

\$~119

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

Date of Decision: 17.01.2022

+ **W.P.(C) 9227/2021**

DHARAMRAJ

..... Petitioner

Through Mr.Jitender Kumar, Adv.

versus

INCOME TAX OFFICER

..... Respondent

Through Mr.Sanjay Kumar, Sr.SC with
Ms.Easha Kadian, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The petition has been heard by way of video conferencing.

1. The present petition has been filed by the petitioner challenging the notice dated 30.03.2019 issued by the respondent under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and all consequential proceedings emanating therefrom including orders passed by the Assessing Officer.
2. The petitioner is the son of Late Sh. Bhangar Singh Tanwar (hereinafter referred to as the 'Assessee') who died on 14.01.2016.
3. The impugned notice under Section 148 of the Act was issued in the name of the Assessee. The petitioner claims that he did not

receive the said notice. Subsequently, notice dated 30.10.2019 under Section 142(1) of the Act was again issued in the name of the Assessee. As no response was received to these notices, a Show Cause Notice dated 15.12.2019 was issued to the Assessee. Finally, an assessment order dated 23.12.2019 was passed against the Assessee. Notice dated 01.02.2020 under Section 221(1) and notice dated 05.07.2021 under Section 271(1) (b) of the Act were also issued in the name of the Assessee.

4. The petitioner has challenged the above notices and proceedings on the ground that they were initiated against a person who had died prior to the issuance of notice and therefore, all proceedings are *void ab initio*.

5. On the other hand, the learned counsel for the respondent submits that notice under Section 148 of the Act was issued at the same address of the Assessee which is available in the ITD data base. The said notice was duly served as it was never received back by the respondent. Thereafter, notice under Section 142 (1) was issued on 30.10.2019 at the same address and was served by the postal agencies. As no response to the communications was received, a Show Cause Notice dated 15.12.2019 under Section 144 of the Act was issued and sent again at the same address. Assessment order under Section 144 of the Act was thereafter passed on 23.12.2019 making an addition of Rs.48,53,000/ under Section 69A of the Act being unexplained cash deposit. Penalty proceedings under Sections 271(1) (c), 271(1)(b) and 271F were also initiated by issuing a Show Cause Notice, again served at the same address. Though, all the correspondences to the Assessee

were made through speed post, none of the correspondence prior to the assessment order dated 23.12.2019 was received back through postal agency in the office of the respondent. Only the assessment order was received back with the remark that the addressee had died.

6. The learned counsel for the respondent submits that the factum of death of the Assessee was never communicated to the respondent by the legal heirs, though the notices were duly served at the given address. He submits that the petitioner, therefore, has an alternate efficacious remedy in form of a statutory appeal and this Court should refuse to entertain the present petition.

7. We have considered the submissions made by the learned counsels for the parties.

8. The issue of validity of a notice and proceedings held subsequent thereto against a dead person is no longer *res integra*. This Court in ***Savita Kapila vs. Assistant Commissioner of Income-Tax***, in W.P. (C) No.3258/2020 has held as under:

“AN ALTERNATIVE STATUTORY REMEDY DOES NOT OPERATE AS A BAR TO MAINTAINABILITY OF A WRIT PETITION WHERE THE ORDER OR NOTICE OR PROCEEDINGS ARE WHOLLY WITHOUT JURISDICTION. IF THE ASSESSING OFFICER HAD NO JURISDICTION TO INITIATE ASSESSMENT PROCEEDINGS, THE MERE FACT THAT SUBSEQUENT ORDERS HAVE BEEN PASSED WOULD NOT RENDER THE CHALLENGE TO JURISDICTION INFRUCTUOUS.

24. Further, the fact that an assessment order has been passed and it is open to challenge by way of an appeal, does not denude the

petitioner of its right to challenge the notice for assessment if it is without jurisdiction. If the assumption of jurisdiction is wrong, the assessment order passed subsequent would have no legs to stand. If the notice goes, so does the order of assessment. It is trite law that if the Assessing Officer had no jurisdiction to initiate assessment proceeding, the mere fact that subsequent orders have been passed would not render the challenge to jurisdiction infructuous.

xxxxx

THE SINE QUA NON FOR ACQUIRING JURISDICTION TO REOPEN AN ASSESSMENT IS THAT NOTICE UNDER SECTION 148 SHOULD BE ISSUED TO A CORRECT PERSON AND NOT TO A DEAD PERSON. CONSEQUENTLY, THE JURISDICTIONAL REQUIREMENT UNDER SECTION 148 OF THE ACT, 1961 OF SERVICE OF NOTICE WAS NOT FULFILLED IN THE PRESENT INSTANCE.

xxxxx

26. In the opinion of this Court the issuance of a notice under Section 148 of the Act is the foundation for reopening of an assessment. Consequently, the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. [See *Sumit Balkrishna Gupta v. Asst. Commissioner of Income Tax, Circle 16(2), Mumbai & Ors.*, (2019) 2 TMI 1209- Bombay High Court].

27. xxxxx Consequently, in view of the above, a reopening notice under Section 148 of the Act,

1961 issued in the name of a deceased assessee is null and void.

xxxxxx

AS IN THE PRESENT CASE PROCEEDINGS WERE NOT INITIATED/PENDING AGAINST THE ASSESSEE WHEN HE WAS ALIVE AND AFTER HIS DEATH THE LEGAL REPRESENTATIVE DID NOT STEP INTO THE SHOES OF THE DECEASED ASSESSEE, SECTION 159 OF THE ACT, 1961 DOES NOT APPLY TO THE PRESENT CASE.

30. Section 159 of the Act, 1961 applies to a situation where proceedings are initiated/pending against the assessee when he is alive and after his death the legal representative steps into the shoes of the deceased assessee. Since that is not the present factual scenario, Section 159 of the Act, 1961 does not apply to the present case.

31. xxxxx

THERE IS NO STATUTORY REQUIREMENT IMPOSING AN OBLIGATION UPON LEGAL HEIRS TO INTIMATE THE DEATH OF THE ASSESSEE.

*32. This Court is of the view that in the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the income tax department. After all, there may be cases where the legal representatives are estranged from the deceased assessee or the deceased assessee may have bequeathed his entire wealth to a charity. Consequently, whether PAN record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In **Alamelu Veerappan** (supra) [2018 (6) TMI 760 – Madras High Court] it has been held*

“nothing has been placed before this Court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased assessee to immediately intimate the death of the assessee or take steps to cancel the PAN registration.”

xxxxx

34. *Consequently, the legal heirs are under no statutory obligation to intimate the death of the assessee to the Revenue.*

SECTION 292B OF THE ACT, 1961 HAS BEEN HELD TO BE INAPPLICABLE, VIS-À-VIS, NOTICE ISSUED TO A DEAD PERSON IN **RAJENDER KUMAR SEHGAL** [2018 (12) TMI 697 (DELHI)], **CHANDRESHBHAI JAYANTIBHAI PATEL** [2019 (1) TMI 353 – GUJARAT HIGH COURT] AND **ALAMELU VEERAPPAN** [2018 (6) TMI 760 – MADRAS HIGH COURT].

35. *This Court is of the opinion that issuance of notice upon a dead person and non-service of notice does not come under the ambit of mistake, defect or omission. Consequently, Section 292B of the Act, 1961 does not apply to the present case.*

IN **RAJINDER KUMAR SEHGAL (SUPRA) A COORDINATE BENCH OF THIS COURT HAS HELD THAT SECTION 292BB OF THE ACT, 1961 IS APPLICABLE TO AN ASSESSEE AND NOT TO A LEGAL REPRESENTATIVE.**

xxxxx

38. *This Court is also of the view that Section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative. Further, in the present case one of the legal heirs of the deceased assessee, i.e. the petitioner, had neither cooperated in the*

assessment proceedings nor filed return or waived the requirement of Section 148 of the Act, 1961 or submitted to jurisdiction of the Assessing Officer. She had merely uploaded the death certificate of the deceased assessee.

xxxxxx

40. Consequently, the applicability of Section 292BB of the Act, 1961 has been held to be attracted to an assessee and not to legal representatives.”

9. The above judgment was followed by this Court in W.P.(C) No.2678/2020 titled ***Mrs. Sripathi Subbaraya Manohara L/H Late Sripathi Subbaraya Gupta vs. Principal Commissioner of Income Tax 22, N.Delhi & Anr.***

10. In the present case also, as the notice under Section 148 of the Act was issued against a dead person, the same is null and void and all consequent proceedings/orders, including the assessment order and the subsequent notices, being equally tainted, are liable to be set aside.

11. Consequently, the impugned notice dated 30.03.2019 issued under Section 148 of the Act is set aside along with all consequential proceedings/notices/assessment orders.

12. The petition is allowed. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

JANUARY 17, 2022
RN/U.