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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 5008/2020**

LALITA AGARWAL

..... Petitioner

Through: Mr. Sudeepta Kumar Pal, Advocate.

versus

**PRINCIPAL COMMISSIONER
OF INCOME TAX AND ANR.**

..... Respondents

Through: Mr. Ruchir Bhatia, Advocate with
Ms. Mansie Jain and
Mr. Chandratanay Chaubey,
Advocates for respondent No.1.

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Date of Decision: 06th August, 2020

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

CM APPL. 18034/2020 & CM APPL. 18035/2020

Allowed, subject to all just exceptions.

W.P. (C) 5008/2020 & CM APPL. 18033/2020

1. The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the notice issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as

the 'Act') to the deceased-assessee (petitioner's husband) and all the consequential eight assessment orders for different assessment years passed under Section 144 of the Act.

3. Learned counsel for the petitioner submits that the *sine qua non* for acquiring jurisdiction to reopen an assessment is that notice under Section 148 of the Act should have been issued to a correct person and not to a dead person. Consequently, according to him, the proceedings against the petitioner are illegal and *non est* in the eyes of the law. In support of his submission, he relies upon the judgment of this Court in ***Savita Kapila, legal heir of Late Sh. Mohinder Paul Kapila Vs. Assistant Commissioner of Income Tax, Circle 43(1) Delhi, W.P.(C) No.3258/2020*** passed on 16th July, 2020.

4. Per contra, learned counsel for the respondent states that the present petition is barred by delay and laches inasmuch as some of the assessment orders had been passed way back in 2016 (for assessment years 2008-09 and 2009-10).

5. He also submits that against all the eight assessment orders, appeals have been filed by the petitioner. He points out that while three of the assessment orders are pending challenge before the Income Tax Appellate Tribunal, the remaining assessment orders are pending challenge before the Commissioner, Income Tax (Appeals).

6. He submits that the judgment of this Court in ***Savita Kapila*** (supra) is inapplicable to the present case inasmuch as notices in the present case were issued in accordance with Section 159 of the Act to the deceased through the legal representative.

7. Having heard learned counsel for the parties, this Court is of the view that since in the present case, the petitioner has filed appeals which are pending adjudication in different forums, it would not be appropriate to entertain the present writ petition. Accordingly, the present writ petition and pending application are dismissed. However, the Commissioner, Income Tax (Appeals) and Income Tax Appellate Tribunal are directed to expedite the disposal of the appeals pending before them. It is clarified that this Court has not expressed any opinion on the merits of the matter and all the rights and contentions of the parties are left open.

8. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

AUGUST 06, 2020

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