IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 333 OF 2023

Rajnni Hanuman Mhatre, (legal heir of Late Hanuman Sakharam Mhatre, residing at Aajobanchi Punyai Bungalow, Gauri Pada, Behind Birla College, Kalyan-421301 } .. Petitioner

Versus

Income-tax Officer Ward – 3(2), Kalyan, Rani Mansion, Murbad Road, Maharashtra, 421301 & Ors. } .. Respondents

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Mr. Dharan Gandhi, Advocate for the Petitioner.

Mr. Ajeet Manwani a/w Ms Samiksha Kanani, Advocates for the Respondents.

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CORAM : DHIRAJ SINGH THAKUR AND ARIF S. DOCTOR, JJ.

DATE : 27th JANUARY, 2023

ORDER

PER DHIRAJ SINGH THAKUR, J.:

. The Petitioner is the legal representative of Late Shri. Hanuman Sakharam Mhatre (deceased assessee), who was served with the notice under Section 148A(b) of the Income Tax Act, 1961 ("the Act") requiring the Petitioner to show cause as to why a notice under Section 148 of the Act should not be issued on the basis of information to suggest that the income chargeable to tax had escaped assessment for the assessment year 2014-15. Response to the said notice was submitted by the Petitioner in her capacity as the legal representative of the deceased bringing to the notice of the Assessing Officer (A.O.) about the demise of the deceased assessee.

In the reply to the notice, the Petitioner 'requested' the A.O. not to issue any notice or initiate any proceedings in the name of the deceased as it would result in inherent defect in the entire proceedings. A copy of the death certificate was also furnished for the perusal of the A.O which reflects that the deceased assessee had passed away on 24th November, 2021.

Besides these, an objection was also taken to the issuance of the proposed notice under Section 148 of the Act on grounds of limitation. What is evident from the reply filed by the Petitioner is that she did not consent to the continuance of the proceedings against her in her capacity as a legal representative, rather she objected to the issuance of the proposed notice on the jurisdictional issue that the same was being issued against a dead person.

2. The response filed by the Petitioner was considered by the A.O. in its order dated 25th July, 2022 passed under Section 148A(d) of the Act. In the said order, the A.O. appears to have conveniently ignored the factum regarding the assessee having since passed away, and proceeded to record the satisfaction regarding the case being fit for issuance of notice under Section 148 of the Act. A notice under Section 148 of the Act was then issued on 25th July, 2022. Interestingly, the order under Section 148A(d) of the Act as also the notice issued under Section 148 of the Act was not in the name of the legal representative the Petitioner herein but in the name of the deceased assessee.

It is no longer *res integra* that a notice issued under Section 148 of the Act against a dead person would be invalid, unless the legal representatives submit to the jurisdiction of the A.O. without raising any objection. Reference in this regard can be made to the decision of this Court in the case of ***Sanket Shailendra Pathare & Ors. V/s. The Income Tax Officer Ward 32(1)(1) Mumbai*** [1].

1 Writ Petition (L) No.18691/2022 decided on 15.09.2022.

3. Be that as it may, the petition is allowed. The impugned order passed under Section 148A(d) of the Act as also the notice under Section 148 of the Act, both dated 25th July, 2022, are set aside.

The writ petition is disposed of accordingly.

(ARIF S. DOCTOR, J.) **(DHIRAJ SINGH THAKUR, J.)**