IN THE HIGH COURT OF BOMBAY
AT GOA (PANAJI)

WRIT PETITION NO.894 OF 2017

William Britto ...Petitioner
vs.
Deputy Commissioner of Income Tax and Ors. ...Respondents

Mr. Jitendra Jain, Ms. Eesha Dukle, Neha Shirodkar, Advocates for the Petitioner.
Ms. Susan Linhares, Junior Central Government Standing Counsel, for the Respondents.

CORAM : **SHANTANU KEMKAR & NUTAN SARDESSAI, JJ.**

DATE : **8TH JANUARY, 2018**

PC:

. By filing this Petition under Article 226 of the Constitution of India, the Petitioner has challenged the Notice dated 19th May, 2016 (Exhibit "A") issued by the Respondents under Section 148 of the Income Tax Act (in short "the Act") seeking to re-open the assessment for the Assessment Year 2015-2016 as also the order dated 11th September, 2017 (Exhibit "AF") by which the Petitioner's objection has been rejected.

2. According to the Petitioner, self assessment was made by it on 3rd September, 2015 for the Assessment Year 2015-2016. The period for taking action under Section 143(2) of the Act was to expire on 30th September, 2016. However

prior to expiry of the period for taking such action, on 19th May, 2016 the first Respondent issued the impugned notice.

3. In the circumstances, according to the Petitioner, since the impugned notice has been issued prior to expiry of the period for taking action under Section 143(2) of the Act, the same is liable to be quashed in view of the law laid down by this Court in the case of "**Smt. Suman vs. Income Tax Officer, Ward No.1(1), Nagpur, (2017) 84 taxman.com 267 (Bombay).** The learned counsel for the Petitioner has also placed reliance on the various orders passed by various High Courts including the order dated 12th January, 2007 passed in the case of **"KLM Royal Dutch Airlines vs. Assistant Director of Income-tax", (2007) 159 Taxman 191 (Delhi)."**

4. Having considered the submissions made by the learned counsel for the Petitioner as also the learned counsel appearing for the Respondents and having gone through the impugned notice as also the impugned order rejecting the objection raised by the Petitioner, in our considered view, since the impugned notice has been issued by the first Respondent before expiry of the period of taking action under Section 143(2) of the Act, the same is liable to be quashed and set aside as now it has been well settled that unless the return of Income already filed is disposed of, notice for reassessment under Section 148 of the Income-tax Act, 1961, cannot be

issued, i.e., no reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of the return already filed are not terminated.

5. In view of the aforesaid, we set aside the impugned notice as also the order passed by the first Respondent rejecting the Petitioner's objection.

6. The Petition is allowed.

7. No order as to cost.

(Nutan D. Sardessai, J.) **(Shantanu S. Kemkar, J.)**