IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1101 OF 2019

Mr. Ketan Ranjit,
s/o. late Mrs. Bhadravati Ranjit
Canji, Indian National, married,
major of age, r/o. Maganlal Sadan,
Dr. Dada Vaidya Road,
Panaji – Goa – 403001. .... Petitioner.

V/s.

1. Income Tax Officer,
   Ward 1(1) Panaji,
   having his Office at Aayakar
   Bhawan, 1st Floor, 5 EDC Complex,
   Patto Plaza, Panaji – Goa.

2. Principal Commissioner of Income Tax,
   having his Office at Aayakar
   Bhawan, Plot No.5, EDC Complex,
   Patto Plaza, Panaji, Goa- 403001. .... Respondents

Mr. Gaurang D. Panandiker and Ms. Eesha Dukle, Advocates for the petitioner.

Ms. Amira Abdul Razaq, Standing Counsel for the Income Tax Department - Respondents.

Coram : M. S. SONAK &
SMT. M.S. JAWALKAR, JJ.

Date : 17th February, 2020.

Oral Judgment: (Per M.S. Sonak, J.):

Heard Gaurang D. Panandiker, the learned Counsel for the petitioner and Ms. Amira Abdul Razaq, the learned Standing Counsel for the Income Tax Department - Respondents.

2. Rule. Rule is made returnable forthwith at the request and consent of the learned Counsel for the parties.

3. That challenge in this petition is to the Notice dated 26.3.2019, Show Cause Notice dated 9.12.2019 and Letter dated 9.12.2019 issued under Section 148 of the Income Tax Act, 1961 seeking to reopen the Assessment for the Year 2012 - 2013 in respect of the assessee Mrs. Bhadravati Ranjit Canji.

4. The record bears out that Mrs. Bhadravati Ranjit Canji expired on 3.7.2017. Therefore, it is apparent that the aforesaid impugned notices/letter were issued to the person who had already expired.

5. In **Sumit Balkrishna Gupta Vs. Assistant Commissioner of Income-Tax, Circle 16(2), Mumbai,**[1] the Division Bench of this Court upon considering several other decisions has held that issue of notice of reopening the income in the name of the 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. This Court has held that the issue of the Notice under Section 148 of the IT 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.

6. Accordingly, following the decision of the Division Bench in the case of **Sumit Balkrishna Gupta** (supra), we quash the impugned Notice dated 26.3.2019, the Show Cause Notice dated 9.12.2019 and Letter dated 9.12.2019. However, we clarify that this Order/quashing will not prohibit the respondent Revenue from issuing fresh notice for reassessment in accordance with law, if, the requirements of Sections 147/148 of the IT Act, are satisfied including the requirement as to limitation.

1**(2019) 103 taxmann.com 188 (Bombay)**

7. The Rule in this petition is made absolute in the aforesaid terms. There shall be no order as to costs.

SMT. M.S. JAWALKAR, J. ***M. S. SONAK, J.***

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