IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 271 of 2017 (O&M)

Date of Decision: 23.10.2018

Pr. Commissioner of Income Tax, Panchkula.
.......Appellant

Versus

Sh. Yoginder Singh
......Respondent

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

Present: Mr. Yogesh Putney, Senior Standing Counsel
for the revenue-appellant.

Mr. Arvind Bansal, Advocate
for the assessee-respondent.

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AVNEESH JHINGAL, J.

The appellant-revenue has filed the present appeal under Section 260-A of the Income Tax Act, 1961 (for short 'the Act') against the order dated 21.10.2016 passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh, (for short ' the Tribunal') in ITA No. 373/CHD/2015. The assessment year involved is 2006-07.

2. The appellant has claimed following substantial questions of law:

> "(i) Whether on the facts and in the circumstances of the case the ld.ITAT was right in law in holding the notice issued and served under Section 148 of the Income Tax Act, 1961 as invalid on the assumption that the notice was not addressed in the name of Legal Representatives of the deceased-Assessee, ignoring the fact that the notice was addressed to the deceased-Assessee through legal heirs?
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> (ii) Whether on the facts and in the circumstances of the case the ld. ITAT was right in law in holding the re-assessment proceedings as invalid on the ground that the said notice was addressed to the deceased-Assessee, through legal heirs ignoring the fact that the Assessing Officer had validly assumed the jurisdiction under Section

147 of the Income Tax Act, 1961 by recording the reasons for issuing the notice under Section 148 of the Income Tax Act, 1961?

(iii) Whether on the facts and in the circumstances of the case the ld. ITAT was right in law in quashing the Assessment order passed by the Assessing Officer under Section 143(3) read with Section 147 of the Income Tax Act, 1961 on the ground that the legal heirs representatives of the deceased Assessee were not impleaded as necessary party?

(iv) Whether on the facts and in the circumstances of the case the ld. ITAT was right in law in holding that since notice under Section 148 of the Income Tax Act, 1961 was not served on the Assessee or the legal heirs which is essential to make re-assessment in accordance with law, thus, the re-assessment made consequent thereto was without jurisdiction and liable to be quashed?

(v) Whether on the facts and in the circumstances of the case the ld. ITAT was right in law in giving same meaning to words "issue" and "serve" as jurisdictional aspect, whereas both operate in different fields i.e. Former is jurisdictional and later is procedural and any mistake, defect or omission in return of income, Assessment, notice, summons or other proceedings is procedural irregularity and curable under Section 292B read with section 292BB of the Income Tax Act, 1961?"

3. The brief facts necessary for adjudication of the present appeal are that Yoginder Singh filed the income tax return for the assessment year 2006-07 on 31.07.2006, declaring the total income of Rs. 42,96,825/-. The return was processed under Section 143(1) of the Act. The Assessing Officer framed the assessment for the assessment year 2006-07 under Section 143(3) of the Act and noticed that the assessee had received enhanced compensation amounting to Rs.7,24,46,572/- from the Land Acquisition Officer on 11.10.2005 and also received interest on enhanced compensation amounting to Rs.7,53,20,932/- on 08.04.2006 and while framing the assessment under Section 143 (3) of the Act for the assessment year 2007-08, the Assessing Officer (A.O.) noticed that capital gains accrued to the assessee on account of enhanced compensation received for the land acquired which was treated as non-cultivable land by the revenue.

4. Mr. Yoginder Singh, died on 08.04.2008. During the assessment

proceedings for the assessment year 2007-08 his legal heirs were brought on record and assessment was framed vide order dated 30.12.2009. Since, the amount of enhanced compensation and interest on enhanced compensation was received by Mr. Yoginder Singh relating to the assessment year 2006-07, the provisions of Section 147 of the Act were invoked to re-open the assessment for the assessment year 2006-07. The re-opening was done after recording the reasons. Notice under Section 148 of the Act was issued on 25.03.2013 to deceased Yoginder Singh through legal heirs. Notice was sent on the address given in the return filed and was sent through speed post. However, the envelope was returned with remarks that Yoginder Singh had died 6-7 years ago and letter be sent back to the sender. The A.O. issued another notice under Section 143(2) of the Act on 25.09.2013. Thereafter, notice under Section 142(1) of the Act was issued. One of the legal heir filed a reply dated 16.01.2014 and raised the issue that notice under Section 143(2) was time barred. Another show cause notice to the deceased through legal heirs was issued on 29.01.2014. Thereafter, the proceedings were attended by Chartered Accountant, who raised an objection that no notice under Section 148 of the Act has been served for the assessment year 2006-07 till date. The A.O. rejected the objections stating that the notice was sent through speed post well within time. The assessment was framed under Section 143(3) read with Section 147 of the Act vide order dated 28.02.2014.

5. The order of assessment was assailed by filing an appeal before the Commissioner of Income Tax, (Appeals) Panchkula (hereinafter referred to as 'CIT(A)'). The CIT(A) partly allowed the appeal vide order dated 27.02.2015 but rejected the contentions that proceedings under Section 143(3) read with Section 147 of the Act were not validly invoked.

6. Further, an appeal was filed before the Tribunal. The appeal was allowed vide order dated 21.10.2016 only on the ground that notice issued under

Section 148 of the Act was invalid as the same was not served either upon the deceased-assessee or on his legal heirs. Hence, the present appeal.

7. Learned counsel for the appellant argued that notice under Section 148 of the Act, was issued within limitation. It was sent to Yoginder Singh through his legal heirs. One of the legal heir filed reply to the notice and even the assessment proceedings were attended. The Tribunal erred in accepting the appeal of the assessee.

8. Learned counsel for the assessee contended that statutory requirements to serve notice under Section 148 of the Act, has not been complied with. The initiation of proceedings itself is without jurisdiction and the Tribunal was justified in accepting the appeal of the assessee.

9. Before dealing with the contentions raised, it would be pertinent to reproduce Section 159 of the Act:

"**159. Legal representatives**

(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.

(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.

10. There is no dispute that respondents in appeal are the legal heirs of the deceased. Once it is so, the legal heirs cannot absolve themselves from the liability. Moreso, when they participated in assessment proceedings.

11. Further Section 292B of the Act relates to validity of the return of income etc. on certain grounds and the same is reproduce below:

"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."

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.

12. In the present case as noticed above, notice for re-opening under Section 148 of the Act was issued on 25.03.2013, i.e. within time to the deceased-assessee through his legal heirs. The notice was sent through speed post. The same was returned by stating that the assessee had died about 6-7 years ago. It is not disputed that the address was correct. The act of returning the notice was deliberate inspite of the fact that notice was not in the name of Yoginder Singh but Yoginder Singh through his legal heirs.

13. It is pertinent to note that the legal heirs of the assessee filed a reply dated 16.01.2014 stating that notice under Section 143(2) of the Act was time barred. The assessment proceedings were attended by Neeraj Jain, Chartered Accountant and he submitted that no notice had been served under Section 148 of the Act for the assessment year 2006-07. The finding recorded has not been disputed that after issuance of notice under Section 148 of the Act, notice under Section 143(2) of the Act alongwith questionnaire was issued and the same was served. The final show cause notice was issued which was served through affixation on 04.02.2014. The legal heirs participated in the assessment proceedings but never filed any reply on the merits of the issue.

14. The objection raised regarding non-receipt of notice under Section

148 of the Act was rightly rejected by the A.O.

15. The order passed by the Tribunal allowing the appeal on the ground that re-assessment order had no validity being passed in the name of dead person and that notice under Section 148 of the Act was not served upon the deceased-assessee or legal heirs, is not-sustainable.

16. Consequently, the impugned order dated 21.10.2016 is hereby set aside and the matter is remanded back to the Tribunal to decide the appeal on merits. The substantial questions of law as claimed are answered accordingly.

17. Hence, the appeal is allowed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
23.10.2018 **JUDGE**
reema

Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No