

\$~29

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

Date of Decision: 27.09.2021

+ W.P.(C) 10686/2021 & CM 32955/2021

LATE SH RAM AVTAR BHAGERIA LH MR
PURRSHOTTAM BHAGGERIA Petitioner

Through: Mr.Ayush Puri, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE
61 (1) NEW DELHI AND ANR. Respondents

Through: Mr.Zoheb Hossain, Sr. Standing
Counsel for Revenue with
Mr.Vipul Agarwal, Jr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The petition has been heard by way of video conferencing.

1. This petition has been filed challenging the Notice dated 24th June, 2021 issued by the respondent under Section 148 of the Income Tax Act, 1961, in the name of the deceased, assessee late Sh. Ram Avtar Bhageria, for the Assessment Year 2017-18.

Signature Not Verified

Digitally Signed
By:SHALOO PATRA
29.09.2021 12:35:33

W.P.(C) 10686/2021

Page 1 of 3

2. The learned counsel for the petitioner, placing reliance on the judgment of this Court in ***Savita Kapila, Legal Heir of Late Shri Mohinder Paul Kapila v. Assistant Commissioner of Income Tax, Circle 43(1) Delhi***, in W.P.(C) 3258 of 2020, submits that as the notice has been issued in favour of the assessee, who was no longer alive on the date of the notice, it is *non est*. He further submits that in the present case, the respondents were well aware of the death of the assessee as the income tax return on behalf of the assessee was filed by his LRs on 16th September, 2017.

3. To prove the factum of death, the petitioner has also placed on record the death certificate issued by the North Delhi Municipal Corporation.

4. The learned counsel for the respondent has not disputed the factum of death of the assessee prior to the issuance of the Impugned Notice. He, however, submits that in the present case, even if this Notice is set aside by this Court, the respondents still be entitled to issue a fresh notice to the LRs of the deceased assessee in accordance with law.

5. In view of the above and taking into account the judgment of this Court in ***Savita Kapila*** (supra), the Impugned Notice dated 24th June, 2021, having been issued in favour of the assessee who was no longer alive, is set aside. This order, however, shall not bar the respondents from issuing a fresh notice for the concerned Assessment Year to the LRs of the deceased assessee in accordance with law.

6. The petition is disposed of in the above terms.
7. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

NAVIN CHAWLA, J

MANMOHAN, J

SEPTEMBER 27, 2021/rv/ns/P

