

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3460 OF 2024

Mary Gene Gracious)
Legal heir of Late Gene Gracious,)
Aged 70 years, Residing at Flat No.8,)
Alisha Apartment, Spence Road,)
Byculla, Opp. Seva Niketan,)
Mumbai Central, Mumbai- 400008.) **...Petitioner**

Vs.

1. Income Tax Officer – Ward)
20(1)(1), Mumbai,)
124, 1st Floor, Piramal Chamber,)
Lal Baug, Parel, Mumbai – 400012.)
2. Assessment Unit,)
Income Tax Department,)
Aayakar Bhavan,)
Maharshi Karve Road,)
New Marine Lines, Churchgate,)
Mumbai, Maharashtra- 400020)
3. Union of India,)
through the Secretary,)
Department of Revenue,)
Ministry of Finance,)
North Block, New Delhi – 100001.) **...Respondents**

Ms. Maitri Malde for Petitioner.
Ms. Mamta Omle 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, is the challenge as mounted by the petitioner to the action as resorted by the respondents against Mr. Gene Gracious, the husband of the petitioner by issuance of notice under Section 148 of the Income Tax Act, 1961 (for short, the “**IT Act**”) dated 29 July 2022, which was preceded by a notice issued under Section 148A(b) dated 26 May 2022 and an order passed thereon under Section 148A(d) dated 29 July 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 Mr. Gene Gracious against whom these notices were issued, expired on 09 November 2016. A Death Certificate issued by Department of Health, Municipal Corporation of Greater Mumbai, E-Ward, 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

1 [2021] 130 taxmann.com 196 (Gujarat)

Veerappan vs. Income Tax Officer, Non-corporate Ward-2(2), Chennai², Savita Kapila vs. Assistant Commissioner of Income-Tax, Circle 4(1)³, Devendra vs. Additional/Joint Commissioner of Income-Tax⁴, Sumit Balkrishna Gupta vs. Assistant Commissioner of Income-Tax, Circle 16(2), Mumbai⁵, 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. Ms. Omle, 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 Mr. Gene Gracious had expired, the impugned notices should not have been issued to her.

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

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)

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 were being initiated against Mr. Gene Gracious. Once Mr. Gene Gracious is a dead person there was no question of his 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 Ms. Malde, 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 Mr. Gene Gracious expired on 09 November 2016, the show cause notice under Section 148A(b) of the IT Act was issued on 26 May 2022 and an order thereon was passed on 29 July 2022 under Section 148A(d), as also the impugned notice under Section 148 was also issued on 29 July 2022. All this has happened after the said assessee - Mr. Gene Gracious 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.)