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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8273/2015 & CM No. 17434/2015 (for stay)

VIPIN WALIA

..... Petitioner

Through: Mr. S. Krishnan, Advocate.

versus

INCOME TAX OFFICER

..... Respondent

Through: Mr. Zoheb Hossain, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

15.02.2016

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Dr. S. Muralidhar, J.:

1. There are certain instances where the facts speak for themselves and this is one such.

2. A notice under Section 148 of the Income Tax Act, 1961 ('Act') dated 27th March 2015 was addressed by the Income Tax Officer (ITO) of Ward-72(3), Delhi to one Mr. Inder Pal Singh Walia, 128 RPS, DDA Flats, Sheikh Sarai Phase-I, Delhi seeking to reopen the assessment for Assessment Year (AY) 2008-09.

3. The above notice was returned unserved to the Department with the postal authorities endorsing on it the remarks "Addressee expired". That was a correct statement by the postal authority since indeed Mr. Inder Pal Singh Walia had expired on 14th March 2015. In other words, the notice dated 27th March 2015 had been addressed to a dead person.

4. The ITO, obviously unmindful of the requirement of law as far as Section 147 of the Act was concerned, issued a letter dated 15th June 2015 to the Petitioner as under:

“Sir,

Sub: Notice u/s 148 of the Income Tax Act, 1961 in the case of Sh. Inder Pal Singh Walia PAN – AAKPW8463F for the AY 2008-09 – reg.

Kindly refer to the subject mentioned above.

In this connection, this is to inform you that a notice u/S 148 of the Income Tax Act, 1961 in the case of Sh. Inder Pal Singh Walia PAN – AAKPW8463F for the AY 2008-09 was issued by this office on 27th March 2015. This notice has been received back in this office with the postal remarks ‘addresses expired.’

On this basis of information received from the records, the undersigned spoke to you on your mobile No. 9818200740 on 15th June 2015. Kindly find enclosed the copy of notice u/S 148 of the Income Tax Act issued on 27th March 2015 for the AY 2008-09 in the name of Sh. Inder Pal Singh Walia. You are further requested to kindly provide details of legal heirs/successor of the deceased Assessee to complete the assessment proceedings for the AY 2008-09.

The required details should be submitted to the office of the undersigned on the above mentioned address on or before 6th

July 2015.”

5. On 6th July 2015, the Petitioner wrote to the ITO pointing out that his father Shri Inder Pal Singh Walia had expired on 14th March 2015 and that the proceedings initiated under Section 148 of the Act were barred by limitation. Additionally, it was stated that he was unaware of the financial affairs or transactions carried on by his late father.

6. On 18th July 2015, the ITO took the stand that since the intimation of the death of Shri Inder Pal Singh Walia on 14th March 2015 was not received by her office “therefore the notice was not issued on a dead person”. To say the least this was a strange stand to take since the death certificate of Shri Inder Pal Singh Walia confirming the date of his death as 14th March 2015 is on record. With the Department having not been able to counter this basic fact, the stand taken by it that the notice was not issued to a dead person on 27th March 2015 was plainly untenable.

7. Another stand taken in the letter dated 18th July 2015 is treating the endorsement made by the postal authority (‘addressee expired’) as a refusal by the family members of the Assessee to accept the notice. This was again plainly erroneous. The notices were not addressed to the family members. Therefor, there was no occasion for them to refuse such notice. The postal authority had correctly noted that the person to whom the notice was addressed had indeed expired by then.

8. Proceeding on the above two erroneous stands, the Department

compounded its errors by insisting on continuing with the proceedings under Section 147/148 of the Act. It is at that stage that the Petitioner approached this Court.

9. While issuing notice in the petition on 28th August 2015, this Court stayed further proceedings. No counter affidavit has been filed till date. Learned counsel for the Revenue sought some more time for that purpose. With the facts being evident and the question being purely one of law, the Court declines the request.

10. As far as Assesseees who have expired, Section 159 of the Act sets out how the Department should go about proceeding against the legal representatives ('LRs') of such Assessee. The said provision reads as under:

“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 re-computation 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.”

11. Section 159(2) of the Act makes a specific reference to a reassessment proceeding under Section 147 of the Act. While Section 159(2)(a) of the Act talks of a proceeding already taken against an Assessee ‘before his death’. Section 159(2)(b) of the Act envisages any proceeding which could have been taken against the deceased if he had survived. It permits such a proceeding to be taken against the LRs of the deceased Assessee even if it had not taken while the Assessee was alive. Section 159(2)(b) is relevant as far as the present case is concerned.

12. What was sought to be done by the ITO was to initiate proceedings under Section 147 of the Act against the deceased Assessee for AY 2008-09. The limitation for issuance of the notice under Section 147/148 of the Act was 31st March 2015. On 27th March 2015, when the notice was issued, the Assessee was already dead. If the Department intended to proceed under Section 147 of the Act, it could have done so prior to 31st March 2015 by issuing a notice to the LRs of the deceased. Beyond that date it could not have proceeded in the matter even by issuing notice to the LRs of the Assessee.

13. Learned counsel for the Revenue sought to place reliance on the decision of the Supreme Court in *Commissioner of Income Tax, Shillong v. Jai Prakash Singh (1996) 3 SCC 525* in support of his contention that the ITO was justified in initiating proceeding under Section 147 of the Act even against the Petitioner who admittedly was the LR of the deceased Assessee in this case.

14. A perusal of the said judgment reveals that it is clearly distinguishable on facts. Para 2 of the said decision shows that the son of the deceased Assessee there had filed returns for the three Assessment Years ('AYs') for which the deceased Assessee had failed to file the returns. In other words, the proceedings at the instance of the LR of the deceased Assessee were already in progress when the question arose about the notice being issued only to the LR who filed the returns or to all the LRs. The question was whether the failure to issue notice to all the LRs would render the proceedings invalid. It is in those circumstances it was held that the non-

issuance of notice to all the LR's would be only an irregularity and not an illegality.

15. The Court fails to understand how the above decision in ***Commissioner of Income Tax, Shillong v. Jai Prakash Singh*** (*supra*) is of any help to the Revenue in the present case where the initial notice under Section 147/148 of the Act was issued to a dead person. The Revenue was unable to issue a notice to the LR of the deceased Assessee under Section 147/148 of the Act within the period of limitation. That would be a plain illegality and not a mere irregularity.

16. Learned counsel for the Revenue then relied on the decision of the Calcutta High Court in ***Kamlesh Kumar Mehta v. Commissioner of Income-Tax, West Bengal-III*** (1977) 106 ITR 855 (Cal). The facts of that case show that the initial notice under Section 148 of the Act was served to the Assessee who was still alive. He died after the service of such notice under Section 148 of the Act. This makes the decision distinguishable on facts.

17. On the other hand, we have a decision of this Court in ***Braham Prakash v. Income-Tax Officer*** (2005) 275 ITR 242 which in similar circumstances has held that “notice could have been served upon a deceased Assessee”. Even in that case there was nothing on record to show that notice under Section 148 of the Act was served on the LR of the deceased within the time prescribed.

18. Consequently, the Court has no hesitation in holding that the actions of the Revenue in this case in persisting with the proceedings under Section 147/148 of the Act against the Petitioner were wholly misconceived both on facts as well as on merits. Accordingly, the impugned notice dated 27th March 2015 and all proceedings consequent thereto are hereby quashed.

19. The writ petition is allowed but in the circumstances with no order as to costs. The application is disposed of.

FEBRUARY 15, 2016
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S. MURALIDHAR, J

VIBHU BAKHRU, J