01.07.2022.
p.b.
Sl. No.13.

W.P.A. 12407 of 2022

Ela Roy
Vs.
The Income Tax Officer,
Ward No.37(1), Kolkata & Ors.

Mr. Soumitra Chowdhury,
Mr. Avra Mazumder,
Mr. Sk. Md. Bilwal Hossain,
Mr. Binayak Gupta.
........for the petitioner.
Mr. S. Roy Chowdhury.
.........for the respondent.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned notice under Section 148 of the Income Tax Act, 1961 dated 28th March, 2021 relating to the assessment year 2014-15 and subsequent assessment order dated 22nd March, 2022 and initiation of penalty proceeding, on the ground that the issuance of notice and the final assessment order are no tenable in the eye of law since the aforesaid notice dated 28th March, 2021 has been issued against a dead person who died on 7th April, 2017 and the petitioner has annexed the death certificate issued by the Kolkata Municipal Corporation. It is also on record that after receiving the impugned notice under Section 148 of the Act, petitioner who is the sister of the noticee has informed the assessing officer by her letter dated 24th April, 2021.

Mr. Roy Chowdhury, learned advocate appearing for the Income Tax authorities opposing this writ petition submits that the petitioner being the sister of the noticee, in response to notice under Section 148 of the Act has filed the return. Petitioner submits that she being a lay person, due to inadvertence has filed the return on behalf of her brother noticee though she had already informed the department at the same time that the noticee has already expired. Be that as it may, the fact remains that no proceeding can be initiated against a dead person and the assessing offier after having notice and knowledge that the noticee has already expired should not have proceeded and passed the final assessment order against the noticee.

Considering the facts and circumstances of this case as appears from record the aforesaid impugned notice dated 28th March, 2021 under Section 148 of the Act and all subsequent proceedings on the basis of the aforesaid notice are quashed. However, quashing of the impugned notice and proceeding will not prevent the assessing officer concerned to initiate any fresh proceeding in future in accordance with law.

With this observation and direction, this writ petition being WPA 12407 of 2022 stands disposed of.

(Md. Nizamuddin, J.)