2024:BHC-AUG:17717-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8291 OF 2024

Geeta w/o Amol Tapadia
Legal heir of Amol Ramkishan Tapadia
(Deceased Assessee PAN No.ACXPT0795N)
Age: 41 years, Occu: Business,
R/o. Near Siddhi Vinayak Mandir,
Hatte Nagar, Latur,
Tq. & Dist. Latur. ... **PETITIONER**

V/s.

1. The Principal Commissioner,
Income Tax-4, Pune,
Having its office at Aykar Bhavan,
Sadhu Waswani Chowk,
Near Pune Station, Pune.

2. The Income Tax Officer,
Central Ward-13 (1), Pune,
Having its office at Aykar Bhavan,
Sadhu Waswani Chowk,
Near Pune Station, Pune.

3. The Assessing Officer,
National Faceless Assessment Centre,
Jawaharlal Nehru Stadium, Ramp No.3,
New Delhi. ... **RESPONDENTS**

...
Mr. Raviraj R. Chandak, Advocate for the Petitioner
Mr. Alok Sharma, Advocate for the Respondents
...

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.
DATE : 8th August, 2024

ORAL JUDGMENT (Per: Ravindra V.. Ghuge, J.):-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. The Petitioner has put-forth prayer clause-C and D as under:

> *"C] By issuing appropriate writ or direction like in nature the impugned notice dated 31.01.2024 U/Section 148-A (b) of Income Tax Act and order dated 16.03.2024 passed U/Section 148A (d) and consequential notice dated 16.03.2024 U/sec. 148 of Income Tax Act, by the respondent no.2 for the assessment year 2020-21 may kindly quash and set aside.*
>
> *D] Pending the hearing and final disposal of this writ petition, the effect, execution, implementation and further proceeding in pursuance to the impugned order dated 16.03.2024 passed U/Section 148A(d) and consequential notice dated 16.03.2024 U/sec. 148 of the Income Tax Act, for assessment year 2020-21 by the respondent no. 2 may kindly be stayed."*

3. By this present Petition, the Petitioner widow seeks to challenge the show cause notice dated 31.01.2024, issued under Section 148-A (b) of the Income Tax Act regarding re-opening of assessment for the assessment year 2020-2021 and the consequential order dated 16.03.2024 passed under Section 148-A (d) and so also, the notice dated 16.03.2024 issued under Section 148 of the Income Tax Act. All these notices are issued by Respondent No.2. The grievance of the widow is that the entire proceeding is vitiated since the first

notice for re-opening of the assessment is issued in the name of a dead person and the same obviously could not have been served on such a dead person. The Petitioner’s husband died on 01.05.2021, due to the Covid-19 pandemic. The Petitioner is the widow. Two minor children are residing with her. The deceased assessee was assessed by Respondent No.2, who is under Respondent No.1-Authority, for the purpose of Section 151 of the Income Tax Act. Respondent No.3 is the Assessing Officer who is supposed to pass the assessment order.

4. Respondent No.2 has issued the notice dated 11.01.2024, after the demise of the Petitioner's husband on 01.05.2021.

5. Considering the order that we intend to pass, we are not required to look into the other aspects of the case. Suffice it to say, we need to consider the effect of a notice issued to a dead person.

6. The learned advocate representing the Department submits that there is no specific provisions under the Act which would enable the Authority which has issued such notice, to withdraw the notice. The learned advocate for the Petitioner submits that the Central Board for Direct Taxes (CBDT) can issue certain instructions under Section 119 of the Income Tax Act by way of instructions for ensuring the effective administration of the Department.

7. The learned advocate for the Petitioner refers to a judgment delivered by the Delhi High Court in **Savita Kapila, LR V/s. Assistant Commissioner of Income Tax; (2020) 108 CHH 0049 Del. HC**, wherein it has been concluded that as there is an absence of a statutory provision casting a duty upon a legal representative to intimate the factum of death of an asessee to the Income Tax Department, the legal representative is not under any statutory obligation to convey the death of the assessee. In **Alamelu Veerappan V/s. Income Tax Officer; (2018) 102 CCH 0118 Madras HC**, it was held that there is no provision which casts a statutory obligation on the part of the legal representatives of the deceased to immediately intimate the death of the assessee or take steps to cancel the PAN registration.

8. It cannot be debated upon that it is the duty of the Department to ensure that it's notice is issued and executed on a person to whom it is intended to be served. If the Department gets knowledge after issuance of such a notice that the concerned assessee has passed away, there must be a mechanism to recall such a notice since, it would be a wasteful exercise to spend time for attempting to serve such a notice on a dead person, in as much as, it would not advance the case of either of the parties since a dead person would not be answerable to or respond to the notice and the legal heirs, unless served with a notice, would have no authority to reply to the said notice.

9. Since we are informed that the CBDT has the scope of issuing instructions under Section 119 of the Income Tax Act for ensuring effective and proper administration, we would advice the CBDT, if there is no other legal impediment, to issue appropriate instructions to the concerned Departments to recall or withdraw such a notice, once it is brought to the knowledge of the Authority that the addressee has passed away. There must be a provision to withdraw such notice, lest every legal representative will be compelled to file a Petition in this Court and pray for an order for quashing the said notice. We trust that the CBDT would consider this observation for issuing an instruction under Section 119 for the purpose of recalling a notice which is issued to a dead person.

10. In view of the above, **this Writ Petition is allowed in terms of prayer clause-C**. The impugned notice dated 16.03.2024, stands quashed and set aside for having been issued to a dead person. Needless to state, the Department is at liberty to issue an appropriate notice in place of the earlier notice, to the appropriate legal representative and proceed with the matter. In the peculiar facts of this case, since a fresh notice would actually be a replacement of the earlier notice, which was inadvertently issued to a dead person, as the Department did not have any knowledge and the widow did not

intimate the Department of the said event, contentions of the parties with regard to such notice are kept open.

11. Since we have requested the CBDT to issue instructions as observed above, we request Respondent No.1 to place this order before the CBDT for compliance.

[Y.G. KHOBRAGADE, J.] **[RAVINDRA V. GHUGE, J.]**

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