IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3321 OF 2022

Late Shri Dinesh N Shah through Legal Heirs ….Petitioner

V/s.

Assistant Commissioner of Income Tax 27(1) & ors. …Respondents

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Mr. Paras S. Savla a/w Mr. Harsh R. Shah for Petitioner
Mr. Suresh Kumar for Respondents

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ
DATED : 28th MARCH 2022

P.C. :

1 Petitioner is impugning a notice dated 31st March 2021 issued under Section 148 of the Income Tax Act 1961 (the said Act) for A.Y.-2014-15. Petitioner's case is that notice has been issued to a dead person namely; Dinesh N Shah, who expired on 11th July 2020.

2 Mr. Suresh Kumar sought further time to file a reply and take instructions. In our view, from the order on objections itself we can dispose the petition. The Jurisdictional Assessing Officer (JAO) in his letter dated 4th March 2022 responded to petitioner's objections and has stated as under:

> *"It is pertinent to note that the notice u/s 148 of the Act 1961 was served by e-mail on 31-03-2021 showing the status as "delivered". The e-mail to which notice was sent is clients@skrambhia.com which is the email appearing in the e-filed return for A.Y. 2014-15 as well as return filed in A.Y. 2020-21. Responses to the e-proceedings have been received from this mail. There was no communication to this office from the legal heir of the assessee intimating the death of the assessee or objection to the reopening in A.Y. 2014-15. In fact the legal heir of the assessee had e-filed return of income for A.Y.- 2020-21 in ITR 3 on 22.02.2021, with total income of Rs.38,56,630/- thereby owning up as legal heir of the assessee, late Shri Dinesh N Shah bearing PAN: AAGPS6923A."*

3 This court has time and again said that notice to a dead person is not valid. One of the recent cases being in an order dated 15th February 2022 in Writ Petition No.2329 of 2021 in the matter of *Raniben Khimji Patel Vs. The Assistant Commissioner of Income Tax & Ors.*

4 Moreover, though, JAO states that there was no communication from the legal heirs of the assessee intimating the death of the assessee, a) that would not make a invalid notice valid, b) that in the next sentence JAO admits that the death of the assessee has been communicated, because he says "in fact the legal heirs of the assessee has e-filed return of income for A.Y.-2020-21………… thereby owning up as legal heir of the assessee, Late Shri Dinesh N Shah……….". We fail to understand if, on 22nd February 2021 admittedly legal heir of the assessee had filed e-return of income to the knowledge of the JAO, how did he still issue a notice on 31st March 2021 to a dead person.

5 In the circumstances, petition is allowed in terms of prayer clause (a) which reads as under:

> *"(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of certiorari under Article 226 of the Constitution of India calling for all papers and proceedings under Section 148 of the petitoner's case for the assessment year 2014-15, and after examining the validity, legality and propriety thereof, quash and set aside the impugned notice dated 31-03-2021, order/letter dated 21-01-2022 and order/letter dated 04-03-2022."*

6 Petition disposed.

(N. R. BORKAR, J.) **(K.R. SHRIRAM, J.)**

Meera Jadhav