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

\+ W.P.(C) 7121/2019

HARVINDER SINGH JAGGI .....Petitioner

Through: Mr. Udaibir Singh Kochar & Mr. Pushkar Khanna, Advs.

versus

INCOME TAX OFFICER, WARD 45(3), NEW DELHI .....Respondent

Through: Mr. Aseem Chawla, SSC.

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

O R D E R

% **11.07.2024**

1. The writ petitioner, who is the son of the late Smt. Jaswant Kaur Jaggi, impugns the action initiated in terms of Section 148 of the Income Tax Act, 1961 ["**Act**"].

2. From a perusal of the order rejecting the petitioner's objections to the impugned Section 148 notice dated 30 March 2019, we find that the late Smt. Jaswant Kaur Jaggi is stated to have died on 11 December 2008. The reassessment action was confined to Assessment Year ["**AY**"] 2012-13. Consequently, we find merit in the contention which is addressed in the writ petition, with it being submitted that the deceased person could have not had any income in AY 2012-13 quite apart from the notice itself being rendered invalid since it was drawn in the name of a deceased person.

3. We note that following the judgment of this Court in **Savita Kapila vs. Assistant Commissioner of Income Tax** [2020 SCC OnLine Del 2540], we had recently and while passing the order dated 16 April 2024 in **Pradeep Jain vs Income Tax officer Ward 63(1),**

Civic Centre, Minto Road, New Delhi [WP(C) 13474/2022] held as follows:

> "**14.** We note the pertinent observations of this Court in the case of ***Savita Kapila v. Asst. CIT (supra)***, wherein, while dealing with the identical question, it has been held that the pre-requisite of 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:-
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> > "25. 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.
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> > **26. 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) 2 TMI 1209-the Bombay High Court).**
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> > 27. In ChandreshbhaiJayantibhai Patel v. ITO (2019) 413 ITR 276 (Guj) ; [2019] (1) TMI 353-the Gujarat High Court has also held (page 290 of 413 ITR) :
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> > > "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.

28. 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.

29. 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.

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32. 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 PAN record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In Alamelu Veerappan (supra) 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 PAN registration".

33. The judgment in Pr. CIT v. Maruti Suzuki India Ltd. (supra) offers no assistance to the respondents. In Pr. CIT v.

Maruti Suzuki India Ltd. (supra) 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. ..
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> 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 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. The decision in Spice Enfotainment has been followed in the case of the respondent while dismissing the special leave petition for the assessment year 2011-12. In doing so, this court has relied on the decision in Spice Enfotainment."

35. 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 (supra)***, wherein this Court while dealing with the identical questions held as follows:-

> "**<u>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 ITR 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.</u>**
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> **<u>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 PAN 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.</u>**
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> 13. Consequently, the impugned notice dated 22nd September, 2019 issued under Section 143(2) of the Act and the impugned assessment order dated 30th September, 2021 is set aside along with all consequential proceedings and notices. The petition is allowed; however, Revenue will have the liberty to take steps in the matter, albeit as per law. In case any such-steps are taken, the Petitioner will have liberty to assail the same, in accordance with law."

16. <u>On the touchstone of the principles that emerge from the judicial pronouncements discussed above, it is crystal clear that the action under Section 148 of the Act cannot be initiated on the factum as the impugned notices were issued to a dead person</u>. Furthermore, 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 148 of the Act. The course as adopted is clearly reflective of complete non-application of mind.

17. <u>It is also pertinent to point out that for the previous AYs, the Revenue had already dropped the proceedings in the case of the assessee on the premise that the notice under Section 148 of the Act was issued to a dead person</u>. Therefore, on the yardstick of the principle of consistency which as has been enunciated by the Supreme Court in the case of **Radhasoami Satsang, Saomi Bagh, Agra v. CIT** [(1992) 1 SCC 659], Revenue ought not to have proceeded to initiate action under Section 148 of the Act for the relevant AY, especially when there was no alteration in the factual matrix as compared to the previous AYs.

18. <u>Therefore, we find ourselves unable to sustain impugned notices dated 31.03.2021 and 19.04.2021 under Section 148A(b), assessment order dated 31.03.2022 passed under Sections 147 read with 143,</u>

> order dated 20.07.2022 passed under Section 148A(d) and the consequential notice of the even date issued under Section 148 of the Income Tax Act, 1961 ["**Act**"] for the AY 2013-14. Accordingly, we set aside and quash them.
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> **19.** We, however, accord liberty to the Revenue to proceed in accordance with law against the legal heirs of the assessee if otherwise permissible in law."

In our considered opinion, the petitioner is entitled to succeed based on our decision in *Pradeep Jain*.

4. Accordingly, we allow the instant writ petition and quash the impugned notice dated 30 March 2019, subject to liberty being reserved to the Revenue to proceed in accordance with law against the legal heirs of the deceased-assessee, if otherwise permissible in law.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 11, 2024/kk