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ORDER SHEET
WPO/2168/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

USHA GOYAL
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 06TH JUNE, 2022.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Brijesh Kumar Singh, Adv.
..for the petitioner

Mrs. Smita Das De, Adv.
..for the respondents

The Court : Heard learned Advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned assessment order dated 31st March, 2022 under Section 147 read with Section 144(B) of the Income Tax Act and the impugned notice for penalty under Section 274 read with Section 271 AAC (1) of the Income Tax Act, 1961 on the ground that the impugned assessment order and notice has been issued against the dead person which is substantiated from the death certificate of the noticee from which it appears that the noticee has expired on 12th May, 2021 while the impugned notice was issued on 18th March, 2021 when the noticee was alive. It also appears from the record that death of the noticee was brought to the notice and official record of the respondents Income Tax Authority by the petitioner by its letter dated 5th July, 2021.

Mrs. Smita Das De, learned Counsel appearing for the respondents Income Tax Authorities is not in a position to contradict these facts which appears from record that the draft assessment order and final assessment order and noticee for the penalty proceeding were issued much after the date of death of the noticee.

It is well-settled principle of law that no proceeding can be initiated or continued against any dead person even if it is initiated at the time when that person was alive and at the same time, it cannot be also a case that no proceeding can be initiated or proceeded under the Income Tax Act against the legal heirs of the assessee in accordance with law after the death of the assessee.

Considering the submission of the parties, this writ petition being WPO No. 2168 of 2022 is disposed of by setting aside the aforesaid impugned assessment order and penalty notice with liberty to the assessing officer to proceed with the impugned assessment proceeding in accordance with law against the legal heirs of the noticee subject to compliance of all legal formalities, from the stage after the assessee had expired.

Petitioner shall disclose the names of the legal heirs to the Assessing Officer concerned within fortnight from date.

(MD. NIZAMUDDIN, J.)

Sbghosh