IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION Nos: 22070 & 22086 OF 2024

WRIT PETITION NO: 22070 OF 2024:

Between:

Mrs. Kontham Sugunalatha, Wife and Legal Heir of Late Dr.Kontham Eashwar Jai Suryanarayana, Aged about 60 years, Occ. Household, Resident of H.No. 2-1-400/3, St.No. 3, New Nallakunta, Hyderabad.

...PETITIONER

AND

1. The Assessment Unit, National Faceless Assessment Centre (NFAC), Rep. by its Principle Chief Commissioner of Income Tax, Room No 401 2nd Floor E Ramp Jawaharlal Nehru Stadium, Delhi 110003.
2. The Income Tax Officer, Ward - 2, Nizamabad, Nizamabad District, Telangana.
3. The Union of India, Rep. by its Secretary, Ministry of Finance, Government of India, North Block, New Delhi - 110 001.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, to declare the action of the 1st Respondent in issuing the Impugned Assessment Order dated 13/2/2024 for the Assessment Year 2016-17 as per Section 147 Read with Section 144 and 144B of the Income Tax Act 1961 against a dead person Dr.Kontham Eashwar Jai Suryanarayana on the ground of non-filing of the returns of income and demanding for payment of tax Rs.46,73,976/-, without prior notice and affording reasonable opportunity of being heard against legal heirs of the dead person as being illegal, arbitrary,I patently barred by limitation, without Jurisdiction, contrary to the Provisions of Section 148 and Section 148A of the Income Tax Act,1961 and consequently set aside the Assessment Order dated 13/02/2024, passed for the Assessment Year 2016-17 under the Income Tax Act,1961 as null and void.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the Impugned Assessment Order dated 13/2/2024 issued by the 1st Respondent for the Assessment Year 2016-17 under the Income Tax Act.1961, pending disposal of the above Writ Petition, as otherwise I will be put to irreparable loss and hardship.

Counsel for the Petitioner: SRI SHAIK VAHEEDA SUSHMA

Counsel for the Respondent No.1 & 2: M/s. J. SUNITHA (JR. SC FOR INCOME TAX) rep. for SRI P. MURALI KRISHNA, SR. SC FOR INCOME TAX DEPARTMENT

Counsel for the Respondent No.3: SRI GADI PRAVEEN KUMAR, DY. SOLICITOR GENERAL OF INDIA

WRIT PETITION NO: 22086 OF 2024:

Between:

Mrs.Kontham Sugunalatha, Wife and Legal Heir of Late Dr.Kontham Eashwar Jai Suryanarayana, aged about 60 years, Occ. Household, Resident of H.No. 2-1-400/3, St.No. 3, New Nallakunta, Hyderabad.

...PETITIONER

AND

1. The Assessment Unit, National Faceless Assessment Centre (NFAC), Rep. by its Principle Chief Commissioner of Income Tax, Room No 401 2nd Floor E Ramp Jawaharlal Nehru Stadium Delhi 110003
2. The Income Tax Officer, Ward 2, Nizamabad. Nizamabad District, Telangana.
3. The Union of India, Rep. by its Secretary, Ministry of Finance, Government of India, North Block, New Delhi 110 001.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ order or Direction, more particularly one in the nature of Writ of Mandamus, to declare the action of the 1st Respondent in issuing the Impugned Penalty Order dated 29-6-2024 under Section 271 (1) (c) of the Income Tax Act 1961 for the Assessment Year 2016-17 against a dead person Dr.Kontham Eshwar Jai Suryanarayana on the ground of non-filing of the returns of income and demanding for payment of Penalty of Rs. 14,26,653/-, without prior notice and affording reasonable opportunity of being heard against legal heirs of the dead person as being illegal, arbitrary, patently barred by limitation, without Jurisdiction, contrary to the Provisions of the Income Tax Act,1961 and consequently set aside the Penalty Order dated 29.06.2024, passed

for the Assessment Year 2016-17 under the Income Tax Act,1961 as null and void.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the Impugned Penalty. Order dated 29-6-2024 issued by the 1st Respondent, for the Assessment Year 201.6-17 under the Income Tax Act,1961, pending disposal of the above Writ Petition, as otherwise I will be put to irreparable loss and hardship.

Counsel for the Petitioners: SRI SHAIK VAHEEDA SUSHMA

Counsel for the Respondent No.1 & 2: M/s. J. SUNITHA (JR. SC FOR INCOME TAX) rep. for SRI P. MURALI KRISHNA, SR. SC FOR INCOME TAX DEPARTMENT

Counsel for the Respondent No.3: SRI GADI PRAVEEN KUMAR, DY. SOLICITOR GENERAL OF INDIA

The Court made the following: COMMON ORDER

THE HONOURABLE SRI JUSTICE SUJOY PAUL

AND

THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION Nos.22070 & 22086 of 2024

COMMON ORDER *(per Hon'ble SP,J)*

Ms. Shaik Vaheeda Sushma, learned counsel for the petitioner, Ms. J.Sunitha, learned Junior Standing Counsel representing Sri P. Murali Krishna, learned Senior Standing Counsel for Income Tax Department, for respondent Nos.1 and 2 and Sri B. Mukherjee, learned counsel representing Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India, for respondent No.3.

2. With the consent finally heard.

3. Learned counsel for the petitioner raised singular submission. She submits that in W.P.No.22070 of 2024, the Assessment Order dated 13.02.2024 is subject matter of challenge, whereas the consequential Penalty Order dated 29.06.2024 is being questioned in W.P.No.22086 of 2024. The singular ground is that the assessee expired on 26.02.2016. The impugned Assessment Proceedings and Assessment Order could not have been passed against a dead person. Similarly, the impugned Penalty Order could not have been issued against a dead person. Reliance is placed on a judgment of Delhi High Court in **Savita Kapila v. Assistant Commissioner of Income Tax, Circle 43(1) Delhi**[1].

[1] 2020 SCC OnLine Del 2540

4. Learned Junior Standing Counsel for Income Tax Department opposed the prayer and supported the impugned Assessment and Penalty Orders. However, she could not point out or distinguish the aforesaid judgment of Delhi High Court.

5. We are in respectful agreement with the view taken by the Delhi High Court in **Savita Kapila** (supra). In the light of said judgment, the impugned Assessment Order and Penalty Order cannot sustain judicial scrutiny.

6. Resultantly, both the orders dated 13.02.2024 and 29.06.2024 are set aside. Liberty is reserved to the Revenue Department to proceed against the legal representatives of the deceased assessee, if law so permits.

7. The Writ Petitions are **disposed of**. No costs.

Interlocutory applications, if any pending, shall also stand closed.

SD/-A.V.S.PRASAD
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principle Chief Commissioner of Income Tax, The Assessment Unit, National Faceless Assessment Centre (NFAC), Room No 401 2nd Floor E Ramp Jawaharlal Nehru Stadium, Delhi 110003.
2. The Income Tax Officer, Ward - 2, Nizamabad, Nizamabad District, Telangana.
3. The Secretary, Ministry of Finance, The Union of India, Government of India, North Block, New Delhi - 110 001.
4. One CC to SRI SHAIK VAHEEDA SUSHMA, Advocate [OPUC]
5. One CC to SRI P. MURALI KRISHNA, SR. SC FOR INCOME TAX DEPARTMENT [OPUC]
6. One CC to SRI GADI PRAVEEN KUMAR, (Deputy Solicitor General of India), High Court for the State of Telangana at Hyderabad. [OPUC]
7. Two CD Copies

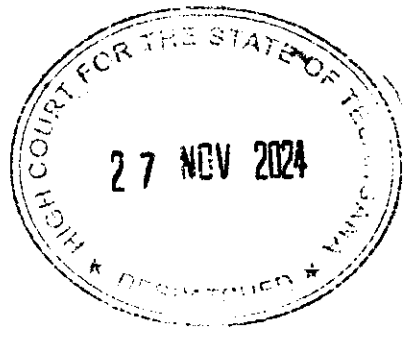
BN
GJP

HIGH COURT

DATED:21/11/2024

COMMON ORDER

WP.Nos.22070 & 22086 of 2024



DISPOSING OF THE WRIT PETITION
WITHOUT COSTS

(9x copies)
22/11/24