

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

WRIT PETITION NO.4871 OF 2022

Prakash Tatoba Toraskar
Through Legal Heir Kiran Toraskar
815, Adarsh Nagar, New Link Road,
Opp. Lokhandwala Complex,
Andheri (West), Mumbai-400 058
Maharashtra
PAN : AAAPT6197R

... Petitioner

Versus

1. The Income-tax Officer 24(3)(1)
Mumbai, having his office at Room No.303,
3rd Floor, Kautiya Bhavan, C-41 to C-43,
G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai-400 051.

2. Principal Commissioner of Income Tax-
20, Mumbai having his office at Aayakar
Bhavan, M.K. Road, Churchgate,
Mumbai-400 020

3. National Faceless Assessment Centre,
having its office at National e-Assessment
Centre, Delhi

4. The Union of India
Through the Secretary,
having office at Aayakar Bhavan,
M.K. Road, Churchgate,
Mumbai-400 020

... Respondents

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Mr. Yahya Ghoghari a/w Mr. Mustafa Shabbir Shamim i/b Shamaim
& Co. for the Petitioner.

Mr. Suresh Kumar for the Respondents.

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**CORAM : DHIRAJ SINGH THAKUR &
KAMAL KHATA, JJ.**

RESERVED ON : 20 JANUARY 2023
PRONOUNCED ON : 10 FEBRUARY 2023

O R D E R

Per DHIRAJ SINGH THAKUR, J.

. The Petitioner challenges notices issued under Section 148 of the Income Tax Act, 1961 (“the Act”) dated 30 June 2021 and 20 June 2022 and the Order under Section 148A(d) dated 30 June 2022 on the ground that the the re-assessment proceedings have been initiated against a dead person.

2 It is stated that the Respondents have issued a notice under Section 148 dated 30 June 2021, in the name of the father of the Petitioner, namely, Prakash Tatoba Toraskar, who had already expired on 4 November 2019. The death certificate issued by Municipal Corporation of Greater Mumbai is also placed on record to support this fact. It is stated that the said notice had not been challenged in any writ proceedings before the Court and ordinarily the matter should have rested there. However, pursuant to the judgment of the Apex Court in the case of **Union of India Vs. Ashish Agarwal**¹, the Respondents then vide communication dated 20 May 2022 acting in purported compliance of the said judgment treated the earlier notice issued under Section 148 of the Act to be a notice

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under Section 148A(b) provided information to the deceased Prakash Tatoba Toraskar and sought reply thereto, so that necessary Order in terms of Section 148A(d) could be passed. Since Prakash Tatoba Toraskar had already expired, his legal heir Kiran Toraskar submitted a response informing the assessing officer about the factum of death of the assessee. A copy of the death certificate was also furnished along with the response. It is also not out of place to mention that since the communication dated 20 May 2022 purporting to be a notice under Section 148A(b) had been addressed in the name of the deceased, the legal heir of the deceased, therefore, did not consent to participate in the assessment proceedings.

3 Notwithstanding the above mentioned objection having been taken by the legal heir of the deceased, an Order under Section 148A(d) came to be passed on 30 June 2022. From the facts as they emerge from the record, thus, make it clear that initial notice under Section 148 was in the name of the deceased and so was the subsequent communication dated 20 May 2022 purporting to be a notice in terms of Section 148A(b), it is settled law that 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 Assessing Officer without raising any objection. Reference in this regard can be made in the case of **Income Tax Ward 1(3)(7), Surat Vs. Durlabhbhai Kanubhai Rajpara²**.

4 Be that as it may, the Petition is allowed. Notices issued under Section 148 of the Income Tax Act, 1961 (“the Act”) dated 30 June 2021 and 20 June 2022 and the Order under Section 148A(d) dated 30 June 2022 are set aside.

(KAMAL KHATA, J.)

(DHIRAJ SINGH THAKUR, J.)

RAJESH
VASANT
CHITTEWAN

Digitally signed by
RAJESH VASANT
CHITTEWAN
Date: 2023.02.10
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2 [2020] 114 taxman.com 482 (SC)

