IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5328 of 2022

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Prakash Aditya, son of Late Nawal Kishore Prasad, 159 Patliputra Colony, Patna P.S. and P.O.- Patliputra Dist. Patna- 800013

... ... Petitioner/s

Versus

1. Union of India through Chairman Board of Direct Taxes North Block, New Delhi
2. Chairman Board of Direct Taxes North Block, New Delhi
3. Principal Chief Commissioner of Income Tax, C.R. Building, Bir Chand Patel Path, Patna 800001
4. Commissioner of Income Tax, C.R. Building, Bir Chand Patel Path, Patna 800001
5. Joint Commissioner of Income Tax, Lok Nayak Bhawan, Dakbanglow Road, Patna 800001
6. Deputy Commissioner of Income Tax, Lok Nayak Bhawan, Dakbanglow Road, Patna 800001
7. Assistant Commissioner of Income Tax, Lok Nayak Bhawan, Dakbanglow Road, Patna 800001
8. Commissioner of Income Tax Banglore Centralised Processing Centre Income Tax Department 560500

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prakash Sahay, Advocate
For the Respondent/s	:	Dr. K.N.Singh, A.S.G.
		Mrs. Archana Sinha, Advocate
		Mr. Ratnesh Kumar, Advocate
		Mr. Sanjeev Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-04-2023

The writ petition is filed seeking opening of the portal of the deceased father of the petitioner, for the purpose of filing his return, as the legal heir of the deceased father. Rather than looking at the writ petition, which is bereft of the essential facts, we have perused the representation filed by the petitioner before the Income Tax Authority, as produced at Annexure-4. The petitioner's father, Late Nawal Kishore Prasad was a member of the Indian Administrative Service and retired from the State of Bihar as the Chief Secretary. The petitioner's father expired on 24.03.2020 and the petitioner's mother was made the legal heir entitled to file the return of her deceased husband for the assessment year 2020-21, under Section 159 of the Income Tax Act (hereinafter referred to as the 'Act'). The petitioner's mother also expired on 05.11.2021 and the petitioner filed returns on her behalf for the assessment year 2021-22; as her legal heir under Section 159 of the Act.

2. The petitioner's contention is that upon his mother's death, he became the sole legal heir of his father and despite his best efforts, he could not upload the relevant documents in his father's name, for filing an income tax return for the assessment year 2021-22, as his father's legal heir. It is contended that the IT portal of the deceased father and the deceased mother have been deactivated and hence, the necessary application for refund could not be filed. The learned counsel for the petitioner, before us, asserts that his father had

income in the assessment years 2021-22 and there was deduction made at source as could be seen from Annexure-2. The deactivation of the portal by the Income Tax Department effectively hampers the petitioner's attempt to get refund of the T.D.S., eligible to his father for reason of his having no income assessable to tax.

3. The learned Senior Standing Counsel for the Income Tax Department points out that the petitioner has not furnished the required particulars to enable him to seek refund, as the sole legal heir. The legal heirship certificate filed by him, with respect to the deceased father, indicates two other siblings; one a brother and the other a sister. It is the petitioner's contention that he has only two sisters and that both of them have agreed to the petitioner receiving the refund. This has to be substantiated by a proper legal heirship certificate, which alone could enable the refund as claimed by the petitioner.

4. We are surprised that the prayer made by the petitioner is to permit him to file the income tax returns of his deceased father for the assessment year 2021-22 relatable to the financial year 2020-21; during which period his father was not alive, having expired on 24.03.2020. There can be no income for a deceased person and hence, no return filed for such

deceased person. Section 159 of the Act makes liable the legal representative of a deceased, to satisfy the liability to tax under the Act, in the same manner and to such extent as is mulcted on the deceased. Sub section (2) also provides for an assessment, reassessment or re-computation under Section 147 of the Act to be made on the legal representative for the income of the deceased. Hence, a legal representative is definitely entitled to file a return on behalf of the deceased predecessor in the same manner as the deceased individual would have done, if he were alive and claim all benefits of exemption, refund and the like as would have been claimed by the deceased assessee himself. It is also pertinent that the liability of the legal representative is only to the extent of the estate left behind by the deceased and not to any personal income or property in the hands of the legal representative. The provision only enables the income in the hands of a person, to be properly assessed and the entitlements under the Income Tax Act, to be enabled to the legal representative, in the circumstance of the assessee expiring in the course of an assessing year. This can apply only to the year in which the death occurred and the prior years, if it is permissible under the Act. There is no question of a return being filed for any year subsequent to the death since, obviously, there can be no income found in the hands of a dead person and there could also be no assessment made against a dead person, even if the estate of the deceased remains in the mortal world. The estate of the deceased devolves on the legal heirs and any income therefrom is the income of the successor, which would also be assessed to tax in the successors hands.

5. The learned counsel for the petitioner has specifically pointed out Annexure-1 and Annexure-2. Annexure-1 is the computation of income with TDS and the taxable income determined for the assessment year 2020-21. The said return admittedly was filed by the mother, who was permitted to file the return as a legal heir. If not already disbursed with the amounts to be refunded, the right remedy for the petitioner is to furnish a proper legal heirship certificate of the father and the mother before the Income Tax Authority and make appropriate claim. As far as Annexure-2 is concerned, it is an annual tax statement under Section 203AA of the Act delineating the TDS recovered from the income received in the assessment year 2021-22. The said statement is also in the name of Nawal Kishore Prasad, the deceased father of the petitioner. Annexure-2 document has to be examined in juxtaposition with Annexure-1. The income shown at Item No. 1, 2 and 4 are

obviously dividend income from three companies, as is indicated at Annexure-1. The TDS shown at Sl. No. 5 and 6 are interest income from two banks as is seen also from Annexure-1. Though the petitioner speaks of salary and pension having been received for the relevant year for which the petitioner seeks filing of a return, i.e. 2021-2022 (AY), there could definitely be no such income available to the deceased person. If at all, there is any arrears due to the deceased, it could only be received by the legal heir after his death, which is not evident from Annexure-2. What is obvious from Annexure-2 is that the TDS has been recovered from the Income received from investments made, in the name of an individual, since deceased. Surely, the investment would have been made prior to death and after his death, it devolves on the legal heirs. It is for the legal heirs to take appropriate steps to transfer it in their names. The income derived therefrom would be that of the said heirs, liable to be assessed in their hands. Obviously, the investments remained in the name of the deceased person, which are to be first transferred in the name of the legal heirs.

6. It is very pertinent that the petitioner has not produced a proper legal heirship certificate. The one produced by him before the Income Tax Authorities is produced along

with the reply affidavit , which is the '*parivarik suchi praman-patra'* dated 14.12.1921 of the father, which shows three children, two male and one female. Even according to the petitioner, he has two sisters and no brothers. Hence, the legal heirship certificate does not show the true facts and the petitioner would have to first obtain a proper heirship certificate and then approach the income tax authority for refund of the amounts deducted from the alleged income of his father or rather, the income derived from the investments of his father. We leave open the remedy to so approach the income tax authorities and the above writ petition stands closed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	13.04.2023
Transmission Date	