IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4091 OF 2024

Gourang Anil Wakade (legal heir of late Mrs. Meena Anil Wakade) having PAN AAAPW2700P) an individual non-resident, aged 43 years, residing at 801, 15th Street, South, Apt. 609, Arlington, Virginia 22202, USA) **...Petitioner**

Vs.

1. **Income Tax Officer – Ward 34(2)(1), Mumbai**, Kautaliya Bhavan, C-41, to C-43, G Block, Bandra Kurla Complex, Bandra East, Mumbai – 400 051)

2. **Principal Chief Commissioner of Income-tax, Mumbai,** Aaykar Bhavan, M. K. Road, Mumbai – 400 020)

3. **National Faceless Assessment Centre**, 2nd Floor, E-Ramp, Jawaharlal Nehru Stadium, Delhi – 110003.)

4. **Union of India, through the Secretary**, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi – 110 001.) **...Respondents**

Mr. D. V. Gandhi for Petitioner.
Mr. Ravi Rattesar with Mr. Kiran Singh for Respondents.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE: 10 DECEMBER 2024.

Judgment (Per G. S. Kulkarni, J.)

1. Rule, returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. A short issue arises for consideration in the present proceedings, namely a challenge as mounted by the petitioner to the action as resorted by the respondents against Mrs. Meena Anil Wakade, the mother of the petitioner by issuance of notice under Section 148 of the Income Tax Act, 1961 (for short, the "**IT Act**") dated 14 April 2022, which was preceded by a notice issued under Section 148A(b) dated 24 March 2022 and an order passed thereon under Section 148A(d) dated 14 April 2022.

3. The case of the petitioner is that the impugned notice under Section 148 and the action prior thereto as initiated by respondent no.1 are non-est and illegal in as much as Mrs. Meena Wakade against whom these notices were issued expired on 21 March 2020. A Death Certificate issued by Virginia Department of Health, USA is annexed to the petition at Exhibit-A.

4. Learned counsel for the petitioner relying on the decisions in **Bhupendra Bhikhalal Desai vs. Income Tax Officer, Ward 1(2)(1)**[1], **Alamelu Veerappan vs. Income Tax Officer, Non-corporate Ward-2(2), Chennai**[2], **Savita Kapila vs. Assistant Commissioner of Income-Tax, Circle 4(1)**[3], **Devendra vs. Additional/Joint Commissioner of Income-Tax**[4], **Sumit Balkrishna Gupta vs. Assistant Commissioner of Income-Tax, Circle 16(2), Mumbai**[5], **Raniben Khimji Patel vs. The Assistant Commissioner of Income-Tax, Central Circle 7(3), Mumbai & Ors.**[6] and **Principal Commissioner of Income-Tax, New Delhi vs. Maruti Suzuki India Ltd.**[7] would contend that the prayers as made in the petition are required to be granted as respondent no.1 could not have resorted to impugned action by issuance of notices under Section 148A(b) and 148 and passing an order under Section 148A(d) against a dead person.

5. Mr. Rattesar, learned counsel for the respondents is not in a position to dispute the contentions as urged on behalf of the petitioner. He would also fairly state that as Mrs. Meena Wakade had expired, the impugned notices should not have been issued to her.

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1 [2021] 130 taxmann.com 196 (Gujarat)
2 [2018] 95 taxmann.com 155 (Madras)
3 [2020] 118 taxmann.com 46 (Delhi)
4 [2023] 153 taxmann.com 520 (Bombay)
5 [2019] 103 taxmann.com 188 (Bombay)
6 Writ Petition No. 2329 of 2021 @ Writ Petition No. 2394 of 2021
7 [2019] 107 taxmann.com 375 (SC)

6. We find ourselves in agreement with the submissions as made on behalf of the petitioner. We may at the outset observe that the Supreme Court has held it to be the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself (see: **UMC Technologies Private Limited vs. Food Corporation of India & Anr**., Civil Appeal No. 3687 of 2020, decided on 16 November 2020). This basic jurisprudential principle becomes applicable when any action of such nature was being initiated against Mrs. Meena Wakade. Once Mrs. Meena Anil Wakade was dead person, there was no question of her defending such action or being heard so as to accord any sanctity to such order, and the consequential notice under Section 148 of the IT Act. The entire action under clause (b) and clause (d) of Section 148A of the IT Act were of no consequence being non-est. In this situation even the legal heirs cannot be bound by such order which is non-est, *void ab initio.*

7. Also the provisions of Section 148A read with Section 148 as applicable in the facts of the present case (AY 2015-16) rests on a foundation that no notice under Section 148 could have been issued without a prior show cause notice being issued to an assessee and hearing being granted to the assessee on such show cause notice and an order passed

thereon, as clearly seen from the legislative scheme under section 148A of the IT Act. All this is certainly not possible to be undertaken against a dead person and/or even against a non existing entity [refer **Principal Commissioner of Income-Tax, New Delhi vs. Maruti Suzuki India Ltd**. (supra)].

8. Once such mandatory legal compliance itself could not be achieved, on such sole ground, the notice issued under Section 148 preceded by earlier actions is required to be held to be non-est and *void ab initio*. We are in complete agreement with the view taken by the Courts in the decisions which are referred by Mr. Gandhi, learned counsel for the petitioner, which echo such principles that the department cannot maintain issuance of the notice as impugned to a dead person.

9. In the present case, admittedly, the concerned assessee Mrs. Meena Wakade expired on 21 March 2020, the show cause notice under Section 148A(b) of the IT Act was issued on 24 March 2022 and an order thereon was passed on 14 April 2022 under Section 148A(d), as also the impugned notice under Section 148 was also issued on 14 April 2022. All this has happened after the said assessee - Mrs. Meena Wakade had expired.

10. In this view of the matter, the petition deserves to be allowed. It is accordingly allowed in terms of prayer clause (a). However, it is made clear

that this order will not preclude the Revenue from issuing a fresh notice for reassessment against the legal heirs in accordance with law if requirements under Section 147/148 of the IT Act are satisfied including the limitation period as prescribed.

11. Rule is made absolute in the aforesaid terms. No costs.

(ADVAIT M. SETHNA, J.) **(G. S. KULKARNI, J.)**