25.01.2022.
p.b.
Sl. No.22.

W.P.A. 21170 of 2021

(Through Video Conference)

Sandhya Roy & Anr.
Vs.
The Assistant Commissioner of
Income Tax & Ors.

Ms. Sutapa Roy Chowdhury.
........for the petitioners.
Mr. Tilak Mitra.
.........for the respondent.

Heard learned advocates appearing for the parties.

In this matter, petitioner has challenged the impugned notice dated 31st March, 2021 and subsequent notices on the basis of the aforesaid impugned notice under Section 148 of the Act on the ground that the same has been issued against Mr. Susil Kumar Roy who is a dead person expired on 25th December, 2015.

Learned advocate appearing for the revenue respondents submits that the petitioners have brought to the notice of the department about the death of the noticee much belatedly and deliberately allowed the revenue authority to proceed in the matter. Whatever may be the situation and even assuming that the petitioners have brought to notice of the death of the noticee much belatedly but the legal position is that no notice can be issued or any proceeding can be initiated against a dead person and more so, when the noticee has expired prior to the issuance of notice.

Considering the submission of the parties, this writ petition being WPA No.21170 of 2021 is disposed of by directing the respondent Assessing Officer concerned to consider and dispose of the representation of the petitioners dated 7th October, 2021 at page 58 of the writ petition requesting the Assessing Officer concerned to withdraw the impugned notice and drop the impugned proceeding under Section 147 of the Act by taking into consideration the fact of death of the assessee in accordance with law and by passing a reasoned and speaking order and after giving an opportunity of hearing to the petitioners or its authorised representatives within four weeks from the date of communication of the order. The respondents Assessing Officer concerned can proceed in the matter only after disposal of the representation of the petitioners dated 7th October, 2021 in accordance with law.

Since the writ petition is disposed of without calling for affidavits from the respondents, the allegations contained in the writ petition shall be deemed to have been denied by the respondents.

(Md. Nizamuddin, J.)