

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 17089 of 2015

Date of Decision: 19.8.2015

Smt. Jasbir Kaur Johal

....Petitioner.

Versus

Union of India and another

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. S.P. Chhabra, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a direction to the respondents to drop the assessment proceedings initiated against a dead person after his death.

2. A few facts necessary for adjudication of the instant petition as narrated therein may be noticed. Shri Kulwinder Singh Johal died on 25.7.2014 as per death certificate dated 29.7.2014 (Annexure P-1). Respondent No.2 knowing that Shri Kulwinder Singh Johal has died, initiated assessment proceedings against him vide notice dated 23.3.2015 (Annexure P-2) issued under Section 148 of the Income Tax Act, 1961 (in short "the Act") for the assessment year 2008-09. Again a notice dated 11.5.2015 (Annexure P-3) under Section 142(1) of the Act was issued to the petitioner by respondent No.2. The petitioner filed reply dated 17.6.2015 (Annexure P-4) to the said notice. Again a letter

dated 19.6.2015 (Annexure P-5) was sent to the petitioner for filing reply. In pursuance thereto, the petitioner filed reply dated 3.7.2015 (Annexure P-6). Thereafter, another letter dated 9.7.2015 (Annexure P-7) was issued for compliance of the notice/letters issued by respondent No.2. Hence, the present petition.

3. Learned counsel for the petitioner to buttress his submission that no such notice under Section 148 of the Act could be issued to the petitioner as legal representative of her deceased husband, Kulwinder Singh Johal, relied upon the judgments of Andhra Pradesh High Court in **Commissioner of Income Tax v. C.V. Raghava Reddy (1984) 148 ITR 385** and Allahabad High Court in **Rameshwar Prasad v. Commissioner of Wealth Tax (1980) 124 ITR 77**.

4. After hearing learned counsel for the petitioner, we do not find any merit in the submission.

5. Section 159 of the Act deals with legal representatives. It would be expedient to reproduce Section 159 of the Act which reads thus:-

“**159.** (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under Section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance

with the provisions of sub-section (1),—

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of section 161,

section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability.”

6. Sub-section (1) of Section 159 of the Act clarifies that the liability of the legal representative is in the like manner and to the same extent as of the deceased. Sub-section (2) lays down that the proceedings for making an assessment, reassessment or recomputation under Section 147 of the Act in the hands of the legal representative in accordance with the provisions of sub-section (1), which were commenced before the death of the deceased may be continued thereafter against the legal representative from the same stage at which it stood on the date of the death of the deceased. However, where any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative and all the provisions of the Act would apply. Sub-section (3) provides that the legal representative of the deceased shall be deemed to be an assessee for the purposes of this Act whereas sub-section (4) stipulates that every legal representative is personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged and he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the

asset so charged, disposed of or parted with. Sub-section (5) makes the provisions of Sections 161(2), 162 and 167 of the Act applicable in relation to an assessment against a legal representative which are not in consistent with the provisions of this Section. Sub-section (6) restricts the liability of a legal representative, subject to the provisions of sub-section (4) and sub-section (5), to the extent to which the estate of the deceased is capable of meeting the liability.

7. It is clear from the analysis of Section 159 of the Act as noticed above that the legal representative of the deceased is liable for filing the returns and payment of taxes. It is, however, restricted to the extent of inheritance to the estate of the deceased by the legal representatives. In the present case, notice under Section 148 of the Act was issued to the petitioner as legal representative of her deceased husband Kulwinder Singh Johal and not as an assessee in her individual capacity for the assessment year 2008-09. It was not in controversy that Kulwinder Singh Johal had died on 25.7.2014. Thus, the notice issued to the petitioner as legal representative of her deceased husband, Kulwinder Singh Johal is legal and valid.

8. In all fairness to learned counsel for the petitioner, we proceed to examine the case law relied upon by him. In **C.V. Raghava Reddy's case** (supra), the revenue had filed a petition under Section 256(2) of the Act for the assessment year 1968-69 against the assessee on 5th March, 1981 when the assessee had already died on 13.11.1980. An application was filed to bring on record his legal representative on 19.8.1981. The Court held that the petition had been filed against a dead person. After examining the facts and circumstances of the case, the petition was returned as incompetent against a dead person. The

question of assessability of legal representative under Section 159 of the Act was not the issue arising therein. Similarly, the question before the Allahabad High Court in **Rameshwar Prasad's case** (supra) was relating to levy of penalty under Section 18 (1)(a) of the Wealth Tax Act, 1957 (for brevity, WT Act") for late filing of the wealth tax return. It was held that the liability of penalty of legal representative after the death of the assessee when penalty proceedings under Section 18 of the WT Act were not commenced against a dead person during his life time, the same was not maintainable. This enunciation also does not help the petitioner as the said case was relating to Wealth Tax Act and imposition of penalty under Section 18(1)(a) thereunder. Again, it was not interpreting the scope and applicability of Section 159 of the Act regarding framing of assessment/reassessment on the legal representative of the deceased. Thus, none of the pronouncements relied upon by learned counsel for the petitioner comes to his rescue. Herein, the income of the deceased Kulwinder Singh Johal which has escaped assessment is sought to be brought to tax by issuance of a notice under Section 148 of the Act to his legal representative in accordance with the provisions of Section 159 of the Act.

9. In view of the above, we do not find any justification to interfere with the impugned notice and the assessment proceedings. Accordingly, the present petition is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 19, 2015
gbs

(RAMENDRA JAIN)
JUDGE