IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1411 OF 2022

Alka Kapoor (Legal Heir of Late Shri Kishore Kapoor) ....Petitioner

V/s.

Assistant Commissioner of Income Tax,
Circle 32(1) and Ors. ....Respondents

Ms. Radha Halbe i/b. Mr. Devendra H. Jain for petitioner.
Mr. Suresh Kumar for respondents.

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ.
DATED : 12th APRIL 2022

P.C.:

1 Ms. Halbe states that the notice dated 23rd March 2021 issued under Section 148 of the Income Tax Act, 1961 (the Act) for Assessment year 2014-2015 to Kishore Kapoor is bad in law in as much as it has been issued to a dead person. Ms. Halbe states that Mr. Kishore Kapoor died on 24th December 2020 and even after receiving the impugned notice, communication was addressed to the Faceless Assessing Officer (FAO) informing him that Mr. Kishore Kapoor has died and, therefore, the notice issued is bad in law. Ms. Halbe states that notwithstanding being aware, the penalty notice under Section 272A(1) of the Act has also been issued by the FAO.

2 In our view, it was the duty of the FAO to consider the communications from petitioner and ascertain whether the said Kishore Kapoor, who was the assessee, has infact expired on 24th December 2020.

FAO be also advised that this Court has held in various matters that notice to dead person is bad in law.

3 Petitioner may file, within two weeks from today, further submissions as objections to the notice issued under Section 148 of the Act/response to the notice issued under Section 272A(1) of the Act.

4 The FAO shall first decide whether the notice issued under Section 148 of the Act itself could have been issued.

The FAO shall decide the objections within four weeks of receiving the further submissions from petitioner. The FAO shall, however, grant a personal hearing to petitioner. Notice about personal hearing shall be given atleast seven working days in advance. If the FAO is going to rely on any order or judgment of any High Court or Tribunal, then a list thereof shall be provided to petitioner alongwith the notice of personal hearing so that petitioner may be able to deal with/distinguish those orders/ judgments.

5 Petition accordingly disposed with liberty to approach this Court should the need arise.

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