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

WRIT PETITION NO. 2329 OF 2021
ALONGWITH
WRIT PETITION NO. 2394 OF 2021

Raniben Khimji Patel
Legal Heir of Khimji Karamshi Patel
(PAN AADPP8816G),
an individual, aged 51 years,
residing at Ground Floor,
53 Sheth Motisha Lane, Mazgaon,
Mumbai – 400 010. ….Petitioner

V/s.

1. The Assistant Commissioner of
Income Tax, Central Circle 7(3),
Room No.655, 6th Floor, Aayakar
Bhavan, M.K. Road,
Mumbai – 400 020.

2. Joint Commissioner of Income Tax,
Central Circle – Range 7, Mumbai
Aayakar Bhavan, M.K. Road,
Mumbai – 400 020.

3. Principal Commissioner of Income Tax - 4
(Central), Mumbai,
Aayakar Bhavan, M.K. Road,
Mumbai – 400 020.

4. Union of India,
Through The Secretary,
Department of Revenue,
Ministry of Finance,
Government of India, North Block,
New Delhi – 110 001.

5. The Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
Government of India, North Block,
New Delhi – 110 001. …Respondents

Mr. Dharan V. Gandhi for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.
DATED : 15th FEBRUARY, 2022

ORAL JUDGMENT : (PER : K.R. SHRIRAM, J.)

1. Facts in both petitions are identical, save change in assessment year. In Writ Petition No.2329 of 2021 it is A.Y. 2014-15 and in Writ Petition No. 2394 of 2021 it is A.Y. 2013-14.

2. Petitioner is the legal heir of one Khimji Karamshi Patel who died on or about 2nd March, 2021. The death of assessee Khimji Karamshi Patel has been communicated to respondent. Notwithstanding the communication of death of Khimji Karamshi Patel, respondent has issued a notice under Section 148 of the Income Tax Act, 1961 (the Act) dated 30th June, 2021 for A.Y. 2014-15 stating that there are reasons to believe that Khimji Karamshi Patel's income chargeable to tax for A.Y. 2014-15 has escaped assessment.

3. Identical notice has been issued for A.Y. 2013-14 as well which is also challenged separately in Writ Petition No.2394 of 2021. By this common order we are disposing both the petitions with the consent of the parties.

4. Petitioner has challenged the notice itself without taking further steps like for example asking for reasons to believe that income as chargeable to tax has escaped assessment.

5. Petitioner has impugned this notice on the grounds that notice issued in the name of dead person for assessment is null and void and secondly, the notice having been issued on 30th June, 2021 has been issued without following mandatory provisions of law that came into force on 1st April, 2021.

6. On the first ground that notice issued to a dead person is null and void in law, this court in ***Sumit Balkrishna Gupta vs. Assistant Commissioner of Income Tax, Circle 16(2), Mumbai***[1] has held that notice issued in the name of a dead person for re-opening of assessment is null and void in law. Paragraph no.6 and 7 of the said judgment reads as under:

> *6. In view of the above, the submission of the Revenue reiterating the grounds in the impugned order dated 13.11.2018 stands negatived on facts so far as grounds (b) i.e registration as legal heir and (c) i.e filing the return in the name of deceased assessee therein are concerned. It is not seriously disputed by the Revenue before us that a reopening notice issued in the name of a deceased person is null and void. This in view of the decision of the Gujarat High Court in the case of Vikram Singh Vs. Union of India [2018] 401 ITR 302 rendered on 22.1.2018, a decision of Delhi High Court in the case of Rajendra Kumar Sehgal Vs. I.T.O., [2019] 101 taxmann.com 233/260 Taxman 412 rendered on 19.11.2018 and the decision of Madras High Court in the case of Alamelu Veerappan Vs. I.T.O., [2018] 95 taxmann.com 155/257 Taxman 72. These Courts had occasion to consider an identical issue of notice of reopening in the name of the deceased assessee and after*

1 [2019] 103 taxmann.com 188 (Bombay)

> *considering the same, came to the conclusion that the notice issued in the name of the dead person for reopening of assessment is null and void in law.*
>
> *7. The issue of a notice under Section 148 of the Act is a foundation for reopening of assessment. The sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not a merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. Thus, a notice which has been issued in the name of the dead person is also not protected either by provisions of Section 292B or 292BB of the Act. This is so as the requirement of issuing a notice in the name of correct person is the foundational requirement to acquire jurisdiction to reopen the assessment. This is evident from Section 148 of the Act, which requires that before a proceeding can be taken up for reassessment, a notice must be served upon the assessee. The assessee on whom the notice must be sent must be a living person i.e legal heir of the deceased assessee, for the same to be responded. This in fact is the intent and purpose of the Act. Therefore, Section 292B of the Act cannot be invoked to correct a foundational / substantial error as it is meant so as to meet the jurisdictional requirement. Therefore, both the impugned notice dated 29.3.2018 and the impugned order dated 13.11.2018 are quashed and set aside. It is made clear that this order will not prohibit the Revenue from issuing a fresh notice for reassessment, if requirement of Section 147/148 of the Act are satisfied, including the limitation period therein.*

7. There are many other judgments including one of the Gujarat High Court in case of ***Bhupendra Bhikhalal Desai vs. Income Tax Officer, Ward 1(2)(1)***[2] where also the court held that notice issued to a dead person is not valid. This judgment of the Gujarat High Court has been upheld by the Hon'ble Apex Court in ***Income Tax Officer vs. Bhupendra Bhikhalal Desai***[3]**.**

2 [2021] 130 taxmann.com 196 (Gujarat)
3 [2021] 131 taxmann.com 40 (SC)

8. In the circumstances, we hereby grant prayer clause – (i) which reads as under :

> *(i) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the said notice u/s 148 of the Act dated 30 June 2021 ("Exhibit I")*

9. Since we have quashed the notice itself as not maintainable having been issued to a dead person, we are not considering the other aspect as to whether respondent was correct in issuing notice without following the mandatory provisions of law.

10. Petitions disposed.

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