BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.03.2022
CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN
W.P(MD).No.5226 of 2022
and
W.M.P(MD).Nos.4250 and 4251 of 2022

J.Kishorekumar ... Petitioner

Vs.

The Income Tax Officer,
Non Corp.Ward 2(3), MDU
No.2 V P Rathinasamy Nadar Road,
Cr Building, Bibikulam,
Madurai-625002. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records on the file of the respondent in PAN:AMQPJ3386E and quash the impugned notice under Section 148 in ITBA/AST/S/148/2020-21/1031882546 (1) issued on 29.03.2021 by the respondent for the Assessment Year 2015-2016 as illegal and without jurisdiction.

For Petitioner : Mrs.Vandana Vyas
For Respondent : Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned notice issued under Section 148 of the Income Tax Act, dated 29.03.2021 on the ground that notice has been issued in the name of his father, who died on 17.10.2014.

2. The learned counsel for the petitioner submits that for the assessment year 2013-2014, the petitioner had acquired into a similar proceedings unaware of the decision of the Division Bench of this Court, in **Commissioner of Income Tax-VIII, Chennai Vs M.Hemanathan, (2016) 68 taxmann.com 22 (Madras).** The learned counsel for the petitioner further submits that after the impugned notice was issued, the petitioner has written several letters informing the respondent that impugned notice was without jurisdiction and was liable to be recalled. The learned counsel for the petitioner further submits that despite the same, the respondent has proceeded to issue a show cause notice, dated 16.03.2022, which is contrary to law. The learned counsel for the respondent interjects and submits that for the assessment year 2013-2014, the petitioner participated in the proceedings and accepted the tax demand and therefore it is not open for the petitioner to take a different stand for the assessment year 2015-2016. That apart, it is submitted that though the impugned notice, dated 29.03.2021 was in the name of deceased

assessee, namely, Jeyachandran, all subsequent communication was addressed to the petitioner as the legal representative of his deceased father.

3. The learned counsel for the respondent submits that the language of Section 159 (2) (b) also makes it clear that for the purpose of making an assessment including the assessment or re-assessment or recomputation under Section 147 and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of the Sub Section 1, any proceedings which are taken against a deceased, assessee who is survived by legal representative, proceedings may be taken against the legal representatives. It is therefore submitted that the ground on which the impugned notice issued under Section 148 and the show cause notice issued to the petitioner as the legal representatives of the deceased assessee has been challenged is misconceived. It is submitted that the writ petition is liable to be dismissed.

4. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

5. Section 159 of the Income Tax Act deals with the situation where an assessee dies and how the assessment has to be completed after the death of the deceased person. The relevant portion of the aforesaid Section reads as under:

> *"159. **Legal representatives.**--(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.*
>
> *(2) For the purpose of making an assessment (including an assessment, reassessment or re-computation under Section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of Sub-Section (1),--*
>
> *(a)any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased ;*
>
> *(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and*
>
> *(c) all the provisions of this Act shall apply accordingly.*
>
> *(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.*

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of, or parted with.

(5) The provisions of Sub-Section (2) of Section 161, Section 162 and Section 167, shall, so far as may be, and to the extent to which they are not inconsistent with the provisions of this Section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of Sub-Section (4) and Sub-Section (5), be limited to the extent to which the estate is capable of meeting the liability."

6. Though, Section 159 (3) makes it clear that the legal representative shall for the purpose of be deemed to be an assessee and the subsequent communication of the department was received by the petitioner as the legal representative of the deceased assessee, namely, Jeyachandran. The Hon'ble Division Bench of this Court in **Commissioner of Income Tax-VIII, Chennai Vs M.Hemanathan, (2016) 68 taxmann.com 22 (Madras)** has held as under:

"20. Clause (b) is probably more advantageous to the Revenue, if at all it could be taken advantage by the Revenue. Clause (b) attempts to save the situation where the right of the Revenue to proceed against the assessee was available at the time when the assessee had passed away. Take for instance cases where the Appellate Authority has decided an issue in favour of the assessee and before the time limit available for the Department to file a further appeal, the assessee had died. In such situation, the right to file further appeal is a right to take any proceeding that was available to the Department as if the deceased assessee had survived. Therefore, it is only those circumstances that can be said to be taken care of under Clause (b).

21. In any case, in the case on hand, the Department was made aware of the fact that the assessee was dead. The Income Tax Officer's letter dated 23.9.2013 informing his superior that the notice under Section 263 returned with the endorsement of the Postal Department to the effect that the addressee was dead, clinches the fact. Despite being put on notice that the noticee was dead, the Department chose to pursue the very same notice. In such *circumstances, Clause (b) of Sub-Section (2) of Section 159 cannot be taken advantage of by the Department.*

22. Sub-Section (3) of Section 159 contains a deeming fiction. It states that the legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee. Therefore, it is contended by Mr.M. Swaminathan, learned Standing Counsel for the Department that the respondent should be deemed to be an assessee and the service of notice on him should be deemed to be sufficient service."

7. Under these circumstances, I am inclined to allow this writ petition at the stage of admission by giving liberty to the respondent to issue appropriate notice to the petitioner under Section 148 as a legal representative of the deceased assessee, namely, Jeyachandran. The time spent in the impugned proceeding till the date of receipt of this order shall be excluded. Considering the fact that the time for completing the assessment would expire on 31.03.2022, the respondent is given liberty to issue a fresh notice to the petitioner within a period of two weeks from the date of receipt of copy of this order. The respondent shall thereafter proceed to pass appropriate orders on merits and in accordance with law within a period of 75 days. The entire exercise shall be completed by the respondent within a period of 90 days from the date of receipt of copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

sn

To

The Income Tax Officer,
Non Corp.Ward 2(3), MDU
No.2 V P Rathinasamy Nadar Road,
Cr Building, Bibikulam,
Madurai-625002.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-14697[F] dated 25/03/2022)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-14755[F] dated 28/03/2022)

W.P(MD).No.5226 of 2022
24.03.2022

srr(CO)
CC(31.03.2022) 4P 4C