IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2405 of 2019

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Most. Sudha Devi, aged about 62 years (Female), Wife of Late Krishna Mohan Prasad Resident of Mohalla- Jhakari Mahadev, Gola Road, P.S.- Danapur, Patna, Pin Code- 801503 ... ... Petitioner

Versus

1. The Chairman, Central Board of Director Taxes, New Delhi
2. The Chief Commissioner of Income Tax, Revenue Building, Birchand Patel Path, Patna
3. The Commissioner of Income Tax, Birchand Patel Path, Patna
4. The Deputy Commissioner of Income Tax, Birchand Patel Path, Patna
5. The Income Tax Officer, Ward 6(5), Patna, 3rd Floor Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, Frazer Road, Patna

... ... Respondents

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Appearance :
For the Petitioner/s : Mr. Mrigank Mauli, Adv.
Mr. Rakesh Kumar Singh, Adv.
Mr. Bishwajeet Singh, Adv.
For the Respondent/s : Mr. Rishi Raj Sinha, Sr.S.C.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 27-02-2019

We have heard Mr. Mrigank Mauli, learned counsel for the petitioner and Mr. Rishi Raj Sinha, learned Senior Standing Counsel for the Income Tax Department.

The issue raised in this writ petition lies in a very narrow compass for while praying for issuance of a writ in the nature of certiorari for quashing the notice issued by the Income Tax Officer dated 30.3.2018 for the assessment year 2011-12, which is issued in the name of Shri Krishna Mohan Prasad, the petitioner, who is the widow of the noticee, questions the same, inter alia, in reference to the provisions underlying Section 148 of the Income

Tax Act, 1961 (hereinafter referred to as ‘the Act’) on grounds that no proceeding can be initiated against a dead person.

The petitioner while questioning the notice also questions the proceedings that has followed the notice and resulted in the order of assessment dated 28.12.2018, which is impugned at Annexure 6 to the writ petition and is followed by a demand notice at Annexure 7 to the writ petition, which again is issued in the name of the deceased husband of the petitioner.

Mr. Mrigank Mauli, learned counsel for the petitioner, has made a rather brief submission to rely upon the provisions of Section 148 of ‘the Act’ to submit that even if a proceeding can be initiated against an assessee during his life time and can continue even after he deceases, as against his legal heirs/ representative, the respondent Assessing Officer has not bothered to correct himself even after his attention was invited to the death of the assessee rather has perpetuated the illegality which got initiated from the stage of the notice and has culminated in the order of assessment/ demand notice.

Learned counsel has relied upon a judgment of Delhi High Court rendered in W.P.(C) No. 8273/2015 (**Vipin Walia v. Income Tax Officer**) to submit that identical issues engaging the Delhi High Court, the proceedings have been quashed.

Mr. Sinha, learned Sr. Standing Counsel for the Income Tax Department, while accepting the statutory provisions submits that even if the notice has been issued to the assessee that the petitioner has responded to the notice, participated in the proceedings and which has resulted in the assessment order and the demand notice, the orders put to challenge may not be interfered with because the petitioner has been given opportunity to contest the notice. Learned counsel relies upon the provisions of Section 159 read with Section 292BB of 'the Act' where a notice shall be deemed to be valid in the circumstances of the present kind where the assessee, if deceased, has been represented through the legal representative and who has participated in the proceeding.

We have heard learned counsel for the parties and have perused the records.

The three provisions which are pressed into service in the present case are Sections 148, 159 and 292BB of 'the Act', which provisions reads under:

> "148. **Issue of notice where income has escaped assessment.-** (1) Before making the assessment, reassessment or re-computation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period as may be specified in the notice, a return of his income or the

income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that in a case-

(a) Where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this Section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or re-computation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, re-assessment or re-computation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

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 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.

292BB. **Notice deemed to be valid in certain circumstances**.-Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was-

(a) not served upon him; or

(b) not served upon him in time; or

(c) served upon him in an improper manner;

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

Be it noted that we are not looking into an original assessment rather the present case is a case of reopening of assessment in purported exercise of power vested under Section 148A of 'the Act' i.e. where in the opinion of the Assessing Officer, the income declared by an assessee has escaped assessment either at the time of assessment or reassessment or re-computation under section 147 of 'the Act' and when a notice is to be served on the assessee requiring him to furnish the details present in the notice. The language used in Section 148 of 'the Act' is eloquent and casts an obligation on the assessee to discharge and not his legal representative.

Now to what extent a Taxing Authority, in possession of such information, can proceed in case of a deceased assessee, is answered by Section 159 of 'the Act' and which, inter alia, provides that where a person dies, his legal representatives shall be liable to pay any sum which was payable by the deceased. Section

159(2) of 'the Act' takes note of a circumstance where any such proceeding is initiated but the assessee deceases in the meanwhile and when power is vested in the Assessing Authority to carry forward such proceeding by arraigning the legal representative of such an assessee.

Section 292BB of 'the Act' so relied upon by Mr. Sinha validates a legal fiction where an assessee has appeared in any proceeding, co-operated in any inquiry relating to assessment or reassessment. In such circumstances, the issue whether or not, a notice was served, becomes irrelevant and the participation by an assessee in such a proceeding shall be construed a lawful proceeding.

We completely fail to appreciate as to how either Section 159 or Section 292BB of 'the Act' comes to the aid of the department for the facts on record itself are sufficient to hold the entire proceeding void because not only the notice at Annexure 2 dated 30.3.2018 is addressed to the deceased assessee, that the widow petitioner having responded to the notice, informed the Assessing Officer about his death, the certification of which is at Annexure 1 and confirms the death on 11.6.2014 i.e. not less than four years prior to issuance of such notice and even thereafter the Assessing Officer did not bother to correct the course of proceeding in tune with the statutory provisions available under 'the Act', rather proceeded to continue the proceeding against a dead person for passing the assessment order dated 28.12.2018, not only the assessment order, impugned at Annexure 6 but even the consequential demand notice issued under section 156 of 'the Act' dated 28.12.2018 and the penalty notice issued under section 274 read with section 271 of 'the Act' impugned at Annexure 7 are void ab initio because they are addressed to a dead assessee, late Krishna Mohan Prasad.

It is rather strange that even in such defenceless circumstances noted, the Department has come up with a counter affidavit which defends such action and is advanced through their Senior Standing Counsel, Mr. Sinha, on mere participation of the widow- petitioner in the proceedings. As we have observed at the outset, we reiterate that no amount of justification by the authorities nor even the persuasive argument of Mr. Sinha can provide validity to a void proceedings for it does not require any reference to any judicial pronouncement to hold that no proceeding much less a proceeding under 'the Act' can be proceeded against a dead person unless and until such time that such proceeding was initiated during his life time and has been carried forward by his legal representative. 'The Act' under

Section 159(1) though empowers the statutory authorities to carry forward such proceeding against the legal representative but then such is not the case here because the proceedings was initiated against a dead man and has culminated in an order passed against him.

For the discussions above, it is only a completion of formality for us to declare the entire proceedings void, ab initio and while holding as such, we quash the entire proceedings including the notice dated 30.3.2018, the order of assessment dated 28.12.2018 and the demand notice of the same date and the penalty notice, impugned at Annexures 2, 6 and 7 respectively which are quashed and set aside.

However, our order would not preclude the authorities to move afresh in the matter but in accordance with law.

The writ petition is allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.03.2019
Transmission Date	NA