2024:DHC:5602-DB

$~38, 49, 50, 53, 54, 56, 60, 63

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment delivered on: 24.07.2024***

\+ W.P.(C) 5789/2021

PRATEEK SONI L/H OF RAJENDAR KUMAR DECEASED .....Petitioner

Through: Mrs. Prem Lata Bansal, Sr. Adv. with Mr. Shivang Bansal, Adv.

versus

NATIONAL FACELESS ASSESSMENT CENTRE .....Respondent

Through: Mr. Debesh Panda, SSC and Ms. Zehra Khan, Mr. Vikramaditya Singh, Mr. Vineet Gupta, Ms. Anauntta Shankar and Mr. Ojaswa Pathak, Advs.

49

\+ W.P.(C) 10322/2022

SANGITA SHARMA L/H LATE SHRI YOGESH SHARMA .....Petitioner

Through: Ms. Rano Jain, Adv.

versus

ITO, WARD 62(1), DELHI .....Respondent

Through: Mr. Sanjay Kumar and Ms. Easha, Advs.

50

\+ W.P.(C) 12055/2022

NARENDER KUMAR AGGARWAL L/H LATE SMT HITESH KUMARI .....Petitioner

Through: Ms. Rano Jain, Adv.

versus

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ITO, WARD 43(6), DELHI .....Respondent
Through: Mr. Sunil Agarwal, SSC, Mr. Shivansh B Pandya, Mr. Viplav Acharya & Mr. Utkarsh Tiwari, Advs.

53
+ W.P.(C) 13202/2022

CHANCHAL SINGH (LEGAL HEIR OF RAJESHWARI SINGH) .....Petitioner
Through: Mr. Kapil Goel, Adv.

versus

INCOME TAX OFFICER WARD 36 (1) DELHI .....Respondent
Through: Mr. Sanjay Kumar and Ms. Easha, Advs.

54
+ W.P.(C) 16745/2022
VIVEK JAIN LEGAL REPRESENTATIVE OF LATE MAHAVIR PRASAD JAIN .....Petitioner
Through: Mr. Anil Kumar Jain, Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX OFFICER CIRCLE 28(1) & ANR. .....Respondents
Through: Mr. Anurag Ojha, SSC, Ms. Hemlata Rawat and V.K. Saksena, Advs.

56
+ W.P.(C) 1389/2023
DHARMENDRA DEO MISHRA (LEGAL HEIR OF LATE SMT. KAMAL MISHRA) .....Petitioner
Through: Mr. Inder Paul Bansal, Mr. Vivek Bansal and Mr. Vishal Chechi, Advs.

versus

INCOME TAX OFFICER, WARD 71(1), NEW DELHI

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15:01:44

& ORS. .....Respondents

Through: Mr. Aseem Chawla,, SSC, Ms. Pratishtha Chaudhary and Ms. Simran Jha, Advs.

60

\+ W.P.(C) 2912/2023

SMT SMRITI BHATIA LEGAL REPRESENTATIVE OF LATE SH ANKUR BHATIA .....Petitioner

Through: Mr. Mayank Nagi, Mrs. Husnal Syali Nagi and Mr. Tarun Singh, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. .....Respondents

Through: Mr. Sanjay Kumar and Ms. Easha, Advs.

63

\+ W.P.(C) 6007/2023

SMT NEERA GUPTA L/H OF LATE SH SANJEEV KUMAR .....Petitioner

Through: Ms. Rano Jain, Adv.

versus

ITO, WARD 46(4), DELHI & ANR. .....Respondents

Through: Mr. Gaurav Gupta, SSC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>J U D G M E N T</u>

<u>YASHWANT VARMA, J. (Oral)</u>

1. These writ petitions impugn actions for reassessment undertaken under the **Income Tax Act, 1961**[1]. The principal ground

[1] Act

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of challenge which is raised is that the notices were addressed in the name of assessees who had by then expired.

2. Before us, the following details have been provided insofar as some of the writ petitions are concerned. Those details which have been set out in tabular form are reproduced hereinbelow: -

Item No.	**WP(C) No.**	**Cause List**	**Date of Death**	**Date of intimation of death to department**
38	W.P.(C) 5789/2021	Prateek Soni L/h of Rajendar Kumar deceased vs. NFAC.	30.09.2020	07.03.2021(Annex 'F' @ pg
48	W.P.(C) 9297/2022	Hardeep Singh being legal heir of Late Sardar Sawarup Singh vs. ITO. Ward 68(5) New Delhi &Anr.	19.01.2022	23.03.2022
49	W.P.(C) 10322/2022	Sangita Sharma L/H Late Shri Yogesh Sharma vs. ITO, Ward 62(1), Delhi	02.03.2015	23.03.2022(Annex 'D' @ pages 32-34)
50	W.P.(C) 12055/2022	Narender Kumar Aggarwal L/H Late Smt Hitesh Kumari vs. ITO, Ward 43(6). Delhi	19.02.2022	20.05.2022(Annex 'D' @ Pgs. 28-29)
53	W.P.(C) 13202/2022	Chanchal Singh (Legal Heir Of Rajeshwari Singh) vs. ITO, Ward 36 (1) Delhi	24.05.2021	27.07.2021
54	W.P.(C) 16745/2022	Vivek Jain legal representative of late Mahavir Prasad Jain v/s DCIT, Circle 28(1) & Anr.	07.08.2020	18.03.2021
55	W.P.(C) 17319/2022	Vikram Bhatnagar (as	10.03.2018	06.10.2018 (Annex 'G' @

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		legal representative, acting for and on behalf of legal heirs of late Sh. Virendra Kumar Bhatnagar (deceased). vs. ACIT Circle-28(1), New Delhi &Ors.		pgs. 126-128)
56	W.P.(C) 1389/2023	Dharmendra Deo Mishra (legal heir of Late Smt. Kamal Mishra) v ITO, ward 71(1), New Delhi &Ors.	18.04.2017	28.03.2018 (Annex 'P13' @ pg. 86)

3. As is manifest from the above, although the petitioners assert that the factum of the original assessees being no more was duly intimated, the notices were neither amended nor addressed to the legal representatives. We note that while dealing with an identical challenge, we had in **Pradeep Jain vs. Income Tax Officer**[2] noticed the legal position as enunciated by this Court in the following terms: -

> "**14.** We note the pertinent observations of this court in the case of *Savita Kapila* v. *Asst. CIT* [(2020) 426 ITR 502 (Delhi); 2020 SCC OnLine Del 2540.] , wherein, while dealing with the identical question, it has been held that the prerequisite for issuing a notice in the name of the correct person and not in the name of a dead person is sine qua non for acquiring the jurisdiction and initiating the action under section 148 of the Act. The court while setting aside the notice issued under section 148 of the Act to a dead person held as follows (page 510 of 426 ITR):
>
> "In the present case the notice dated March 31, 2019 under section 148 of the Act, 1961 was issued to the deceased-assessee after the date of his death (December 21, 2018) and thus inevitably the said notice could never have been served upon him. Consequently, the jurisdictional requirement under section 148 of the Act, 1961 of service of notice was not fulfilled in the present instance.

[2] 2024 SCC OnLine Del 4722

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In the opinion of this court the issuance of a notice under section 148 of the Act is the foundation for reopening of an assessment. Consequently, the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. (See *Sumit Balkrishna Gupta* v. *Asst. CIT*[(2019) 414 ITR 292 (Bom); 2019 SCC OnLine Bom 13178; [2019] (2) TMI 1209 (Bom).]).

In *Chandreshbhai Jayantibhai Patel* v. *ITO* [(2019) 413 ITR 276 (Guj); 2018 SCC OnLine Guj 4812; [2019] (1) TMI 353 (Guj).] the Gujarat High Court has also held (page 290 of 413 ITR):

> 'The question that therefore arises for consideration is whether the notice under section 148 of the Act issued against the deceased-assessee can be said to be in conformity with or according to the intent and purposes of the Act. In this regard, it may be noted that a notice under section 148 of the Act is a jurisdictional notice, and existence of a valid notice under section 148 is a condition precedent for exercise of jurisdiction by the Assessing Officer to assess or reassess under section 147 of the Act. The want of valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects the validity of the proceedings for assessment or reassessment. A notice issued under section 148 of the Act against a dead person is invalid, unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection.'
>
> Consequently, in view of the above, a reopening notice under section 148 of the Act, 1961 issued in the name of a deceased-assessee is null and void.
>
> Also, no notice under section 148 of the Act, 1961 was ever issued upon the petitioner during the period of limitation. Consequently, the proceedings against the petitioner are barred by limitation as per section 149(1)(b) of the Act, 1961.
>
> Also, no notice under section 148 of the Act, 1961 was ever issued to the petitioner during the period of limitation and simply proceedings were transferred to the permanent account number of the petitioner, who happens to be one of the four legal heirs of the deceased-assessee vide letter dated December 27, 2019. Therefore, the assumption of jurisdiction qua the petitioner for the relevant assessment year is beyond the period prescribed and consequently, the proceedings against the petitioner are barred by limitation in accordance with section 149(1)(b) of the Act, 1961….

As in the present case proceedings were not initiated/pending against the assessee when he was alive and after his death the legal representative did not step into the shoes of the deceased-assessee, section 159 of the Act, 1961 does not apply to the present case….

<u>This court is of the view that in the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the Income-tax Department. After all, there may be cases where the legal representatives are estranged from the deceased-assessee or the deceased-assessee may have bequeathed his entire wealth to a charity. Consequently, whether permanent account number record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In *Alamelu Veerappan* [*Alamelu Veerappan* v. *ITO*, (2018) 12 ITR-OL 95 (Mad); 2018 SCC OnLine Mad 13593.] it has been held 'nothing has been placed before this court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased-assessee to immediately intimate the death of the assessee or take steps to cancel the permanent account number registration"</u>.

The judgment in *Pr. CIT* v. *Maruti Suzuki (India) Ltd.* [(2019) 416 ITR 613 (SC); (2020) 18 SCC 331.] offers no assistance to the respondents. In *Pr. CIT* v. *Maruti Suzuki (India) Ltd.* [(2019) 416 ITR 613 (SC); (2020) 18 SCC 331.] the Supreme Court was dealing with section 170 of the Act, 1961 (succession to business otherwise than on death) wherein notice under section 143(2) of the Act, 1961 was issued to non-existing company. In that case, the Department by very nature of transaction was aware about the amalgamation. However, the said judgment nowhere states that there is an obligation upon the legal representative to inform the Income-tax Department about the death of the assessee or to surrender the permanent account number of the deceased assessee. The relevant portion of the said judgment is reproduced hereinbelow (page 635 of 416 ITR):

'In this case, the notice under section 143(2) under which jurisdiction was assumed by the Assessing Officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in section 292B….

In the present case, despite the fact that the Assessing Officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on

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Signing Date:05.08.2024
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which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment on November 2, 2017 [*CIT* v. *Spice Enfotainment Ltd.*, (2018) 12 ITR-OL 134 (SC); (2020) 18 SCC 353.] . The decision in *Spice Enfotainment* has been followed in the case of the respondent while dismissing the special leave petition for the assessment year 2011-2012. In doing so, this court has relied on the decision in *Spice Enfotainment*….'

This court is of the opinion that issuance of notice upon a dead person and non-service of notice does not come under the ambit of mistake, defect or omission. Consequently, section 292B of the Act, 1961 does not apply to the present case."

15. The abovenoted settled position of law was also followed in the decision of this court in the case of *Vikram Bhatnagar* v. *CIT* [2022 SCC OnLine Del 3899.] , wherein this court while dealing with the identical questions held as follows:

"11. In the present case as admitted by the respondent the facts are admitted. The death of the assessee was duly communicated by his legal heirs (the petitioner herein). The Income-tax return also duly disclosed that the same has been filed by the legal representative. However, in ignorance of the said facts available on the record the scrutiny proceedings have been wrongly conducted in the name of the deceased assessee without bringing on record all his legal heirs as per the requirement of law.

12. In the present case, the jurisdictional notice under section 143(2) of the Act was issued against the dead person and the assessment order has also been passed against the dead person on his permanent account number without bringing on record all his legal representatives, therefore, the said assessment order and the subsequent notices are null and void and are liable to be set aside.

13. Consequently, the impugned notice dated September 22, 2019 issued under section 143(2) of the Act and the impugned assessment order dated September 30, 2021 is set aside along with all consequential proceedings and notices. The petition is allowed; however, the Revenue will have the liberty to take steps in the matter, albeit as per law. In case any such-steps are

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Signing Date:05.08.2024
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taken, the petitioner will have liberty to assail the same, in accordance with law."

16. On the touchstone of the principles that emerge from the judicial pronouncements discussed above, it is crystal clear that the action under section 147 of the Act cannot be initiated on the factum as the impugned notices were issued to a dead person. Furthermore, the present is a case where the petitioner had already intimated the Revenue about the death of the assessee and yet it proceeded to reopen the assessment under section 147 of the Act. The course as adopted is clearly reflective of complete non-application of mind."

4. Mr. Agarwal, learned counsel representing the respondents, has however drawn our attention to the provisions of Section 159 of the Act and submits that the proceedings which have been impugned are not liable to be interfered with since the statute itself empowers them to continue proceedings against the legal representatives. Section 159 of the Act reads as follows:-

" **159. Legal representatives**.—(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under Section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

(*a*) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(*b*) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(*c*) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

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By:KAMLESH KUMAR
Signing Date:05.08.2024
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(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of Section 161, Section 162 and Section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability."

5. As is manifest from the above, the statute does not debar the respondents from continuing or drawing proceedings against the legal representative of a deceased assessee. Section 159(2) of the Act clearly envisages such a situation and upon such a contingency coming into being, the respondents stand enabled to either draw or continue proceedings against the legal representative. It becomes pertinent to note that Section 159(2) of the Act empowers the respondents to make an assessment, reassessment or re-computation against a legal representative of a deceased assessee. The deeming fiction comprised in Section 159(2)(a) is essentially to ensure that proceedings pending on the date of death do not come to an abrupt or unforeseen closure. Similarly, the provision envisages a continuance of proceedings against the legal representative. However, neither of those stipulations can be read or construed as obviating the requirement of the legal representative being called upon to face proceedings in terms envisioned in that provision. This would necessarily entail the legal representative being placed on notice and being made aware of the intent of the respondents to continue proceedings in accordance with Section 159. Regard must also be had

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By:KAMLESH KUMAR
Signing Date:05.08.2024
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to the fact that the liability of the legal representative is not unlimited. This since it stands circumscribed by sub-section (6) which limits it to the extent to which the estate is capable of meeting that liability. Thus, the legal representative stands conferred with not just the right to contest those proceedings, but also assert the extent to which the ultimate liability is liable to be liquidated. This reinforces the requirement of a notice being formally issued to the legal representative of the deceased assessee.

6. We are, however, in this particular batch faced with a situation where the respondents neither adopted any corrective measures nor did they consciously take a decision to invoke the aforenoted statutory provision to continue proceedings against the legal representatives. The impugned action appears to have been mechanically continued in ignorance of the salutary provisions which stand embodied in Section 159.

7. Mr. Agarwal had also sought to draw sustenance from the judgment rendered by the Supreme Court in **Commissioner of Income Tax, Shillong vs. Jai Prakash Singh**[3] and where the following observations came to be rendered: -

> "**12.** In *Maharaja of Patiala* v. *CIT* [(1943) 11 ITR 202 (Bom)] , a decision rendered by the Bombay High Court, the facts were these: the late Maharaja of Patiala had income from property and business in British India. He died on 23-3-1938. On 23-11-1938, the Income Tax Officer, Bombay sent two notices under Sections 22(2) and 38 of the Indian Income Tax Act, 1922 addressed to the Maharaja of Patiala requiring him to make a return of his income from all sources for the Assessment Years 1937-38 and 1938-39. They were served upon the successor Maharaja. Returns were filed, signed by the Foreign Minister of Patiala. <u>The Income Tax Officer passed assessment orders describing the assessee as "His Highness … late</u>

[3] (1996) 3 SCC 525

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Signing Date:05.08.2024
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Maharaja of Patiala". The succeeding Maharaja appealed against the assessment orders contending that inasmuch as the notices were sent in the name of Maharaja of Patiala and not to him as the legal representative of the Maharaja of Patiala, the assessments made were illegal. The contention was that the notices were really addressed to the late Maharaja, who was not alive when the said notices were issued and that they were wrongly served upon him. The argument was rejected by the authorities under the Act as well as by the High Court on reference. The Division Bench comprising Beaumont, C.J. and Kania, J. held that inasmuch as the present Maharaja, (who raised the contention of nullity) was the legal representative of the late Maharaja of Patiala and because the return of the late Maharaja's income was made by the Foreign Minister on his behalf and because he knew perfectly well that what was being assessed was the income of his predecessor, the assessment made, though not complying strictly with Section 24-B (corresponding to Section 159 of the present Act), is yet valid. The following observations of Beaumont, C.J., are relevant for our purpose:

> "In this case the person to be assessed was the late Maharaja, who had died before he was served with any notice under Section 22, and, therefore, the provisions of Section 24-B(2) apply, and the Income Tax Officer was entitled to serve on the executor, administrator or other legal representative of the deceased Maharaja a notice under Section 22(2) or under Section 34 as the case might be, and then proceed to assess the total income of the deceased Maharaja as if such executor, administrator or other legal representative were the assessee. As observed by the President of the Tribunal in his judgment, the Income Tax Officer made no attempt to observe the provisions of that sub-section. He served the notice on the present Maharaja, without showing in what capacity. But the Tribunal have found, as a fact, that the present Maharaja is the legal representative of the deceased Maharaja, and although it would obviously have been better so to describe him in the notice, I am not prepared to say that the notice was bad, if it was served on the legal representative, merely because it omitted to state that it was served in that capacity. It should have been stated that it was served on the legal representative of the late Maharaja, and that the return required was of the late Maharaja's income. It was not so stated, and the present Maharaja himself may have had taxable income for the years in question; but I think there is a good deal of force in the contention of the Tribunal that any irregularities in this respect were waived by the Maharaja, because returns of the late Maharaja's income were made by the Foreign Minister on behalf of the Maharaja, and then subsequently corrections were made in the assessment at the instance of the Maharaja. There is no doubt that the

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Signing Date:05.08.2024
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present Maharaja knew perfectly well that what was being assessed was the income of his predecessor."

13. To the same effect are the observations of Kania, J. in his separate but concurring opinion. The decision, one of the earliest on the subject, shows that an assessment made without strictly complying with Section 24-B (Section 159 in the present Act) is not void or illegal and that any infractions in that behalf can be waived by the assessee."

8. The submissions that were addressed on this score clearly fail to bear in mind the significant findings on facts which had come to be recorded by Beaumont, C.J. and who had taken note of the admitted position of the returns of the late Maharaja's income having been submitted by the Foreign Minister on its behalf and subsequent corrections also being made in the course of assessment at the instance of the succeeding Maharaja. Beaumont, C.J thereafter proceeded to pertinently observe that the present Maharaja was fully aware of the assessment proceedings and those pertaining to the income of his predecessor. It was in the aforesaid background that the Bombay High Court had held that the argument of the present Maharaja that the assessment ultimately framed was a nullity would not sustain. As would be evident from a reading of the extracts of that decision reproduced hereinabove, the High Court had clearly found that there was an apparent failure to invoke Section 24-B(2) and thus the Assessing Officer having failed to apprise the Maharaja of the capacity in which proceedings were sought to be continued. However and ultimately on facts it was found that the Maharaja was fully aware of the circumstances surrounding the continuance of proceedings. The judgment is thus clearly distinguishable on facts.

9. We accordingly allow the instant writ petitions and quash the following impugned notices: -

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Writ Petition	Date of Impugned Notice/Order	Section under which the Notice/Order has been issued
W.P.(C) 5789/2021	23 April 2021	Assessment Order under Section 144 read with Section 144B
W.P.(C) 10322/2022	12 April 2022	Section 148 notice
W.P.(C) 12055/2022	13 July 2022	Section 148 notice
W.P.(C) 13202/2022	29 July 2022	Section 148 notice
W.P.(C) 16745/2022	29 July 2022	Section 148 notice
W.P.(C) 1389/2023	20 July 2022	Section 148 notice
W.P.(C) 2912/2023	30 September 2022	Assessment Order under Section 143(3)
W.P.(C) 6007/2023	31 March 2023	Section 148 notice

10. We, however, accord liberty to the Revenue to proceed further and against the legal heirs of the assessees, if otherwise permissible in law.

11. The writ petitions stand disposed of on the above terms.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 24, 2024/RW

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