**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 160 OF 2020**

Manoj Ramji Gupta …Petitioner

***Versus***

Assistant Commissioner of Income Tax-Circle 26(3) and 2 Ors. …Respondents

….

Mr. Devendra H. Jain, for Petitioner.
Mr. Suresh Kumar, for Respondents.

….

**CORAM : K. R. SHRIRAM &**
**M.M. SATHAYE, JJ.**

**DATED : 12th JUNE, 2023**

**P.C.:**

1. One of the preliminary grounds raised in the Petition and as submitted by Mr. Jain that though Petitioner as legal heir of one late Ramji Hiralal Gupta had provided all documents including copies of return of income tax etc. in response to notice dated under Section 142(1), in the impugned order dated 26.12.2019 Respondent No.1 has stated that the legal heirs of the Assessee had submitted only documents relating to the legal heirs and there was no submission in response to notice under Section 142(1) and show cause notice. Mr. Jain submitted on this count alone the impugned order has to be quashed and set aside. This is in addition to the submission of Mr. Jain that notice itself has been issued to a dead person and therefore, *non est in law*.

2. Having considered the Petition and documents annexed to the Petition, in our view, the matter requires to be reconsidered by the



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Assessing Officer. Therefore, without going into the merits of the matter we quash and set aside the assessment order dated 26.12.2019 together with the notice of demand dated 26.12.2019 and remand the matter for *de-novo* consideration. If any penalty notice has been issued consequent to the assessment order, that notice also stands quashed and set aside. If Petitioner wishes to file further reply to the show cause notice dated 21.12.2019, Petitioner may do so within four weeks from today.

3. Respondent No.1 shall pass assessment order within six weeks of receiving the reply after giving a personal hearing to Petitioner. Notice of personal hearing shall be communicated within five working days in advance. If the Assessing Officer is going to rely upon any judgment, a list thereof shall be made available to Petitioner along with notice of personal hearing so that Petitioner will be able to deal with / distinguish the same during the personal hearing. If Petitioner wishes to file written submission recording what transpired during the personal hearing, the same will be filed within three working days of the personal hearing.

4. Petition disposed.

5. It is made clear that we have not made any observation on the merits of the matter.

**[ M. M. SATHAYE, J. ]** **[ K. R. SHRIRAM, J. ]**



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