IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.10.2023

CORAM

**THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY**

W.P.Nos.29157 & 29162 of 2023
and W.M.P.Nos.28772 & 28774 of 2023

Rajakumari ... Petitioner in both W.Ps

**Vs.**

1.The Income Tax Officer,
Non-Crop Ward – 12(1),
BSNL Building – Tower -2,
2nd Floor, No.16, Greams Road,
Thousand Lights,
Chennai – 600 006.

2.The Assessment Unit,
Income Tax Department,
National Faceless Assessment Centre,
4th Floor, Mayur Bhawan,
Connaught Lane, Connaught Place,
New Delhi – 110 001. ... Respondents in both W.Ps

**Common 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 in DIN: ITBA/AST/S/147/2022-23/1051106328(1) dated 21.03.2023 and DIN: ITBA/PNL/F/272A(1)(d)/2023-24/1056464587(1) dated 23.09.2023 on the file of the 2nd respondent relating to A.Y 2018-19 and quash the same.

**In both W.Ps**

| | | |
|---|---|---|
| For Petitioner | : | Mr.L.Dinesh |
| For Respondents | : | Dr.B.Ramaswamy,<br>Senior Standing Counsel |

## COMMON ORDER

These writ petitions have been filed by the petitioner seeking to call for the records in DIN: ITBA/AST/S/147/2022-23/1051106328(1) dated 21.03.2023 and DIN: ITBA/PNL/F/272A(1)(d)/2023-24/1056464587(1) dated 23.09.2023 on the file of the 2nd respondent relating to A.Y 2018-19 and quash the same.

2.Learned counsel for the petitioner submitted that the petitioner's husband passed away on 20.04.2020. Thereafter, the 1st respondent issued notice under Section 148 of the Income Tax Act on 31.03.2022.

The petitioner participated in the proceedings as legal representative of her deceased husband and informed about the death of her husband and submitted the death certificate. Subsequently, the assessment order dated 21.03.2023 and penalty proceeding dated 23.09.2023 came to be passed by the 2nd respondent. 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 assessment order dated 21.03.2023 and the penalty proceedings dated 23.09.2023.

3.In support of his submission, he referred the judgment of this Court in the case of ***Commissioner of Income-Tax-VII, Chennai vs.M.Hemanathan*** reported in ***[2016] 67 taxmann.com 22 (Madras)***.

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. The petitioner also participated in the proceedings initiated by the respondents for the assessment year 2018-2019 and therefore, the respondents proceeded with the same and at this stage, the same cannot be ignored. He further submitted that for the assessment year 2019-2020, the respondents initiated the proceeding against the legal representatives of the dead person.

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 issues to be decided by this Court are:-

(i) whether the notice issued under Section 148 of the Income Tax Act against the dead person and subsequent proceedings is valid and sustainable in law? and

(ii) Since the petitioner participated in the proceedings initiated by the respondents against her deceased husband, the same can be continued without substituting the petitioner as legal representative in the place of the deceased?

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 of the dead person, the same can be continued against the legal representatives of the deceased 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, the 1st respondent issued notice under Section 148 of the Income Tax Act on 31.03.2022 against the dead person, who is the husband of the petitioner. Upon the receipt of the notice, the petitioner in the capacity as the legal representative participated in the proceeding. Since she participated in the proceeding, the respondents continued the proceedings and passed assessment order in the name of dead person, accordingly initiated penalty proceedings. It is the settled principle of law that no order can be passed against the dead person and the same is non-est in law.

10.The Hon'ble Division Bench of this Court in the case of ***Commissioner of Income-Tax-VII, Chennai vs.M.Hemanathan*** reported in ***[2016] 67 taxmann.com 22 (Madras)*** has held as follows:

> "29............ A notice sent to a dead person is actually a nullity. There is only one exception in so far as civil proceedings are concerned, which could be traced to Order XXII Rule 4. Section 159 of the Income Tax Act also carves out an exception. Since service of notice on the legal heir of a dead person falls under the category of an exception to the general rule, the same cannot overtake the rule in the absence

of a specific provision."

11.In the present case, it is admitted that the impugned order was passed in the name of a dead person since the proceedings were initiated subsequent to the death of the original assessee. In terms of the provisions of Section 159(2)(b) of the Income Tax Act, any proceedings of the deceased person, subsequent to death, can be initiated against his legal representative. Though the present case was initiated subsequent to the death of the assessee, it was initiated in the name of the dead person and the assessment order was also passed in the name of a dead person, though his legal representative had participated in the proceedings.

12. 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 and no order can be sustainable if it is passed in the name of a dead person. Further, as discussed above, 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.

13. For all these reasons, this Court is of the considered view that the impugned orders are not sustainable and the same are liable to be set aside. Accordingly, the impugned assessment order dated 21.03.2023 and the penalty proceedings dated 23.09.2023 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.

14.With the above observations, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

**18.10.2023**
(2/2)

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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**To:**

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**KRISHNAN RAMASAMY.J.,**

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