IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 20229 of 2018
Date of decision: 14.08.2018

Late Lal Singh through Legal representative Sh. Balwinder Singh Age 47 years s/o Lal Singh, R/o Village Kumbra, Near State Bank of India, Mohali (Punjab)-PAN-BAOPS9848K.

……Petitioner

Vs.

Central Board of Direct Taxes and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Divya Suri, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226 and 227 of the Constitution of India is for quashing the revisional order passed under Section 264 of the Income Tax Act, 1961 (in short, "the Act") passed by the Principal Commissioner of Income Tax (in short, "the Principal CIT") dated 14.06.2018, Annexure P.4 and the re-assessment order dated 16.11.2017, Annexure P.2, rejecting the claim of petitioner for annulling the re-assessment proceedings against the dead person without bringing the legal heirs on record and complying with the provisions of Section 24-B of the Income Tax Act, 1922 (in short, "the 1922 Act").

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The assessee-Lal Singh (since deceased) was a Government employee and resident of Village Kumbra, District Mohali. The present petition is being filed by Balwinder Singh, legal heir of the assessee-Late Lal Singh. Notice under Section 148 of the Act was

issued on 26.03.2017 i.e. after the death of the assessee in his name asking explanation for cash deposit of ₹ 5,80,000/- made during the period from 1.04.2009 to 31.03.2010. The said notice was returned un-served. The second notice was issued on 20.06.2017 and the same was returned by postal authorities with the remarks that the assessee was dead. The Department again issued another notice under Section 142(1) of the Act requiring the filing of return of income from a deceased person. The proceedings continued without bringing on record the legal heirs of the deceased. Presently, the case is being represented by the son of the deceased in representative capacity as one of the legal heir. Return of income was filed by him on 08.11.2017 in order to cooperate with the Government notices in response to the notice under Section 148 of the Act declaring income of ₹ 1,23,000/- and agricultural income of ₹ 40,000/-. The assessee's son appeared for hearing and was required to explain the details of amounts of cash deposited in the account of the assessee from 1.04.2009 to 31.03.2010. Though no notice was served on the son of the assessee, but being cooperative, certain information was submitted to the department by him like death certificate of the assessee, detail of the amount of ₹ 3,10,000/- which was given by assessee to his son-in-law Sh. Kuldeep Sharma on 06.11.2008 which was returned to the assessee in March 2009 by way of payment of ₹ 4,50,000/- in cash and affidavit dated 14.11.2017 substantiating the aforesaid transaction. The Assessing Officer made an addition of the whole amount including interest i.e. ₹ 6,71,300/- under Section 68 of the Act, vide order dated 16.11.2017, Annexure P.2. Aggrieved by the order, an application under Section 264 of the Act was filed by the assessee's son with a prayer to revise the order being prejudicial and illegal inter alia stating that his father expired on 04.03.2015 and certificate of his death was filed on 13.11.2017. It was further pleaded that a deceased person cannot be assessed without appointing legal heir. Vide order dated 14.06.2018, Annexure P.4, the Principal CIT rejected the application under Section 264 of the Act filed by the assessee. Hence the instant petition before this Court by the petitioner-son of the deceased assessee.

3. We have heard the learned counsel for the petitioner.

4. Admittedly, notice under Section 148 of the Act was issued after the death of the assessee in the name of deceased asking explanation for cash deposit of ₹ 5,80,000/- made during the period from 1.4.2009 to 31.03.2010. The return of income was filed in response to the notice under Section 148 on 8.11.2017 declaring income of ₹ 1,23,000/- and agricultural income of ₹ 40,000/-. The assessee's son who has filed the present writ petition appeared for hearing. He was required to explain the details of amounts of cash deposited in the account of the assessee for the period in question. The petitioner had submitted the required information/documents. After examining the record, the Assessing Officer made an addition of the whole amount including interest i.e. ₹ 6,71,300/- under Section 68 of the Act. Aggrieved by the order, the assessee's son filed an application under Section 264 of the Act for revision of the order passed by the Assessing Officer. The Principal CIT vide order dated 14.06.2018, Annexure P.4, rejected the application.

5. Section 159 of the Act deals with "legal representative" of the deceased assessee and reads thus:-

> "**159. Legal representatives**
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> (1) Where a person dies, his legal representatives 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.
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> (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 subsection (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 subsection (4) and sub- section (5), be limited to the extent to which the estate is capable of meeting the liability."

According to Section 159(2)(b) of the Act, any proceeding which could have been taken against the deceased if he was alive, could be taken against the legal representative. The said legal representative of the deceased shall be deemed to be an assessee for all purposes of the Act.

6. It was not disputed that the petitioner was the legal heir/representative of the deceased – Lal Singh. Once that is so, the petitioner could not absolve himself from the liability. The Principal CIT while rejecting the petition under Section 264 of the Act filed by the petitioner, as legal representative of deceased – Lal Singh, had, inter alia, recorded as under:-

> "i) The assessee had not filed return for the assessment year 2010-11 during the relevant period in view of provisions of Section 139(1) of the Act. The department was in possession of information that the assessee had deposited cash amounting to ₹ 5,80,000/- in the bank account maintained with SBOP, Chandigarh.
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> ii) Therefore, NMS notice generated from the system was issued to the assessee on 11.9.2013. The assessee did not comply with the aforesaid notice.
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> iii) In absence of return of income and non compliance to the NMS notice dated 11.9.2013, source of cash deposits of ₹ 5,80,000/- remained unexplained and therefore, proceedings under Section 147 of the I.T.Act, 1961 were initiated by issuing notice under Section 148 of the I.T.Act, 1961 on 26.3.2017 by speed post.
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> iv) The department has no way of knowing about the death of a tax payer. Notice under Section 148 was issued within time at the tax payer's address.
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> v) xxxxxxxxxxx
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> vi) The notice for reopening under Section 148 was issued on 26.3.2017 within time, in the name of Sh.Lal Singh, when the Department had no knowledge that tax payer had expired. However, it will be seen that this letter, delivered at the correct address, dated 26.3.2017 was deliberately returned with the remarks "Wrong Address".
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> vii) At the same address, subsequently, the death of the tax payer was reported when notice under Section 142(1) dated 20.6.2017 calling for return was returned back stating that tax payer had expired.

> viii) At the same address however compliance with notices was effected on 14.8.2017 when Sh.Deepak Minhas, AR attended and filed POA on 4.9.2017 signed on behalf of late Sh.Lal Singh by his son Sh.Balwinder and legal representative.
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> ix) xxxxxxxxxxxx
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> x) xxxxxxxxxxxxx"

7. Further, Section 292B of the Act relates to validity of the return of income etc. on certain grounds. It reads thus:-

> **"292B. Return of income, etc., not to be invalid on certain grounds** - No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

8. A perusal of the above provision shows that no return of income, assessment, notice, summons or other proceedings in pursuance of any of the provisions of the Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein if the same are in substance and effect in conformity with the intent and purpose of the Act. In the present case, as noticed above, it has been recorded by the Principal CIT in its order dated 14.06.2018, Annexure P.4 that notice for re-opening under Section 148 of the Act was issued on 26.03.2017 within time, in the name of the deceased assessee, when the department had no knowledge that the tax payer had expired. It was further recorded that this letter delivered at the correct address, was deliberately returned with the remarks "**Wrong Address**". At the same address, subsequently, the death of the tax payer was reported when notice

under Section 142(1) of the Act dated 20.06.2017 calling for return was returned back stating that the tax payer had expired. Thereafter, compliance with notices was effected on 14.08.2017 at the same address and the representative on behalf of assessee's son appeared. It was concluded by the Principal CIT that the son and legal representative of the deceased assessee attended the proceedings and furnished all the information and never objected until the addition was made. Thus, the application under Section 264 of the Act was rightly dismissed by the Principal CIT.

9. Learned counsel for the petitioner-assessee has not been able to produce any material on record to point out any error or illegality in the impugned order passed by the Principal CIT. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

August 14, 2018 **(Avneesh Jhingan)**
'gs' **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**