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ORDER SHEET
WPO/38/2020
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

VINOD KUMAR JAIN AND ANR.
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 5th July, 2022.

Appearance:
Mr. Saumyajit Dasgupta, Adv.
Mr. Ashis Kumar Mukherjee, Adv.
Mr. Saurabh Prasad, Adv.
..for the petitioner

Mr. Smarajit Roy Chowdhury, Adv.
..for the Respondents

The Court : 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 29th March, 2019, relating the assessment year 2012-2013 and all subsequent proceedings on the basis of the aforesaid impugned notice, on the ground, that the aforesaid impugned notice and all subsequent proceedings are not valid and bad in law for the reason that on the day that is on 29th March, 2019, when the impugned notice under Section 148 of the Act was issued, noticee was not alive and he had already expired much earlier, i.e., on 22nd October, 2017.

The short question of law arises in this writ petition is as to whether a notice issued under Section 148 of the Income Tax, 1961 and subsequent proceeding can be called valid and legal if the aforesaid notice and proceeding under Section 147 of the Act has been initiated by the Assessing Officer against a dead person by taking the plea that it was ignorant of the death of the noticee.

Mr. Roy Chowdhury, learned Advocate appearing for the respondent Income Tax Authority opposing the writ petition submits that at the time when the impugned notice under Section 148 of the said Act was issued, the Assessing Officer was not aware of the death of the petitioner and he further takes the point that after coming to the knowledge of the death of the noticee the Assessing Officer had asked the legal representative of the noticee to join and participate in the aforesaid re-assessment proceeding initiated against the dead noticee on the basis of the aforesaid notice under Section 148 of the said Act.

Now question also arises as to whether by simply asking the legal representative to participate in the impugned re-assessment proceeding which was initiated against a dead person and passing the final assessment order under Section 147 of the Act, would it validate and legalize such proceeding. My answer is in negative and against the revenue since it is well settled principles of law that no proceeding can be initiated or any notice for initiation of proceeding can be issued against a dead person and passing final assessment order after having notice and knowledge about the death of the notice. Admittedly it is not a case where proceeding was initiated under Section 147 and notice was issued under Section 148 of the Income Tax Act in the name of the noticee when he was alive and died during pendency of the impugned proceeding. It is a case where impugned proceeding was initiated after the death of the noticee and since notice in any proceeding to be initiated is a foundation of a proceeding, whole proceeding would be invalid if initiated in the personal name of a person after his death.

In view of the discussion made above, the impugned notice under Section 148 of the Act dated 29th March, 2019 and all subsequent proceedings on the basis of the aforesaid impugned notice under Section 148 of the Act issued against the dead noticee are quashed.

However, quashing of the impugned proceeding will not prevent the Assessing Officer from initiating any fresh proceeding against the legal heir /representative of the noticee in accordance with law.

Accordingly, this writ petition being WPO No. 38 of 2020 stands disposed of.

(MD. NIZAMUDDIN, J)

Sbghosh