

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.6095/Mum/2016
(Assessment Year :2006-07)**

&

**ITA No.6096/Mum/2016
(Assessment Year :2007-08)**

Ms. Amrita Jhaveri 58, Hill Park A.G. Bell Marg Mumbai- 400 006	Vs.	The Deputy Commissioner of Income Tax(IT)-3(3)(2) Mumbai
PAN/GIR No.AAEPJ2724L		
(Appellant)	..	(Respondent)

Assessee by	Shri Madhur Agrawal
Revenue by	Shri Kunal Haver
Date of Hearing	09/02/2023
Date of Pronouncement	09/05/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeals have been filed by the assessee against separate impugned order of even dated 30/06/2016 for the quantum of assessment passed u/s. 143(3) r.w.s. 147 for the A.Y.2006-07 and 2007-08.

2. In both the years, the common issue relates to validity of reopening u/s.147 r.w.s. 148; and addition of Rs.2,27,36,790/-

in the A.Y.2006-07 on the ground of balance appearing in HSBC Bank Account, Geneva of USD 505262 in A.Y.2006-07 which has not been disclosed; and similar balance of USD 607950 in A.Y.2007-08.

3. The brief facts and the background of the case are that the assessee is an individual who is married to a British citizen and is settled in London. Undisputedly, she has been outside India since F.Y.1999-2000 to till date and had status of non-resident or not ordinarily resident of India. Even prior to that, from F.Y. 1989-90 to 1998-99, she was a non-resident or not ordinarily resident. As a non-resident, the assessee has been maintaining NRE account & NRO account in India. However, the assessee was filing the return of income in India in the status of non-resident in respect of income chargeable to tax in India in accordance with the provisions of Income Tax Act, which generally comprises of capital gains and income from other sources like dividend, interest, etc. For the A.Y.2006-07 assessee had filed return of income in India declaring income of Rs.15,86,134/- in the return of income filed on 30/03/2007 in the status of non-resident. And in the A.Y.2007-08, return of income was filed on 31/03/2008 in the same status of non-resident declaring total income of Rs.4,61,12,141/-.

4. Prior to the issuance of notice u/s.148 and recording of the 'reasons', ADIT (Investigation), Mumbai had issued summons u/s.131 to the assessee on the basis of certain information

received from Government of India in the form of “Base Note” from French Government from which it was gathered that, assessee was the beneficial owner of HSBC bank account in Geneva for amount of 505262/- USD as on 31/12/2005 in the code of account opened on 17/08/2005 in the name of Amaya Ltd; and USD 607950 as on 31/12/2006 in the same account. The ADIT asked to file all the financial statements, profit and loss account, balance sheet, audit report alongwith annexure, return of income, bank book and cash book, all bank statements whether inside India or outside India and copy of passport. In response, assessee filed a letter dated 08/12/2011 giving all the requisite details. It was categorically submitted that she is a non-resident Indian and she had visited India on a very short visits for business and personal purposes. She had also given duration of stay in India and her residential status for the purpose of income tax. Apart from that, all the requisite details were filed. Thereafter, assessee again furnished all the information as was required from the ADIT which was submitted before him. The content of the letter in response to queries raised by the ADIT which would be very relevant for deciding the issue in hand before us, reads as under:-

1.	<i>Particulars of Bank Accounts held in HSBC Private Bank (Suisse) SA.</i>	<i>Account No. 11790208 in USD Currency</i> <i>Account No. 11790216 in EURO Currency</i> <i>Account No. 11790224 in GBP currency</i>
----	--	--

2	Account Opening Information	<i>These accounts were opened on 17.08.2005.</i> <i>The Accounts stand in the Name of AMAYA LTD</i> <i>Please note that the Bank has put the name of AM ART INDIA PVT. LTD. In the statements for Account Nos 11790208 and 11790216 for the period from 17.08.2005 to 30.09.2005 by mistake. These accounts were never intended to be of AM ART INDIA PVT. LTD.</i>
3.	Name/s of Persons holding the account in HSBC – Geneva:	<i>All the Accounts are in the name of AMAYA LTD.</i>
4.	Whether the Account is owned by you in your personal capacity or as controller of any entity:	<i>These accounts are held in the name of AMAYA LTD. This Company is registered as Limited Company in the Republic of Seychelles. Ms. Amrita Jhaveri is owner of AMAYA LTD. She is the only shareholder and beneficiary and director of the Company.</i>
5.	Other Accounts	<i>Ms. Amrita Jhaveri and her husband Mr. CHRISTOPHER MICHAEL DAVIDGE had a</i>

		<i>joint account with the Bank. The Account Nos are: 10906776 (USD)., 11448879(EUR) and 10906601 (GBP). Copies of these accounts are attached herewith. These accounts were closed in August 2005.</i>
6.	<i>Sources of Funds in the Account- How the funds are generated in these accounts.</i>	<i>She is a person of Indian origin. She holds Indian Passport. She was employed in Britain, married to a British Citizen and has settled in London. For the past several years she has been engaged in buying and selling of Art Works. She has also been advising on Art Works and earning income by way of consultancy and Commission.</i> <i>Various deposits in the account are from her own funds generated or earned abroad. Most of the amounts deposited in the account are from selling of Art works The credits in the account relate to transactions of sale of paintings or Art Work abroad or in respect of</i>

		<i>income earned by way of Commission for procuring Sale of art work abroad or by way of commission for sales or purchase of paintings effected outside India.</i> <i>Transactions originating in India are shown in her Bank Accounts in India. They do not appear in the Accounts held with HSBC Bank Geneva. No transactions which appear in the HSBC (Geneva) accounts have any nexus or relation or origination to a source in India.</i>
7.	<i>Copies of Passport from 01.04.2004 till date</i>	<i>Our client has submitted the Xerox copies of her passports from 1.4.2004 till date at the hearing on 12th December, 2011.</i>
8.	<i>Copies of HSBC Bank Account from 01.04.2204 till date</i>	<i>As stated in Col. 2 above, these accounts were opened on 17.08.2005. Copies of these Accounts from inception of the account till date are attached herewith.</i>
9.	<i>Statement of Accounts in</i>	<i>Most of the transactions in these accounts were on</i>

	<i>relation to transactions in HSBC Accounts:</i>	<i>personal account. Our client therefore did not maintain books of account for the same. Nor was she required to do so by the Seychelles authority. As such she is now not in a position to produce proper accounts relating to transactions in these accounts Further, documents relating to these transactions are lying in her matrimonial home at London. She is at present not in a position to produce the same before you. Having regard to the facts of the case, especially because she being a non resident and the transactions having taken place outside Indian Territories and having no tax nexus with India, she should not be required to produce the same. However, if you still require the same, she may have to get the same from London. Again she will be required to appoint accountants in London to get the accounts prepared. In the circumstances please let our client know if the documents regarding transactions</i>
--	--	--

		appearing in the Bank statements and accounts are required to be submitted before you.
10.	<u>Taxability or otherwise of the funds held or deposited in HSBC Accounts.</u> <u>1. Residential Status:</u> Copies of the passport held by Amrita Jhaveri and a statement containing the dates of her arrivals and departures into and from India from 1.4.2004 onwards till date were submitted to you on 12th December, 2011. Ms. Amrita Jhaveri is a Citizen of India. She is a person of Indian Origin. She is settled abroad and visits India for short durations. In any of the years from 2003-04 till 2010-11, she has not been in India for 182 days or more. She is therefore a Non-Resident from financial year 2003-04 through FY 2010-11 <u>2. Source of Accruals in HSBC Account (Geneva)-Situs:</u> The deposits and or credits in these accounts were from her funds accumulated out of her salary earnings, from the sale of Work of Art and some small amounts out of consultancy receipts and commission for facilitating sale of paintings overseas. With reference to deposits in HSBC (Geneva) Accounts the paintings are bought in foreign countries and sales also are effected in those countries i. e. London, Paris, New York etc. The	

deposits / credits in these accounts, apart from her savings from salary earned abroad, transfers for investment in fiduciary/term deposits, entirely relate to these transactions of buying and selling of paintings / art work and income received by way of commissions for facilitating sale of paintings/art work.

These receipts or deposits did not originate or arise whether directly or indirectly through or from any business connection in India or through or from any property in India or through or from any asset or source of income in India or through the transfer of a capital asset situate in India. We wish to mention that Ms. Jhaveri has bought some of the paintings from Indian parties and has imported the same to territories outside India, for which she has made payments from these accounts. Income arising from such transactions do not come within the meaning of income deemed to accrue or arise in India and income arising from the sale of art work in a territory outside India, of art work bought or imported from India is not liable to be taxed in India, as at the time of sale she was a Non Resident.

3. Amaya Ltd..

This is a Limited Company registered in the Republic of Seychelles. Ms. Amrita Jhaveri is a sole beneficiary in the Company She is the only shareholder and Director. No one else is interested in this Company This company is not registered in India. The Management and control of this company did not situate wholly in India. We also submit that

this company is not even partially controlled or managed from India Assuming without admitting that the income of this company is assessable in the hands of Company, the Company not being an Indian Company or the management and control of this company not having been situated wholly or partially in India, any income accruing to it is not liable to be taxed in India.

4. TAXES ON INDIAN TRANSACTIONS:

Our client has been a diligent tax payer. In respect of Indian Income she has been paying substantial taxes in India. Paintings and art work purchased by her within India or located in India form part of her income tax statements in India. Wherever she has sold paintings or Art Work in India or sold painting located in India whether directly or through auctions she has considered the same as part of her Indian Income and has paid appropriate taxes thereon under the Indian Income-tax Act, 1961. This will be amply clear from the copies of statements of income, Balance Sheets, Income & Expenditure Account, copies of the returns for the assessment years 2005-06 onwards submitted before you.

Our client respectfully submits that the sources of deposit / credits in HSBC (Geneva) accounts originated outside Indian Territories. No part of the activities in relation to the entries therein took place or had any tax nexus with India. As Ms. Jhaveri was a Non Resident in all these years, any income accruing to her or deemed to accrue to her outside India is not liable to tax under the Indian Income Tax Act, 1961

Please note that our client is settled abroad and does not regularly stay in India. Due to family needs and compulsions

she has to remain present in U. K. As such she cannot be present in India for long durations without much inconvenience. Our client therefore request you to close her case taking into account all the above submissions.

Thanking you

Yours faithfully,

R. K. KOTIAN
CHARTERED ACCOUNTANT

Encl

- 1. Copies of Bank Statements for Account with HSBC, Geneva
Account No. 11790208 in USD Currency
Account No. 11790216 in EURO Currency
Account No. 11790224 in GBP Currency*
 - 2. Copies of Bank Statements for Account with HSBC, Geneva
in the names of Ms. Amrita Jhaveri and her husband
Mr. CHRISTOPHER MICHAEL DAVIDGE
Account No: 10906776 (USD).
Account No. 11448879 (EUR)
Account No. 10906601 (GBP).*
5. Thereafter, assessee had also submitted her affidavit before the ADIT, reiterating the same things which are borne out from the records and giving the details of the accounts and the source of deposits made therein. After all these information been filed, ACIT (2) further issued notice u/s.131 on 19/07/2013 in the following manner:-
- “1.On the basis of information received, it is seen that you hold account No. 5090149151 with HSBC, Geneva.*
 - 2. The ownership of the aforesaid account was confirmed by you during the course of inquiries by the Investigation Wing, Mumbai.*

3. *In this connection, you are requested to furnish a complete copy of the statement of bank account right from its inception till date. In case, you are not in possession of statement of your bank account, you are requested to fill up the consent waiver form enclosed with this letter, get it notarized and forward the same to the undersigned within 7 days of the receipt of this letter.*
4. *The submission of the copy of the statement of bank account or duly filled in and notarized Consent Waiver Form will be considered due compliance with the enclosed notice.”*
6. In response to that assessee stated as under:-
- (1) *In your notice you have stated that I hold account No. 5090149151 with HSBC Geneva and requested me to furnish a complete copy of the statement of bank account right from its inception till date.*
- (2) *I have made inquiries with my bank HSBC and I am advised that No. 5090149151 is not an account number but an internal number to the bank.*
- (3) *I had submitted all bank statements relating to all my accounts with HSBC Geneva to The Asstt. Director of Income-tax (Inv) U-II(3), Scindia House, N. M. Road. Mumbai 400038 in the course of hearings held in December, 2011*
- (4) *I have complete copies of Account Nos 11790208, 11790216 and 11790224 which I had submitted to the ADIT (Inv) U-11(3), Mumbai in the course of hearings held in December, 2011.*
- (5) *I therefore believe that I am already in full compliance with the notice sent to me by you.*
- (6) *I am a Non Resident Indian since last several years settled abroad. I have submitted fill details of my arrivals and departures to ADIT(Inv) U-II(3) Mumbai. in December 2011 along with copies of my Passport, which have been perused by him As I have been a Non Resident, income accruing or*

arising to me outside India are not subject to Indian Income-tax and as such my holding an account outside India should generally be of no consequence as far as Indian Income Tax Act is concerned.

(7) As I am resident in the U. K. making irregular visits to India, I request that a copy of any notice, reply or further inquiries may also be sent to my Authorised Representative, Mr. R. K. Kotian, Chartered Accountant, 14 Sai Sadan, 68 Janmabhoomi Marg, Fort, Mumbai 400001. Tel: 22023818 Mob: 9820601418

7. Thereafter, the proceedings continued with the ld. AO and in his record all the bank statements, all the details as and when required by the ld. AO were filed. The copies of which have been placed in the paper book also before us alongwith copy of returns, statements of income etc.,

8. After having called for all the informations from the assessee, the ld.AO issued notice u/s.148 on 12/03/2014 on the following reasons recorded:-

REASONS FOR RE OPENING U/S 147 OF THE IT.Act 1961

Information was received by the Government of India under Article 28 of Double Taxation Avoidance Agreement from the French authorities in exercise of its sovereign powers that certain persons in India held bank accounts in HSBC Bank, Geneva. The information is received in the form of a document wherein various details of account holders such as Name, Date of Birth, Place of Birth, Residential Address, Sex Nationality etc are mentioned in the case of the assessee also such information is received. The details of the assessee's bank account in HSBC, Geneva are as under:-

<i>Name Amrita Jhaveri</i>	<i> BUP_SIFIC_PER_ID: 5090149151</i>
<i>Date of opening of account</i>	<i>25.11.1999</i>
<i>Balance shown for AY 2006-07</i>	<i>USD 505262</i>

The Investigation Wing of the Income Tax Department has conducted enquiries and a large number of assessees have admitted to holding accounts in HSBC Bank Geneva and have disclosed the balances in these bank accounts to tax. Further, certain assessee who had denied having such account in HSBC Bank,

Geneva later on submitted their bank account statements which were forwarded to them by the HSBC bank, Geneva in response to Consent Waiver Form submitted by them The fact that a large number of assesses have confirmed the existence of the bank accounts in HSBC Bank, Geneva mentioned in the information received under DTAA, shows that the information received is credible

The information regarding the assessee with the department shows a balance of In FY 2005-06 relevant to the AY 2006-07 The balance shown of USD 505262 in Assessment Year 2006-07 is not disclosed to Income-Tax Department.

In view of the above, I have reason to believe that the assesses holds the above mentioned bank account in HSBC, Geneva which is an asset located outside India and that the income in relation to such asset has escaped assessment for the assessment year 2008-07, for which as per Section 149(c), sixteen years time limit is available.

(KISHAN VYAS)
Commissioner of Income tax (OSD),
I/C Range 16(2), Mumbai

REASONS FOR RE-OPENING U/S 147 OF THE IT.Act, 1961

Information was received by the Government of India under Article 28 of Double Taxation Avoidance Agreement from the French authorities in exercise of its sovereign powers that certain persons in India held bank accounts in HSBC Bank, Geneva. The information is received in the form of a document wherein various details of account holders such as Name, Date of Birth, Place of Birth, Residential Address, Sex, Nationality etc are mentioned In the case of the assessee also such information is received. The details of the assessee's bank account in HSBC, Geneva are as under:

<i>Name Amrita Jhaveri</i>	<i>BUP_SIFIC_PER_ID: 5090149151</i>
<i>Date of opening of account</i>	<i>25.11.1999</i>
<i>Balance shown for AY 2007-08</i>	<i>USD 607950</i>

The Investigation Wing of the Income Tax Department has conducted enquiries and a large number of assesseees have admitted to holding accounts in HSBC Bank Geneva and have disclosed the balances in these bank accounts to tax Further, certain assesseees who had denied having such account in HSBC Bank.

Geneva later on submitted their bank account statements which were forwarded to them by the HSBC bank, Geneva in response to Consent Waiver Form submitted by them. The fact that a large number of assesseees have confirmed the existence of the bank accounts in HSBC Bank, Geneva mentioned in the information received under DTAA, shows that the information received is credible

The information regarding the assessee with the department shows a balance of In FY 2006-07 relevant to the AY 2007-08 The balance shown of USD 607950 in Assessment Year 2007-08 is not disclosed to Income-tax Department.

In view of the above. I have reason to believe that the assessee holds the above mentioned bank account in HSBC, Geneva which is an asset located outside India and that the income in relation to such asset has escaped assessment for the assessment year 2007-08, for which as per Section 149(c), sixteen years time limit is available

*(KISHAN VYAS)
Commissioner of income tax (OSD),
I/C Range 16(2), Mumbai*

9. After receiving the notice u/s 148, assessee raised detailed objections before the ld. AO, which has been disposed of by the ld. AO vide order dated 17/03/2015. Thereafter, the ld. AO observed that assessee was given ample opportunities to provide bank account, however, assessee did not furnish the details called for nor she has produced any evidence to prove that money deposited in the foreign bank account does not have any source from India and based on some premise and hypothesis, he drew certain inferences based on some general information and perceptions in the public domain not relating to the assessee. For the sake of ready reference some of his observations are reproduced as under:-

“The account was initially in the name of an Indian Private Limited company by name Amaya Ltd” of which the assessee Smt. Amrita Jhaveri was a director/majority shareholder. It is needless to point out that a company is a mere legal entity (or

front) which is operated through the actions of actions of its human conduits namely the directors/officers subsequent to the 18.01.2006, it appears that the company has ceased to exist or for other reasons, the accounts/balances has been transferred in the name of Smt. Amrita Jhaveri. As there is no corresponding change in the address provided or the place of establishment (lien de establishment), it is apparent that the company is merely a front for the assessee, Smt. Amrita Jhaveri. The controls of funds and knowledge of sources of the same was at all points of time known to the assessee, which she has steadfastly refused to share with the Income Tax Department despite being provided numerous opportunities to do so.

On mere verification of the base-note it is established that the account stands in the name of the Assessee herself Ms. Jhaveri Amrita, de in the columns "Lien Personne/profit client and in the column "Details du lien the assessee is mentioned as the Beneficial Owner of the A/c under investigation. Besides, the assessee was very categorically & specifically asked to give the full details of trails of credits in the account, if the same has been sourced from other entities. On this issue the assessee has kept complete silence. Contrary to this, on the very base note itself the assessee has disclosed herself in the column "Lieu d' establishment "as Mumbai while making the application for A/c opening before HSBC authorities. In addition to the above, in the column Nom(Code BUP) & Profiles Clients concerns the assessee has furnished before the HSBC authorities the required information as AMAYA Ltd. (Ex AM ART INDIA Pvt. Ltd. Until 18.01.2006).

In the light of the silence maintained by the assessee despite being asked and the disclosure/information appearing in the base note issued by the French Authority it is undoubtedly concluded that this deposits has been made out of Indian income as per the IT.Act.

The submission of the AR are mere time consuming tactics and to pose a stonewall before the eyes of the tax authority

8.3 Firstly, it must be understood that the assessee has her interests in India. As per the Base Note, the assessee is having

an address in 80, Napean Sea Road, Mumbai - 400 008 which is her legal address. The assessee has not offered any explanation with regard to this address even after a specific question was raised. As per the Base Note

8.4 Secondly, the assessee chose not to produce the bank statements and the source of deposits made in the account even after various opportunities were given during the assessment proceedings. It is in the public domain that HSBC, Geneva has been inquired regarding its role in facilitating its clients to evade taxes. Also, the names of various individuals including the assessee herself have been mentioned in the list of account holders in HSBC, Geneva who has been suspected of tax evasion. Hence there is a prima-facie presumption of amounts in the said account being undisclosed and sourced from India. The report of the Indian Express on 10.2.2015 on the topic "Why diamonds are the HSBC list's best friend" reported that:

(i) A Paris-based Financial Action Task Force handed in a report revealing what lies at the heart of the diamond trade close family ties and kinship. "According to industry sources, it is difficult for a new and unknown individual to get involved in the trade of diamonds without being referred or introduced by an already established dealer," the task force summed up. (b) In the HSBC list, 77 account-holders are connected to the diamond industry, their deposits totalling an estimated \$200 million. Of the 77 account holders, 64 are beneficial owners from 12 families and only 13 are individual account holders.

(c) There is a common thread: all have bases in the Belgian city of Antwerp, the international capital of rough diamond trade. Industry sources say many Indian diamond trading families migrated to Belgium in the 1960s and 1970s. Trade in rough diamonds takes place in Antwerp, London, Tel Aviv, Dabal and, in recent years, Hong Kong while India is the global manufacturing hub, where much of the cutting and polishing is done.

(d) According to data from the Gem and Jewellery Export Promotion Council (GJEPC), India imports 93.75 per cent of the 128 million carats of rough diamonds mined across the world.

After cutting and polishing, the diamonds are re-exported. Most traders have relatives, or at least one relative, in India to handle operations.

(e) The Indian Express visited Bharat Diamond Bourse on Mumbai's Bandra Kurla Complex, the biggest diamond trading centre in India. Here, deals are struck not over stamp papers, but via firm handshakes. Such is the trust, such are the ties that diamonds worth millions are given on credit for sale without any formal agreement.

(f) The pattern of business with footprints in three or four diamond trading cities is what is often called the "diamond pipeline". It has three legs: rough diamonds are purchased in bulk by sight holders, and brought to markets in Antwerp, Dubai and London, rough diamonds are then sent for cutting and polishing the CPDs or cut-and-polished diamonds are exported across the world.

(g) In India, where there is no tax on import of rough diamonds, the precious stones are vulnerable to misuse - these are often used for illegal money transfer, money laundering and exploitation of credit facilities. The Income Tax (I-T), Enforcement Directorate (ED) and Directorate of Revenue Intelligence (DRI) have named diamond traders in at least 65 cases. It is alleged that they are key players in trade-based money laundering of an estimated Rs 60,000 crore. A February 2014 internal I-T paper on the diamond traders of Surat and Mumbai outlines how traders facilitate bogus entries through which black money is converted to legitimate money for other sectors such as real estate.

h) A forensic report dated October 28, 2013, submitted by a consortium of banks to the Reserve Bank of India in connection with the credit facility used by a diamond trading company, underlines: "It is very common for one family to have multiple companies under multiple names across geographies that receive exports from India so that companies can avail import duty allowances and letters of credit from banks" (1) DRI investigations in the last two years have listed 41 instances of

the involvement of Hong Kong-based diamond traders in high-value money transfer.

A report by the GJEPC to the Commerce Secretary in October 28, 2014, stated: "Huge discrepancies were observed in the trade data which indicated that there has been import of rough diamonds from Hong Kong at a very high value per carat, and exporting almost same volumes of carats at a very nominal price, resulting in loss of foreign exchange to the nation.

In the background of the above facts and circumstances as well as knowledge of large numbers of undisclosed foreign accounts, there is a strong presumption of these accounts being undisclosed and amounts lying therein being sourced from India. The assessment proceedings offer an opportunity to the assessee to rebut these presumptions but he has chosen not to disclose his HSBC bank accounts and the sources of deposit despite various opportunities given.

10. Thereafter, AO added Rs.2,27,36,790/- in the hands of the assessee for A.Y. 2006-07; and Rs.2,68,89,629/- in A.Y.2007-08.

11. The ld. CIT(A) rejected the validity of reopening u/s.148 which was raised on various grounds and rejected the plea that assessee being a non-resident, therefore, in terms of fourth proviso to Section 139(1), she is not required to disclose foreign asset and therefore, provision of Section 149(1)(c) extending the period of 16 years will also not apply. The main reasons given by the ld. CIT(A) is as under:-

"However, assessee's case is different in as much as she is a non-resident and had already filed her return of income under section 139(1) of I.T. Act, 1961 on 30/3/2007 for A.Y.2006-07 showing her Indian income arising from capital gains from sale of paintings held by her family members in India and income

from other sources and she was required to declare the income accruing and arising and deemed to accrue and arise in India under section 9 of IT.Act, 1961 also and which was not done by her and hence provisions of section 149(1)(c) of I.T.Act, 1961 squarely apply to assessee's case. The income accruing and arising from assets located in HSBC Private Bank Geneva and interest earned thereon had direct nexus with her activities and business activities in India and abroad and hence provisions of section 149(1)(c) of I.T.Act, 1961 were correctly applied. Moreover, assessee's case squarely falls within provisions of section 139(1) itself and that is why she had filed her return of income for A.Y 2006-07 on 30/3/2007 and she had not offered her income accruing and arising from India and Income deemed to accrue and arise in India under section 9 of I.T.Act, 1961, her case was reopened under section 147/148/149 of I.T.Act, 1961 which is fully justified in facts and law. Hence the objections raised by the assessee are baseless and are rejected.”

12. In so far as merit is concerned, ld. CIT(A) has confirmed the reasoning of the ld. AO which reads as under:-

5.4 Assessee is a citizen of India was a resident of India till F.Y.1998-99 and became not ordinarily resident from FY 1999-2000 relevant to AY 2000-01 and yet assessee regularly visited for periods ranging between 81 days in A.Y.2000-01 to 111 days in A.Y 2006-07 and 123 days in A.Y.2001-02, 136 days in A.Y 2002-03, 158 days in A.Y 2003-04 and 147 days in A.Y.2004-05 and 104 days in A.Y.2005-06 and the total number of days stayed always below 180 days in each Assessment Year. That means that she must be a resident of United Kingdom where she claims to have legal residence in London. The Base Note received from the Government of France is itself quite revealing. An ID Profile was created on 25/11/1999 in the name of Amrita Jhaveri under ID Number 509014915 and an

accounts were created in the name of AM Art India Pvt. Ltd. with number 5090284784 and 5091447777 till 18/01/2006 and the names of these two accounts were changed to Amaya Limited from 18/1/2006 by HSBC Pvt.Bank Ltd., Geneva. On this page there was mention of account number 50912582270 in the name of Rasa 31 and account number 5090140358 in the name of Davidge Chirstopher Michael (husband of Amrita Jhaveri) which was closed later on. And the entries in the account reveal payments to Mossack Fonseca & Associates of 350 dollars on 23/12/2005, and 650 dollars on 18/1/2006 In account number 11790208 of Amaya Limited and this firm of Mossack Fonseca & Associates is the same one which has exposed the opening of bank accounts and deposits in such accounts in Geneva which has come to be known throughout the world as Panama Papers scandal.

5.5: Simultaneously assessee floated a company in Seychelles, a tax haven, under the name AM Art India Pvt.Ltd. in July 2005 which was changed to Amaya Limited on 8 th December 2005 and got 5000 bearer shares of US Dollars one each were issued. These shares were changed to registered shares in 2014 with the changes introduced in 2013 after the amendment of Seyechelles Banking Companies Act 2013 and all the 5000 registered shares were transferred to Amrita Jhaveri in 2014. It also appears from the Internet that Amrita Jhaveri Limited has been floated and registered on 30/3/2014 in United Kingdom and this company deals with works of art and Amrita Jhaveri is one of the directors of the company. It also appears from the Indian Express Report dated 8/4/2016 that Mr. Axel Charles Stern -Managing Director of of HSBC Bank Pvt.Ltd., Geneva to Mossack Fonseca in email dated 6/2/2015 that the company Amaya Limited was formed to hold assets in Switzerland with some commercial activities of purchase and sale of paintings.

5.6: Assessee is an art dealer and consultant relating to Indian Art. Assessee had also set up art gallery Jhavery Contemporary

along with her sister Priya Jhaveri in premises at Krishna Niwas, Walkeshwar Road, Mumbai owned by her and also appears to have vast collections of paintings by Indian painters as per the details of assets s on 31/3/2006 submitted by the assessee and the return of income for A.Y 2006-07. She is rated as one of the topmost authority on Indian painters and has also authored a monogram of 101 Indian Contemporary Painters for an Indian Art auction house Saffron Art, Mumbai and has also organised several exhibitions and auctions under the name Amaya Collections during 2013 with Southbeys and Dubai fest in 2016 as per the information available from the internet. She has in her affidavit admitted she derives income by way of consultations and commissions from the sale of works of art and paintings. Entries in the bank account in the name of Amaya Limited with HSBC Pvt.Bank Geneva also point to the fact of payments and receipts for sale of paintings. Assessee is also a director of AM Art India Pvt.Ltd. which is registered in Mumbai, India with her relatives as directors. This fact and assessee's frequent visits for 111 days during previous year relevant to A.Y.2006-07 to India in connection with identification of Indian paintings and its selection for imports and sale of her own stock of two paintings of Natesan and M.F.Hussain for more than Rs.65 lakhs during the year and assessee's role as consultant in the field of paintings clearly establishes a business connection of the assessee with India through her sister Priya Jhaveri, Jhaveri Contemporary set up by her along with her sister Priya Jhaveri and AM Art India Pvt.Ltd, a company dealing with art works and where assessee is a director is definitely has a business connection with India which is the resource for Indian paintings.

57: All these facts clearly indicate that Amaya Limited was only a façade to hide activities of and the business proceeds of activities of Amrita Jhaveri who dealt in art works which were to be hidden either from the Indian authorities and/or UK authorities for evading taxes. Moreover, this company was only

created in Seychelles, a tax haven in July 2005 initially as AM Art India Pvt.Ltd. and later on renamed as Amaya Limited from December 2005 for crediting and debiting the sale proceeds arising out of art works. It has already been admitted by the assessee in her affidavit before the ADIT(Inv.) Mumbai that she and her husband had opened three accounts with HSBC Bank Pvt.Ltd. in 1999 in their individual names which were closed in 2005. It is not understood as to what was the necessity of closing the individual bank accounts opened in 1999 and open fresh accounts under the same ID in the names of AM Art India Pvt.Ltd./Amaya Limited in 2005 by registering a company in the name of AM Art India Pvt. Ltd./Amaya Limited in Seychelles, a tax heaven? And only possible explanation can be tax evasion because Amrita Jhaveri has registered a company on 30th March 2014 in United Kingdom where she stays. Moreover, why was the name of the account numbers 5090284784 and 5091447777 changed from AM Art India Pvt. Ltd. to Amaya Limited on 18/1/2006. It is assessee's submission that the HSBC Bank Pvt Ltd. made a mistake, but then how did they come to know about the name AM Art India Pvt.Ltd. in the first instance and even if the name was changed, the ultimate beneficiary remained holder of 5000 Bearer shares which were converted into registered shares in 2014 in the name of Amrita Jhaveri. Assessee happens to be the sole share holder, director and the beneficiary of these shares and hence all the assets owned by the company whether it was named as AM Art India Pvt.Ltd. and/or Amaya Limited are her property only. There is something called concept of corporate veil and as soon as it is lifted in the case of Amaya Limited, we have assessee, that is, Amrita Jhaveri. Till date, except for the email by HSBC Pvt.Ltd., assessee and its CAS have not indicated what was the source of the debits and credits in the three bank accounts of Amaya Limited with HSBC Bank Pvt.Ltd. and why was a company floated in tax haven Seychelles and a bank account opened in the name of Amaya Limited when she was living in London UK?

5.8: All these facts clearly and unequivocally indicate that Amaya Limited was nothing but a company solely and wholly owned by Amrita Jhaveri and all the assets owned by Amaya Limited were the assets of the assessee who wanted to avoid and evade Indian and/or UK/France income tax accruing and arising from her business activity of purchase and sale of paintings imported from India. All these facts clearly point to one single fact that assessee was engaged in the import of paintings from India over which she exercised direct and indirect control because of business operations conducted by her sister Priya Jhaveri in Mumbai, AM Art India Pvt.Ltd., a registered company dealing in art works in Mumbai and Jhaveri Contemporary, Mumbai which was set up by her and her sister Priya Jhaveri and also her father Diesh Jhaveri who is a diamond and gold jewellery merchant and an avid art collector. Another proof comes from the fact that her income in India mainly consists of sale proceeds of paintings which grossed her more than Rs.62 Lakhs in A.Y.2006-07 and her assets list indicates holding of painting collections and source of its acquisitions and year are also not known. All this evidence clearly indicates that source of her income in Amaya Limited, that is herself, was nothing but the paintings sourced from India over which she had direct and indirect control through her sister and father and also because of her regular visits which stretched from 81 days in one year to 136 days in another year and 111 days during A.Y 2006-07. Hence the income accruing and arising from the deposits made in three bank accounts with HSBC Bank Pvt.Ltd. Geneva in US Dollars represented income from a source in India, that is the identification of paintings by Indian artists, its acquisitions and its import in London, Newyork AND Paris. Hence the deposits made in the three accounts during previous year relevant to A.Y 2006-07 are deemed to accrue and arise in India and hence taxable under Income-tax Act, 1961 under section 6 of 1.T.Act. 1961.

13. We have heard both the parties at length, carefully considered the findings given in the impugned orders as incorporated above and also various materials referred to before us at the time of hearing. The entire edifice for reopening is based on some "Base Note" received by Government of India under Article 28 of DTAA from the French authorities, on the basis of which, belief has been entertained that assessee holds a bank account with HSBC Bank, Geneva and thus, the balance lying in the said bank accounts is taxable in India and therefore, income chargeable to tax has escaped assessment. As noted above, prior to the recording of the reasons, the investigation wing had issued notices u/s. 131 and asked for all the requisite details of the bank statements, accounts and the relevant information which was placed before the Investigation wing, as well as before the Assessing Officer also prior to the issuance of notice u/s.148. From the bare perusal of the 'reasons' recorded, it is seen that nowhere these documents have been mentioned nor the bank statements as was supplied by the assessee to the Income Tax department. These bank accounts have been provided to the ADIT way back in the year 2011, then again to ACIT in the year 2013 and at no point of time they asked any clarification with regard to various entries appearing in the said bank statement. The reasons recorded are so general in nature which only mentioned about information received by the Government of India and how Investigation wing of the Income Tax department after conducting enquiries, found large number of assessee have admitted of holding accounts in HSBC bank

and certain assesseees have denied. Whether the balance shown in the bank account of the assessee with HSBC Geneva, leads to reason to believe that income is chargeable to tax in India and how it is income taxable in India or not has not even mentioned.

14. One very important fact which is relevant here in this case is that, assessee is a non-resident and from last several years she has been staying in London and earning income from various activities carried outside India. Whatever income, which has been accrued in India in the form of capital gain or interest or dividend has always been disclosed in the return of income filed in India. **Fourth proviso to Section 139(1)** of the Act requires that a person who is resident of India to disclose the details of foreign assets in the return of income and is not applicable to the assesseees who are not ordinarily resident or non-resident. Before us, ld. Counsel has filed a copy of return and had drew our attention to Schedule FA forming part of the return of income which requires assessee to give information with respect to assets held outside India, but the same is applicable for residents and not for the non-resident. The notes forming part of Schedule FA of the Return mentions as under:-

Schedule FA:-

This schedule needs to be filled up by a resident assessee. Mention the details of foreign bank accounts, financial interest in any entity, details of immovable property or other assets located outside India. This should also include details of any account located outside India in which the assessee has signing authority.

Even the Schedule FA of 2015 explains object behind various amendments made by the Finance Act 2012 in Section 139(1) which only refers to the cases of resident assessees. Thus, the assessee being a non-resident was not required to disclose any asset held outside India in the return of income to be filed in India. This basic tenet has been missed by the Assessing Officer while recording the reasons as well as in the assessment order.

15. The department before us seeks to rely upon Section 149(1)(c) to justify the availability of extended time period of 16 years within which the notice can be issued would be available, provided the income in relation to any asset is located outside India which is chargeable to tax has escaped assessment. However, section 149(1)(c) and the period of 16 years is only applicable for reopening the assessment of the persons who are residents and are required to disclose the assets outside India. The asset can be said to be “found” when an assessee who is resident is required to disclose the said asset in the return of income within the provisions of the Income Tax Act. For a non-resident there is no obligation to disclose any foreign asset / account in its return of income in India as per section 139 itself, nor there is any column in the return of income as noted above in the foregoing para. It is reiterated that, even the ld. CIT (A) has not disputed that assessee was non-resident and more so the assessment passed by the ld. AO is in the status of non-resident. The ld. CIT(A) had also not denied this fact that assessee in terms of Section 6 of the Income Tax Act was never a resident of

India. Thus, extended time limit provided u/s. 149(1)(c) will not be applicable in the case of the present assessee.

16. The ld. AO while recording the reasons has not disputed that assessee is a non-resident and even her return of income filed for the A.Y.2006-07 and 2007-08 showed the status of non-resident and nowhere the ld. AO has held that assessee has no longer the status of non-resident. Once the Assessing Officer while recording the reasons has accepted that assessee is a non-resident, then how balance in the bank account with HSBC bank, Geneva represents income which is accrued or arising or is deemed to accrue or arise in India so as to come within the scope of total income in terms of Section 5 of the Act. At least, the ld. AO should have mentioned it in the reasons recorded before acquiring jurisdiction to reopen an assessment for an extended period of 16 years that, *firstly*, assessee is a resident in terms of Section 6; and if not then *secondly*, the balance lying in the foreign bank account represents income which has accrued or arisen or deemed to accrue or arise in India u/s. 5. Once that fact has not been brought on record, ostensibly there cannot be any reason to believe that the income in relation to such an asset has escaped assessment for the A.Y.s 2006-07 and 2007-08 and extended time limit of 16 years is available.

17. The reasons recorded by the AO are not only vague and general but without any application of mind on the records and the material which was filed by the assessee before the Income Tax department right from the year 2011 to 2014, till the

issuance of notice u/s.148. The reasons have been recorded in a very mechanical manner without even ascertaining the facts and material available on record.

18. Even going by the so called “Base Note” as mentioned by the ld. AO refers to account holder, Amaya Ltd. which is a separate legal entity and incorporated outside India. At the time of recording, the reasons or even in the Base Note, nowhere it has been brought on record that the said entity Amaya Ltd. is fictitious or some kind of transparent entity.

19. The ld. CIT (A) has tried to justify the reopening that assessee was required to declare the income accrued and arisen in India u/s.9 which has not been done by her. First of all, there has to be some material on record that any amount deposited in HSBC bank account, Geneva is the income which has accrued and arisen in India and has been routed back in the said bank account. Nothing can be presumed on some hypothesis or surmise that assessee might have earned income from India which has been transferred or deposited in HSBC Bank, Geneva. On the contrary right from beginning assessee has been stating and claiming that she has opened three bank accounts in HSBC Geneva and all the deposits are from her income earned outside India in the form of her salary or sale of painting etc. Not a single entry in the said bank statement refers to any remittance from India or through some indirect channel where money can be said to have been transferred from India and found its final

destination in the said bank accounts. Assessee all throughout has been claiming that money deposited in these are from sources earned outside India from various activities carried outside India.

20. At the time of hearing, we had also called for the entire statement of bank accounts from the period 17/08/2005 to 31/03/2006 for all the three bank accounts which was in US currency, Euro currency and GBP currency and all of the entries are by way of clearance and nowhere it can be inferred that any amount has been deposited from Income earned from India. The entries of these bank statements have already been incorporated in the ld. CIT (A)'s order also and nowhere any finding has been given that any credit in the said bank account pertains to any income earned from India even in terms of Section 9. While confirming the order of the ld. AO, ld. CIT (A) has narrated various facts from Google search in order to draw presumption that; there might have some income earned from import of paintings, which might have deposited in these accounts and therefore, income might have deemed to accrue and arise in India. All these findings are based on certain hypothesis on which he has come to a conclusion. Even certain observations that Amaya Ltd was in fact belong to the assessee and assets owned by said entity is an asset of the assessee, but that does not lead to inference that assessee has evaded tax from India, because the said entity has neither been incorporated nor has any connection in India nor has any business connection or any place of effective management is situated in India. Further,

nothing has been brought on record in 'reasons recorded' or there is any material on record that assessee has any business connection in India and therefore amount deposited in said foreign bank account is income arisen or accrued or deemed to have arisen or deemed to have accrued in India. If at all there is some doubt about the said entity and deposits made therein, then, it is the UK Tax authorities which have to examine this issue.

21. In any case, we are not going into this aspect of the merits of the case, because in our opinion the reasons recorded by the ld. AO itself does not confer any jurisdiction to the Assessing Officer to reopen the case of a non-resident u/s 147 of the Act based on some vague and general information as noted in the reasons recorded and without ascribing how income chargeable to tax has escaped assessment in India. Therefore, on legal issue alone, the entire proceedings u/s.147/ 148 is quashed and consequentially entire re-assessment order is held as 'null and void'. Accordingly, on the legal issue both the appeals of the assessee are allowed.

20. In the result, both the appeals of the assessee are allowed.

Order pronounced on 9th May, 2023

**Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Mumbai; Dated 09/05/2023
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai