IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.12774 of 2022
and W.M.P.No.12232 of 2022

E.Sooriyakala
Legal Heir of late Singaram Elangovan,
Old No.39, New No.67, T.H. Road,
Thangal, Thiruvottiyur,
Chennai – 600 019. ... Petitioner

Vs.

1.The Additional/Joint/Deputy/
Assistant Commissioner of Income Tax/
Income Tax Officer/National Faceless
Assessment Centre, Delhi.

2.The Income Tax Officer,
Non-Crop. Ward – 4(1),
BSNL Building, 2nd Floor,
No.16, Greams Road,
Chennai – 600 006. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, seeking to call for the records of the Revision Notice dated 31.03.2021 issued by the 2nd respondent in PAN

No.AADPE9599F in DIN & Notice No.ITBA/AST/S/148/2020-21/1032090570(1) and the consequential Revision Order of the 1st respondent dated 03.03.2022 in PAN No. AADPE9599F in DIN ITBA/AST/S/147/2021-22/1040295043(1), issued in the name of the petitioner's deceased husband Singaram Elangovan and to quash the same.

For Petitioner	:	Mr.K.Soundara Rajan
For Respondents	:	Dr.B.Ramaswamy Senior Standing Counsel

ORDER

This writ petition has been filed by the petitioner seeking to call for the records of the Revision Notice dated 31.03.2021 issued by the 2nd respondent in PAN No.AADPE9599F in DIN & Notice No.ITBA/AST/S/148/2020-21/1032090570(1) and the consequential Revision Order of the 1st respondent dated 03.03.2022 in PAN No. AADPE9599F in DIN ITBA/AST/S/147/2021-22/1040295043(1), issued in the name of the petitioner's deceased husband Singaram Elangovan and to quash the same.

2.Learned counsel for the petitioner submitted that the proceedings under Section 148 of the Income Tax Act was initiated against the dead person viz., Singaram Elangovan, who is the husband of the petitioner. The petitioner's husband passed away on 08.02.2018. The 2nd respondent issued notice under Section 148 of the Income Tax Act on 31.03.2021. The said notice was signed digitally mentioning the date as 05.04.2021. Since none appeared on behalf of the petitioner, the 1st respondent passed the impugned assessment order on 03.03.2022. The petitioner came to know about these facts on 06.05.2022 with the help of an Auditor. Subsequent to the assessment order, the 1st respondent has also initiated penalty proceedings. He further submitted that the notice issued under Section 148 of the Income Tax Act against a dead person is non-est in law and illegal and hence, he prayed to quash the impugned notice dated 31.03.2021 and the impugned assessment order dated 03.03.2022 .

3.In support of his submission, he referred the judgment of this Court in the case of ***Alamelu Veerappan vs. The Income Tax Officer,***

Non Corporate Ward 2(2), Chennai made in ***W.P.No.30060 of 2017*** dated ***07.06.2018***.

4.Per contra, Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondents submitted that it is the duty of the respondents to initiate the proceedings against the assessee, if required. It is for the petitioner to inform about the death of her husband. Since she has not informed, the assessment order came to be passed. By referring the Paragraph Nos.2, 3 and 4 of the counter affidavit, he submitted that at this stage, the proceedings cannot be ignored.

5.In support of his submissions, he relied upon the following judgments:-

(i) ***Vijay Garg vs.Income-Tax Officer*** reported in ***[2023] 146 taxmann.com 231 (Delhi)***.

(ii) ***D.N.Vikraman vs. Assistant Commissioner of Income-Tax*** reported in ***[2023] 150 taxmann.com 86 (Madras)***.

6.Now the issue to be decided by this Court is whether the notice issued under Section 148 of the Income Tax Act against a dead person and subsequent proceedings is valid and sustainable in law?

7.For better appreciation, it would be appropriate to extract Section under Section 159 of the Income Tax Act, which reads as follows:-

> "**159.**(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.
>
> (2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1), —

(*a*) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(*b*) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(*c*) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets[47] of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability."

8.A reading of the above would show that, as per Section 159(2)(a) of the Income Tax Act, in the event any proceedings is initiated during the life time of a person, subsequent to his death, the same can be continued against his legal representative from the stage at which it stood on the date of the death of the deceased. Section 159(2)(b) of the Income Tax Act deals with the situation where if any proceedings could have been taken against the deceased if he had survived, may be taken against the legal representatives of the deceased.

9.In the present case, it is admitted that the petitioner's husband died on 08.02.2018 and the assessment notice under Section 148 of the Income Tax Act was issued on 31.03.2021 against the dead person. The said notice was signed digitally on 05.04.2021. Thereafter, assessment order came to be passed on 03.03.2022 against dead person. Hence the entire proceedings were initiated against a dead person.

10.In terms of the provisions of Section 159(2)(b) of the Income Tax Act, any proceedings against the deceased person, subsequent to death, can be continued against his legal representative by substitutionn of their name in the place of dead person. However, in the present case, though the proceedings were initiated subsequent to the death of the assessee, it was not initiated in the name of the assessee but in the name of a dead person and accordingly, the assessment order also passed.

11. Therefore, the department is supposed to have substituted the legal representative in the place of a dead person. However, they had not done the same, since they were not aware about the death of the assessee

and no order can be sustainable if it is passed in the name of a dead person. Further, in the case of ***Commissioner of Income-Tax-VII, Chennai vs.M.Hemanathan,*** the Hon'ble Division Bench of this Court had held that no proceedings can be initiated against a dead person.

12. For all these reasons, this Court is of the considered view that the impugned order is not sustainable and the same is liable to be set aside. Accordingly, the impugned revision notice dated 31.03.2021 and the impugned revision order dated 03.03.2022 are set aside. However, the liberty is granted to the respondent to initiate the proceedings against the legal representative of the deceased assessee in accordance with law.

13.With the above observations, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.10.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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KRISHNAN RAMASAMY.J.,

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To:

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Assistant Commissioner of Income Tax/
Income Tax Officer/National Faceless
Assessment Centre, Delhi.

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