

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
WRIT PETITION NO. 3569 OF 2018

Sumit Balkrishna Gupta

.. Petitioner

Versus

Asstt. Commissioner of Income Tax, Circle 16(2), Mumbai.. Respondents
& Ors.

-
- Mr. Satish Mody a/w Ms. Aasifa Khan for the Petitioner
 - Mr. Suresh Kumar for the Respondents
-

**CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.**

DATE : FEBRUARY 15, 2019.

P.C.:

1. At the request of the parties, this petition is taken up for final disposal at this stage.

2. This petition under Article 226 of the Constitution of India challenges a notice dated 29.3.2018 issued under Section 148 of the Income Tax Act, 1961 ("the Act" for short) and order dated 13.11.2018 rejecting the petitioner's objection to the above notice by respondent No. 1. The impugned notice seeks to reopen the assessment for the assessment year 2011-12.

3. The petitioner is the legal heir of late Mr. Balkrishna P Gupta (the original assessee) who died on 9.6.2014. This after having filed the return of income for assessment year 2011-12 on 26.9.2011.

4. The petitioner's challenge to the impugned notice dated 29.3.2018 issued under Section 148 of the Act is on the ground that it is without jurisdiction. This as the same has been issued in the name of the dead person i.e the deceased assessee Mr. Balkrishna P. Gupta. The above objection to the impugned notice dated 29.3.2018 was put forth by the petitioner in its communication to the Assessing Officer submitting that the impugned notice is null and void. However, the Assessing Officer, by impugned order dated 13.11.2018 rejected the petitioner's preliminary objection inter alia on the following grounds:

- (a) the defect in the notice would stand rectified by virtue of Section 292B of the Act;
- (b) the petitioner was not registered as a legal heir of the deceased assessee and thus, the notice issued in the name of the deceased person was automatically issued; and

- (c) the return of income for assessment year 2016-17 was filed on 17.10.2016 in the name of the original assessee Balkrishna Gupta who passed away on 9.6.2014.

5. On perusal of the papers and proceedings and after hearing the parties, the following undisputed facts emerge:-

- (i) the return for assessment year 2011-12 was filed in the name of the deceased assessee on 26.9.2011;
- (ii) The original assessee passed away on 9.6.2014 i.e after filing the return;
- (iii) the petitioner registered himself as the legal heir of the said deceased Balkrishna Gupta on 30.1.2017 and the same was accepted by the portal of Income Tax;
- (iv) the return of income for assessment year 2016-17 though filed in the name of the original assessee, had been verified by the petitioner as a legal heir. In fact, in Writ Petition No. 3563 of 2018 filed by the petitioner in respect of assessment year 2016-17, we have accepted by an order passed today

that it is an inadvertent mistake; and

- (v) The assessment order for assessment year 2014-15 which had been passed on 30.12.2016 by the Assessing Officer in the name of the petitioner as legal heir of the deceased assessee.

6. In view of the above, the submission of the Revenue reiterating the grounds in the impugned order dated 13.11.2018 stands negatived on facts so far as grounds (b) i.e registration as legal heir and (c) i.e filing the return in the name of deceased assessee therein are concerned. It is not seriously disputed by the Revenue before us that a reopening notice issued in the name of a deceased person is null and void. This in view of the decision of the Gujarat High Court in the case of **Vikram Singh Vs. Union of India & Ors.**¹ rendered on 22.1.2018, a decision of Delhi High Court in the case of **Rajendra Kumar Sehgal Vs. I.T.O., New Delhi**² rendered on 19.11.2018 and the decision of Madras High Court in the case of **Alamelu Veerappan Vs. I.T.O., Chennai**³ rendered on 7.6.2018. These Courts had occasion

1 [2018] 401 ITR 302 (Gujarat)

2 WP(C) NO. 11255/2017, CM No. 46017/2017

3 WP No. 30060 of 2017 & WPM NO. 32631 of 2017

to consider an identical issue of notice of reopening in the name of the deceased assessee and after considering the same, came to the conclusion that the notice issued in the name of the dead person for reopening of assessment is null and void in law.

7. The issue of a notice under Section 148 of the Act is a foundation for reopening of assessment. The sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not a merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. Thus, a notice which has been issued in the name of the dead person is also not protected either by provisions of Section 292B or 292BB of the Act. This is so as the requirement of issuing a notice in the name of correct person is the foundational requirement to acquire jurisdiction to reopen the assessment. This is evident from Section 148 of the Act, which requires that before a proceeding can be taken up for reassessment, a notice must

be served upon the assessee. The assessee on whom the notice must be sent must be a living person i.e legal heir of the deceased assessee, for the same to be responded. This in fact is the intent and purpose of the Act. Therefore, Section 292B of the Act cannot be invoked to correct a foundational / substantial error as it is meant so as to meet the jurisdictional requirement. Therefore, both the impugned notice dated 29.3.2018 and the impugned order dated 13.11.2018 are quashed and set aside. It is made clear that this order will not prohibit the Revenue from issuing a fresh notice for reassessment, if requirement of Sections 147/ 148 of the Act are satisfied, including the limitation period therein.

8. Therefore, Petition disposed of in the above terms.

[M.S. SANKLECHA, J.]

[AKIL KURESHI, J]