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**12.06.2023**.
Ct. 3
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**In the High Court at Calcutta**

**Circuit Bench at Jalpaiguri**

**Constitutional Writ Jurisdiction**
**Appellate Side**

**WPA 923 of 2023**

**Sudipta Ghosh**
**-versus-**
**Income Tax Officer, Ward 1(4), Siliguri & Ors.**

Mr. Dhiraj Lakhotia,Adv.
Ms. Radhika Agarwal,Adv.

Counsel for the petitioner is present. None appears on behalf of the respondents. The petitioner has filed the present writ application challenging the assessment order as well as the penalty order passed by the respondent authorities. The contention of the petitioner is that the proprietor of M/s. Nakshalbari Cycle and Rickshaw House, namely Nantu Ghosh died on 21st March, 2021 and after the death of the proprietor, the assessing authority had issued the notice under Section 148 of the Income Tax Act, 1961 on 25th March, 2021 against the dead person. The assessing authority had completed the assessment on 25.3.2021 and also passed an order under Section 144 read with Section 147 of the Act, 1961 by invoking Section 159 of the Income Tax Act, 1961 in the name of the legal heirs of deceased. The respondent no. 1 had also passed penalty order under S. 271(1) ( c )of the Income Tax Act, 1961 against the dead person who was the husband of the petitioner. Counsel for the petitioner submits that the authority had passed the order on 21st March, 2022 wherein it is held that:

"In view of the above, it is apparent that the Sudipta Ghosh being Wife of the deceased asessee and Monjuli Ghosh being daughter of the deceased assessee are legal heirs and responsibilities and duties being legal heir are already informed vide letter dated 15.03.3022. Further, PANs of the legal heir are linked with the PAN of the deceased assessee in the system by his office. Henceforth, assessment proceedings for A.Y. 2015-16 will be completed in the name of Legal Heirs of the deceased assessee."

Subsequently, the authority had passed a penalty order under S.272(c) of the Income Tax Act, 1961 without considering the fact that the proprietor who has expired prior to issuance of notice and the legal heirs have submitted the legal heir certificate but without issuing any notice and without any opportunity of hearing has passed the impugned penalty order.

The petitioner has relied upon the judgment reported in [2020]114 taxmann.com 482 (SC) (Income Tax Officer Ward 1(3)(7), Surat vs. Durlabhbhai Kanubhai Rajpara), the judgment reported in 2022 SCC Online Delhi 174 (Brahmraj vs. Income Tax Officer) and the judgment reported in 2023 SCC Online 362 (Prakash Tatoba Toraskas –vs- Income Tax Officer).

Counsel for the petitioner has referred to the above judgment and submits that the Court while considering the matter has held notice issued under Section 148 of the Income Tax Act is not valid, if the same is issued in the name of the dead person. In the present case, it is found that the notice was issued to the dead person Subsequently, the legal heirs have informed the death of the proprietor of concerned firm to the authorities and as per the direction of the authorities, the legal heirs have submitted the legal heirs certificate but, in spite of the same, i.e. the respondent authorities have passed the assessment order as well as the penalty order.

In view of the above, this Court finds that both the order, i.e. assessment order and the penalty order are not sustainable under law and, accordingly, the same are set aside.

WPA No. 923/2023 is thus disposed of.

It is made clear that this order will not preclude the respondents from taking appropriate steps against the legal heirs of Nantu Ghosh in accordance with law.

**(Krishna Rao, J.)**