IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A. No. 485 of 2022
and
C.M.P. No. 3516 of 2022

Nisha Nandakumar
Legal heir and wife of late Krishnan Nandakumar
10-A, Old No.14-A, Masilamani Street,
T.Nagar, Chennai 600 017
Tamil Nadu, India. .. Appellant

Versus

1.Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
New Delhi.

2.The Assistant Commissioner of Income Tax,
Non Corporate Circle7(1),
121, M.G.Road, Nungambakkam,
Chennai – 600 034. .. Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order passed by this Court in W.P. No. 104 of 2022, dated 06.01.2022.

Prayer in W.P. No. 104 of 2022 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus calling for the records on the file of the first respondent passed in impugned assessment order dated 21.09.2021 in PAN AAEPN5577B in ITBA/AST/S/143(3)/2021-2022/1035763790(1) under Section 143(3) read with Section 144B of Income Tax Act for the Assessment Year 2019-2020 and consequential notice for penalty under Section 270A dated 06.10.2021 in PAN AAEPN5577B in ITBA/PNL/F/270A/2021-2022/1036192206(1) and quash the same as illegal, nullity, non-est in law and against the principles of natural justice and fair play and direct the second respondent not to proceed in pursuance to notice under Section 221(1) dated 16.12.2021 in PAN AAEPN5577B in ITBA/RCV/S/221/2021-2022/1037865866(1).

For Appellant : Mr.T.Pramodkumar Chopda

For Respondents: Mrs.Hema Murali Krishnan
Senior Panel Counsel

JUDGMENT

[Judgment of the court was delivered by R.MAHADEVAN,J.]

"Nothing is certain except death and taxes. Thus spake Benjamin Franklin in his letter of 13th Nov., 1789 to Jean Baptiste Leroy. To tax the dead is a contradiction in terms. Tax laws are made by the living to tax the living. What survives the dead person is what is left behind in the form of such person's property" [Refer: Shabina Abraham & Ors. vs. Collector of Central Excise & Customs MANU/SC/0801/2015 : (2015) 10 SCC 770].

1. The aforesaid observations of the Hon'ble Supreme Court are aptly quoted by us, as the same are squarely applicable to the facts of the present case, wherein the respondents / Revenue proceeded with the assessment and passed the faceless assessment order against a dead person, who was the appellant's husband.

2. This Writ Appeal is directed against the order dated 06.01.2022 passed by the learned Judge in W.P. No. 104 of 2022.

3. According to the appellant, her husband late Krishnan Nandakumar was carrying on proprietorship business in the name and style of M/s.Elektronik Lab. He filed his return of income for the assessment year 2019-2020 on 28.09.2019 disclosing the loss of Rs.88,79,838/- and claiming a refund of Rs.10,56,140/- representing tax deducted at source. Upon scrutiny of the same, the first respondent issued a notice under section 143(2) of the Income Tax Act (in short, “the Act”) dated 31.03.2021. After receipt of the same, he was affected by Covid-19 and passed away on 09.05.2021. Subsequently, another notice dated 08.06.2021 came to be issued by the first respondent calling for certain details through e-portal and the same was followed by notice under section 142(1) of the Act dated 06.08.2021. The petitioner further averred that even her husband's chartered accountant was affected by Covid-19 during that time, no reply was sent to the said notices, which resulted in issuance of show cause notice under section 144 dated 15.09.2021. Thereafter, the chartered accountant of the petitioner's husband sent a letter dated 17.09.2021 and uploaded the required documents along with death certificate of the assessee on 18.09.2021. While so, the first respondent passed an assessment order under section 143(3) r/w section 144B dated 21.09.2021 against the petitioner's husband by making huge additions and levied tax thereon along with interest,

besides initiating penalty proceedings. Challenging the same, the appellant preferred WP.No.104 of 2022, which by order dated 06.01.2022, was dismissed, on the ground that the appellant has exercised the option of alternate remedy, which indeed is more efficacious remedy under the facts and circumstances of the case. Therefore, the appellant is before this court with this writ appeal.

4. The learned counsel for the appellant submitted that the first respondent, ignoring the demise of the assessee and without looking into the documents furnished by the chartered accountant of the deceased, mechanically passed the assessment order dated 21.09.2021 in the name of the appellant's husband and made huge addition to the returned income and levied tax, besides initiated penalty proceedings under section 270A of the Act; and they did not follow the mandatory requirements of furnishing the draft assessment order and / or providing an opportunity of personal hearing, as contemplated under section 144B of the Act for making faceless assessment. Adding further, it is submitted that the appeal was filed by the chartered accountant of the appellant's husband against the assessment order, only in respect of huge addition towards the alleged receipt of interest and addition by disallowing the claim of set off of current year losses against the returned income and there was no challenge as regards the jurisdiction and validity of the assessment order passed by the first respondent in the name of the deceased assessee. Thus, according to the learned counsel, the assessment order passed on a dead person is a nullity and has no force in law. However, the learned Judge, instead of quashing the same, dismissed the writ petition, by the order impugned herein, which is erroneous and unsustainable in law.

5. While making an attempt to justify the assessment order passed by the first respondent against the dead person viz., husband of the appellant, the learned standing counsel appearing for the respondents submitted that due to pressure of work and in view of the fact that the chartered accountant of the appellant's husband uploaded the documents on behalf of the assessee, the first respondent lost sight of the fact that the assessee had died. Further, the chartered accountant did not give the details of the legal heirs of the assessee so as to enable the first respondent to continue the proceedings against the legal heirs, but he merely mentioned that he was filing the response on behalf of the assessee. That apart, the order had to be passed on or before 31.09.2021 failing which the same would get barred by limitation. In such circumstances, due to inadvertent mistake, the first respondent passed the assessment order, which was impugned in the writ petition, against the dead person. In any event, as per section 159(2) of the Act, any proceeding taken

against the deceased before his death, shall be deemed to have been taken against the legal representative(s) and may be continued against them from the stage at which it stood on the date of the death of the deceased; section 159(3) further provides that the legal representative(s) of the deceased shall, for the purposes of this Act, be deemed to be an assessee; and therefore, despite the mistake in mentioning the name of the dead assessee and not the names of the legal representatives, by virtue of section 292B of the Act, the assessment order passed by the first respondent is deemed to be valid and hence, the appellant filed a statutory appeal against the same, before the appellate authority. Thus, according to the learned standing counsel, no interference to the order of the learned Judge is warranted at the hands of this court.

6. Heard both sides and perused the records.

7. Concededly, the appellant's husband / assessee died on 09.05.2021, after receipt of the notice dated 31.03.2021 under section 143(2) issued by the first respondent. On 15.09.2021, the first respondent issued the show cause notice under section 144 to pass best of judgment assessment, to which, the chartered accountant of the appellant's husband, after recovery from Covid-19, sent a communication on 17.09.2021, indicating the death of the assessee on 09.05.2021 and uploaded the death certificate and legal heir certificate of the deceased. Besides this, on 18.09.2021, he uploaded certain documents called for by the first respondent along with the response to the show cause notice. After noting down the factum of death of the assessee, the first respondent mechanically passed the assessment order dated 21.09.2021 making huge addition stating that 'the response of the assessee has been perused but not found satisfactory' and the relevant paragraphs of the same are extracted below for ready reference:

> "With reference to DIN: ITBA/AST/F/144(SNC)(F) /2021-22/1035588778(1) dated 15.09.2021 response is hereby submitted.
>
> The assessee (Mr.Nandkumar Krishnan) proprietor of M/s.Elektronik Lab has been affected by COVID during the month of April 2021 at the time of receipt of letter from IT department. But by the month of May, 2021, the assessee has passed away due to COVID hence the office was shut down. ..."

Consequently, penalty proceedings under section 270A came to be initiated and show cause notice dated 06.10.2021 was also issued to the same dead person. Following the same, the second respondent issued a notice under section 221(1) of the Act addressed to the very same dead person / appellant's husband. Challenging all the proceedings of the respective respondents, the appellant invoked the writ jurisdiction under Article 226 of the Constitution of India, by filing WP.No.104/2022, which was dismissed by the learned Judge.

8. It was argued on the side of the respondents that the chartered accountant of the appellant's husband, on behalf of the assessee, filed reply to the notice issued by the first respondent and after considering the same, the respondent authorities passed the assessment order; however, due to want of particulars of the legal heirs of the deceased assessee, the assessment order came to be issued against the dead person, against which, the appellant has also filed an appeal before the appellate authority. Such contention cannot be countenanced by this court, as it is settled law that 'notice issued to a dead person for assessment is null and void' and the filing of an appeal before the appellate authority, does not denude the appellant of her right to challenge the assessment proceedings, if it is without jurisdiction.

9. Pertinently, it is to be noted that 'an alternative statutory remedy does not operate as a bar to maintainability of a writ petition in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principles of natural justice or where the order or notice or proceedings are wholly without jurisdiction or the vires of an Act is challenged' [See: Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, (1998) 8 SCC 1]. It is also trite law that 'if the Assessing Officer had no jurisdiction to initiate assessment proceeding, the mere fact that subsequent orders have been passed, would not render the challenge to jurisdiction infructuous' [Refer: Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies District I Calcutta and Another, (1961) AIR SC 372]. In the light of the said legal proposition and having regard to the admitted fact that the assessee died at the time of inception of the assessment itself and the same was also brought to the knowledge of the department, we are of the opinion that the assessment order passed by the first respondent against the dead person, that too without following mandatory procedure as contemplated under the Act and the consequential proceedings emanated therefrom, cannot be allowed to be sustained. However, the learned Judge erred in dismissing the writ petition on the premise that the appellant has exercised the option of appeal remedy.

10. Keeping in view the aforesaid, we set aside the order of the learned Judge and the assessment order dated 21.09.2021 as well as the proceedings initiated pursuant thereto for the assessment year in question and remand the matter to the assessing officer, who shall consider all the materials furnished by the appellant and thereafter, pass a reasoned order

on merits and in accordance with law, after granting an opportunity of hearing to the legal heir(s) of the deceased assessee / appellant. Such an exercise shall be completed within a period of three weeks from the date of receipt of a copy of this judgment.

11. With the aforesaid directions, this writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

gba/msr

To

1.Additional/Joint/Deputy/Assistant Commissioner,
of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
New Delhi.

2.The Assistant Commissioner of Income Tax,
NonCorporateCircle7(1),
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

+1cc to Mr.T.Pramodkumar Chopda, Advocate SR.No.21959

+1cc to Mr.Mrs.Hema Murali Krishnan, Advocate SR.No.21915

W.A. No. 485 of 2022
and
C.M.P. No. 3516 of 2022

RLD(CO)
GMY(27/05/2022)