is kept open. The writ petition stands disposed of.

Dasti.

**BADAR DURREZ AHMED, J**

**R.V.EASWAR, J**

**FEBRUARY 08, 2013**

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