IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3285 OF 2021

PETITIONER :- Bandu Shambharkar Legal Heir of Mahadev Shambharkar, aged about 56 years, R/o Plot No. 171, Kamptee Road, Nagpur-441002.

...VERSUS...

RESPONDENTS :-

1. Pr. Commissioner of Income Tax-1, Nagpur, Aaykar Bhawan, Civil Lines, Nagpur 440 001.
2. Income Tax Officer, Ward 1(1), MECL Building, Seminary hills, Civil Lines, Nagpur.
3. Income Tax Officer, Ward 3(4), MECL Building, Seminary hills, Civil Lines, Nagpur.

Mr. Ram D. Heda, counsel for the petitioner.
Mr. Anand Parchure, counsel for respondents.

CORAM : SUNIL B.SHUKRE & ANIL S.KILOR, JJ.
DATE : 09.09.2021.

O R A L J U D G M E N T (Per :Sunil B.Shukre, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. There can be no dispute about the principle of Law that when there is a re-assessment or assessment is opened under Section 148 of the Income Tax Act, 1961 (herein after referred to as 'the Act of 1961') as required under Section 159 of the Act of 1961, the proceedings can be continued against the legal representatives only when the notice has been issued in the name of the person, who is dead and that if the notice is issued to the assessee after his death, the proceedings could not be continued against the legal representatives. This is the view taken by a Co-ordinate Division Bench of this Court at Principal Seat at Mumbai in the case of *Rupa Shyamsundar Dhumatkar Vs. Assistant Commissioner of Income Tax* reported in *Writ Petition No. 404 of 2019 decided on 5th April 2019,* by relying upon several judgments of different High Courts, in particular the judgments rendered by Gujarat High Court in the case of *Chandreshbhai Jayantibhai Patel V. ITO[2019]101 taxmann.com 362/261 Taxman 137/413 ITR*

276 and Madras High Court in the case of *Alamelu Veerappan V. ITO[2018]95 taxmann.com 155/257 Taxman 72.*

4. In the present case also, the notice, under Section 133(6) of the Act,1961 had been issued to the father of the petitioner Mahadeo Janbaji Shambharkar on 18.01.2019. On that day, the father of the petitioner, the assessee was alive. Father of the petitioner died on 27.01.2019. Therefore, notice under Section 133(6) of the Act, 1961 issued on 18.01.2019 was valid. So, as held in the aforesaid cases, the proceedings based upon a valid notice could be continued and taken forward against the legal representatives in view of the provisions made under Section 159 of the Income Tax Act. Of course, for that matter fresh notice will have to be issued to the legal representatives. As of now, what has emerged on record is that it is only the petitioner, who is the legal representative and if there are any more legal representatives, the petitioner would be at liberty to inform their names and addresses to the Income-Tax Department for their being brought on record as legal representatives, as per law.

5. In view of above, the present notices can not survive and they deserve to be quashed and set aside with appropriate liberty given to the Income Tax Department.

6. The Writ Petition is allowed. The impugned notices are hereby quashed and set aside. Liberty is granted to the respondent No.3 to issue fresh notice to the legal representatives including the petitioner, as per law for re-assessment.

7. The petitioner is at liberty to disclose names of other legal representatives, apart from him to the Income Tax Authorities, if any.

8. Rule accordingly. No costs.

(ANIL S. KILOR,J) (SUNIL B. SHUKRE,J)

Kavita