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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 13th June, 2022

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W.P.(C) 9498/2022 & C.M. No. 28355/2022

DAVINDER SINGH THAPAR

L/H AMRIT SINGH THAPAR

..... Petitioner

Through: Mr. Akshit Mago, Advocate.

versus

ASSISTANT COMMISSIONER

OF INCOME TAX & ANR.

..... Respondents

Through: Ms. Zehra Khan, Junior Standing
Counsel for R-1.

Mr. Sanjay Kumar, Advocate for R-2.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA****JUDGMENT****JYOTI SINGH, J (ORAL)**

1. By way of the present writ petition, Petitioner assails the impugned notices dated 26.05.2022, 25.11.2021 and 06.04.2021, in relation to assessment year 2013-14 under Section 148 of the Income Tax Act, 1961, (hereinafter referred to as the 'Act'), issued by Respondent No.1.

2. Petitioner herein is the son of Late Mr. Amrit Singh Thapar, the deceased assessee, who expired on 02.08.2020. It is the case of the Petitioner that impugned notice dated 06.04.2021 was issued by Respondent No.1 stating therein that income chargeable to tax for the assessment year 2013-14 had escaped assessment within the meaning of Section 147 of the Act and 30 days were granted to file a return in the prescribed form. Soon thereafter *vide* an email dated 30.04.2021, Petitioner's mother, i.e., the wife



of the deceased assessee informed Respondent No.1 of the demise of her husband and also sent the Death Certificate. Despite the said intimation the impugned notices were sent by Respondent No.1 including the last one dated 26.05.2022 under Section 148A(b) of the Act, pursuant to the order of the Supreme Court dated 04.05.2022.

3. The primordial grievance of the Petitioner is that the impugned notices are invalid in the eyes of law having been issued against a dead person. It is contended by learned counsel for the Petitioner that the statutory requirement of Section 148 of the Act is that the Assessing Officer shall serve on the assessee a notice, which in the present case was not served as the assessee expired on 02.08.2020, prior to the issuance of the first notice.

4. It is further submitted that Division Benches of this Court in *Savita Kapila v. Assistant CIT, (2020) 118 taxmann.com 46 (Delhi)* and *Mrs. Sripathi Subbaraya Manohara L/H late Sh. Sripathi Subbaraya Gupta v. Principal Commissioner of Income Tax-22, New Delhi and Anr.* in *WP(C) 2678/2020*, have held that a notice under Section 148 of the Act against a dead person is null and void and hence, all consequential proceedings/orders including the Assessment Order and subsequent notices are not legally sustainable. Learned counsel also relies on a recent order dated 27.05.2022 passed by a Division Bench of this Court in *Sangeeta Vig L/H Late Sh. Sunil Vig v. ITO, Ward 28(5), Delhi* in *WP(C) 8276/2022*, wherein relying on the aforesaid two judgments the order passed under Section 148A(d) of the Act and the consequential notice under Section 148 have been set aside.

5. Learned counsel appearing on behalf of Respondent No.1, *per contra* submits that the notices have been issued pursuant to the order passed by the Supreme Court in *Union of India & Ors. v. Ashish Agarwal* in *Civil Appeal*



No. 3005/2022. However, on a pointed query by the Court as to whether the judgment deals with the issue if notices can be issued in cases where the assesses have expired, the answer was in the negative.

6. Having heard the learned counsels for the parties, we are of the considered view that the present case is covered on all four corners by the judgments of the Division Benches of this Court as aforementioned. For a ready reference relevant paras from the judgment in **Sangeeta Vig (supra)** are extracted hereunder:-

*“This Court is of the view that the issue in the present case is covered by the Division Bench judgment in **Savita Kapila vs. Assistant CIT (2020) 118 taxmann.com 46 (Delhi)** which was followed by this Court in **W.P.(C) No. 2678/2020 Mrs. Sripathi Subbaraya Manohara L/H late Sh. Sripathi Subbaraya Gupta vs. Principal Commissioner of Income Tax-22, New Delhi and Anr.**, wherein the notice under Section 148 of the Act against a dead person was held to be null and void and all consequential proceedings/orders, including the assessment order and subsequent notices were set aside.*

Keeping in view the aforesaid mandate of law, the order passed under Section 148A(d) of the Act and the consequential notice issued under Section 148 of the Act dated 30th March, 2022 are set aside. If the law permits the Respondent/Revenue to take further steps in the matter, it shall be at liberty to do so. Needless to state that if and when such steps are taken and if the petitioner has a grievance, she shall be at liberty to take her remedies in accordance with law.”

7. Accordingly, the impugned notices are hereby quashed and set aside. Needless to state that it is open to the Respondents to take such steps as may be permitted in law and if and when such steps are taken, with which the Petitioner is aggrieved, it would be open to the Petitioner to resort to the



remedies in accordance with law.

8. Writ petition is allowed and disposed of in the aforesaid terms.
9. Pending application stands disposed of.

JYOTI SINGH, J
(VACATION JUDGE)

ANOOP KUMAR MENDIRATTA, J
(VACATION JUDGE)

JUNE 13, 2022/sn

