IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2904 OF 2024

Anil Mangtulal Seksaria
Legal Heir of Late Mangtulal K. Seksaria .... Petitioner
Vs.
Income Tax Officer, Ward 42(2)(4)
Mumbai & Ors. .... Respondents

Mr. Nishit Gandhi for the Petitioner.

Mr. Devendra B. Harnesha for the Respondents.

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATE : 09 SEPTEMBER, 2024

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

1. Rule. Rule made returnable forthwith. Learned Counsel for the respondent waives service. By consent of the parties, heard finally.

2. This writ petition under Article 226 of the Constitution of India is filed challenging a notice dated 30th June, 2022 under section 148 of the Income Tax Act, 1961 (***the Act***), and also the underlying prior notice and order under Section 148A(b) and Section 148(A)(d) of the Act, respectively. The reassessment

proceedings under the impugned notice has been initiated in respect of returns filed by the petitioner-Assessee for the Assessment Year 2014-15.

3. At the outset, we are required to note that Shri. Mangtulal K. Seksaria to whom the impugned notices are issued expired on 18th January, 2017. Shri. Anil Mangtulal Seksaria has filed this petition in his capacity as a legal heir.

4. The first and foremost contention as urged on behalf of the petitioner is that the impugned action under the aforesaid provisions is sought to be initiated against a dead person and for such reasons, the proceedings are rendered illegal and *void ab initio*. In support of such contention, learned counsel for the petitioner has placed reliance on the decision of the Coordinate Bench of this court in the case of ***Rupa Shyamsundar Dhumatkar Vs. Asst, Commissioner of Income Tax & Ors.***[1] wherein referring to the settled position in law, a notice to reopen the assessment against the dead person was held to be invalid. The Division Bench in Paragraph 2 of the said decision has observed thus :

> *"2. The facts are not seriously in dispute. The Petitioner had produced the death certificate of Shri Shyamsundar Dhumatkar before the Income Tax authorities, indicating that*

1 Writ Petition No.404 of 2019 dated 5th April, 2019.

he died on 14/10/2016. Thus, the impugned notice of reopening of assessment was issued on a dead person. There are several judgments of different High Courts holding that the notice or reopening of assessment is invalid in law. A reference in this respect can be made to a decision of Gujarat High Court in the case of Chandreshbhai Jayantibhai Patel Vs The Income Tax Officer (Special Civil Application No.15172 of 2018, decided on 10/12/2018). As also the decision of Madras High Court in the case of Alamelu Veerappan Vs. Income Tax Officer, Non corporate Ward2(2), Chennai, reported in (2018) 257 Taxman 72 (Madras). It is not necessary to refer to all the judgments on the point. Suffice it to say, as per the settled law, notice for reopening of assessment against a dead person is invalid."

5. Learned counsel for the petitioner has also raised the contention that apart from the basic illegality attributed to the impugned action in the notice issued under section 148 of the Act also in view of the decision of this Court in *Hexaware Technologies Limited Vs. Assistant Commissioner of Income Tax & 4 Ors.*[2] (*"**Hexaware**"*), the proceedings would be required to be held to be illegal. He also submits that the proceedings would also stand covered by the decision of this Court in the case of *Godrej Industries Ltd. v. The Assistant Commissioner of Income Tax, Circle 14 (1)(2), Mumbai & Ors.*[3] ("***Godrej***"). In any case, the notice under section 148 of the Act has been issued to a dead person which is untenable.

6. Learned counsel for the respondents, however, has raised a

2 (2024) 464 ITR 430

3 2024 (3) TMI 109 Bombay High Court

technical plea. He submits that the petitioner who is the legal heir of the deceased ought to have taken appropriate steps and notified the department about the demise of his father, by following the procedure. He would, however, submit that in these circumstances, certainly the impugned action as taken against the deceased cannot be rendered valid for want of such non-compliance by the petitioner and having approached this Court.

7. Having heard learned counsel for the parties, it is not in dispute that the present proceedings are covered by the decisions of this Court in ***Hexaweare and Godrej***. In any case, the notice under section 148 of the Act has been issued to a dead person, which is untenable as held by this Court in ***Rupa Shyamsundar Dhumatkar (supra).***

8. In this view of the matter, we are of the clear opinion that the petition is required to be allowed. It is accordingly allowed in terms of prayer clause (a), which reads thus:-

> *(a) That this Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, including a writ in the nature of 'Certiorari', calling for the records of the case and, after satisfying itself as to the legality thereof, quash and set aside the Notice d s 148A(b) dated 16.05.2022, Ex. "C" herein, the Order d s 148A(d) and the Notice d s 148 both dated 30.06.2022, Ex. "E"&"F" respectively issued by the First Respondent, the assessment order u/s 147 r.w.s. 144 of the Act*

and the Notice of Demand d s 156 of the Act both dated 27.05.2023, Exs. "r'& "K" herein respectively and all consequential proceedings thereto and any consequential/further proceedings initiated thereafter."

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

[SOMASEKHAR SUNDARESAN, J.] **[G. S. KULKARNI, J.]**