R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 3563 OF 2018

Sumit Balkrishna Gupta .. Petitioner

Versus

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

....

- 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. This petition under Article 226 of the Constitution of India seeks to set aside :-

a) a notice dated 31.7.2017 issued under Section 143(2) of the Income Tax Act, 1961 ("the Act" for short) relating to assessment year 2016-17 and

(b) the order dated 19.11.2018 passed by the Assessing Officer - respondent No. 1 rejecting the petitioner's preliminary objection that the impugned notice dated 31.7.2017 be withdrawn as it is null and void.

This on the ground that the impugned notice dated 31.7.2017 has been issued in the name of the deceased assessee and not on his legal heir i.e the petitioner herein.

2. This petition relates to Assessment Year 2016-17.

3. Briefly stated, the facts giving rise to the petition are as under:

2.1 The petitioner is the son and the legal heir of the assessee Mr. Balkrishna Gupta who died on 9.6.2014. For the subject assessment year 2016-17, the petitioner being the legal heir of the deceased assessee Balkrishna Gupta filed a return of income on 17.10.2016 declaring total income of Rs. 14.67 lacs.

2.2 On 30.1.2017, the petitioner uploaded a request to be registered as the legal heir of deceased Balkrishna Gupta. This request of the petitioner was accepted by the respondent - Revenue as the request was successfully uploaded on the Income Tax Portal.

2.3 On 31.7.2017, the impugned notice was issued by respondent No. 1 - Assessing Officer in the name of deceased Balkrishna Gupta.

2.4 The petitioner, by letter dated 16.11.2018, called upon the Assessing Officer to withdraw the impugned notice issued under Section 143(2) of the Act as it has been issued in the name of the dead person. By the aforesaid communication, respondent No. 1 was informed that the Revenue was aware about the death of original assessee Balkrishna Gupta as is evident from the assessment orders passed for the assessment year 2014-15 which was completed on 30.12.2016. Thus, the impugned notice is null and void. Therefore, no further proceeding be taken on the basis of the above notice. Besides the petitioner also registered its objection to the notice in terms of Section 292BB of the Act.

2.5 However, respondent No. 1 by the impugned order dated 19.11.2018 rejected the petitioner's objection to the impugned notice having been issued in the name of the dead person on the following grounds:-

(i). The nature of the defect viz. issue of notice in case of wrong person stands cured by Section 292B of the Act;

(ii) That the legal heir of the deceased was not registered with the database of the Income Tax Department. Thus, no fault in having issued the notice in the name of the deceased assessee; and

(iii) The return for the assessment year 2016-17 was filed in the name of the deceased assessee.

4. It is in the backdrop of the above facts, the impugned notice dated 31.7.2017 and order dated 19.11.2018 have been challenged in this petition. The principal ground of challenge is that the impugned notice issued in the name of the dead person is nonest in law and does not bestow jurisdiction upon the Assessing Officer to carry out scrutiny assessment under Section 143(3) of the Act.

5. Mr. Mody, learned counsel in support of the petition submits as under:-

(a) The impugned notice dated 31.7.2017 under Section 143(2) of the Act issued in the name of a dead person, is no notice in law. Thus, the Assessing Officer did not acquire jurisdiction to scrutinize the return of income under Section 143(3) of the Act;

(b) The reason for not issuing the impugned notice in the name of the petitioner being non-registration as legal heir is not correct as the petitioner had also registered himself with the Income Tax Authorities on its portal as the legal heir of the deceased assessee on 30.1.2017 i.e much before the issuance of the impugned notice.

(c) Moreover on facts, the respondents were aware of the demise of the original assessee in as much as the earlier assessment order for assessment year 2014-15 was issued in the name of the petitioner as legal representative of the deceased assessee;

(d) Section 292B will not come into play in case where the notice had been issued in the name of the dead person and in support, reliance was placed upon a decisions of Gujrat High Court in the case of **Vikram Singh Vs. Union of India &**

Ors.[1], the 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; and

(e) The filing of the return of income in the name of the dead assessee was a mistake on the part of the petitioner. However, mistake on the part of the petitioner when all facts are known to the respondents will not make the notice valid so as to give jurisdiction.

6. Mr. Suresh Kumar, learned counsel for the Revenue submits as under:

(a) that this Court should not exercise its extra ordinary jurisdiction in view of the fact that the petitioner had filed return of income for the assessment year 2016-17 on 17.10.2016 in the name of the deceased assessee. Thus, the notice issued in the

1 [2018] 401 ITR 307 (Gujrat)
2 WP(C) NO. 11255/2017, CM No. 46017/2017
3 WP No. 30060 of 2017 & WPM NO. 32631 of 2017

name of the deceased assessee; and

(b) In any case, Section 292B of the Act would cure a defect of the notice being issued in wrong name under Section 143(2) of the Act.

Thus, this Court should not interfere and the petitioner should be directed to cooperate in the scrutiny assessment under Section 143(3) of the Act.

7. We have considered rival submissions. It is a fact that the petitioner had filed return for the assessment year 2016-17 in the name of the deceased assessee and not in his name as a legal heir of the deceased assessee. This return was filed on 17.10.2016. However, we note that the return was signed by the petitioner as a Legal Heir. The name of the deceased assessee in the title of the return of income was an inadvertent error. In any event, on 30.1.2017, the petitioner got himself registered as legal heir / representative of the deceased assessee in the software system maintained by the Authority. Thus, the Department was well aware of the fact on the date that the impugned notice dated 31.7.2017 under Section 143(2) was issued, the petitioner is the legal representative of the deceased assessee. Moreover, from the record it has been shown to us that for the earlier assessment years 2014-15, the Revenue has passed an assessment order in the name of the petitioner as legal Representative of the deceased assessee Balkrishna Gupta. Therefore, in the above facts, there was no justification for the Assessing Officer to have issued the impugned notice in the name of the dead person. This would mean absence of a notice under Section 143(2) of the Act. It is a settled position that the proceedings for scrutiny assessment under Section 143(3) of the Act can be done if notice is issued under Section 143(2) of the Act as held by the Supreme Court in the case of **ACIT V/s. Hotel Bluemoon[4].** Thus, a notice in the name of wrong person would be no notice and the Assessing Officer would not acquire jurisdiction to proceed under Section 143(3) of the Act.

8. In fact, the Gujrat, Delhi and Madras High Court in the cases of Vikram Singh (supra), Rajendra Kumar Sehgal (supra) and Alamelu Veerappan (supra) respectively have

4 (2010) 321 ITR 362 (SC)

held that a notice issued in the name of the deceased assessee is null and void. We note the fact that the above decisions were rendered in the context of notices issued for reopening of assessment under Section 148 of the Act, however, the ratio of the aforesaid decisions would equally apply to a notice issued under Section 143(2) of the Act. This is so as the issuing of notice under Section 143(2) of the Act which alone gives jurisdiction to the Assessing Officer to proceed with scrutiny assessment under Section 143(3) of the Act. The contention of the Revenue that in any view of the matter, Section 292B of the Act would apply to the facts of this case is not acceptable. A notice issued under Section 143(2) of the Act which gives jurisdiction to complete the assessment having been issued in the name of the dead person is noneset in law as it is not the saved by Section 292B of the Act. The issue of a notice under Section 143(2) of the Act so as to take up the assessment for scrutiny is not a procedural but a substantive provision. Therefore, where a notice is issued in the name of a wrong person, there would be no issuing of notice as required under the Act. In such cases, as in the case of Section 148 of the Act, the issuing of a notice in the name of the wrong person is not a procedural and / or clerical error. Therefore, being a substantive defect, the notice cannot be saved by Section 292B of the Act.

9. In the above view, the impugned notice dated 31.7.2017 and the impugned order dated 19.11.2018 are quashed and set aside. Petition allowed.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**