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

\+ **W.P.(C) 13474/2022**

PRADEEP JAIN ..... Petitioner

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

versus

INCOME TAX OFFICER WARD 63(1), CIVIC CENTRE, MINTO ROAD, NEW DELHI ..... Respondent

Through: Mr. Debesh Panda, SSC along with Ms. Zehra Khan, Mr. Vikramaditya Singh, JSCs, Mr. Ojaswa Pathak and Mr. Ishan Puri, Advs.

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\+ **W.P.(C) 17029/2022**

PRADEEP JAIN ..... Petitioner

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

versus

INCOME TAX OFFICER, WARD 63(1), CIVIC CENTRE, MINTO ROAD, NEW DELHI ..... Respondent

Through: Mr. Debesh Panda, SSC along with Ms. Zehra Khan, Mr. Vikramaditya Singh, JSCs, Mr. Ojaswa Pathak and Mr. Ishan Puri, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **16.04.2024**

PER: PURUSHAINDRA KUMAR KAURAV, J.

1. The present writ petitions seek to assail the impugned notices

dated 31.03.2021 and 19.04.2021 issued under Section 148A(b), assessment order dated 31.03.2022 passed under Sections 147 read with 143, order dated 20.07.2022 passed under Section 148A(d) and the consequential notice of even date issued under Section 148 of the Income Tax Act, 1961 ["**Act**"] for the Assessment Year ["**AY**"] 2013-14.

2. The brief facts that are relevant to decide the controversy at hand would reveal that the writ petitioner is the legal heir of the assessee Late Mr. Prem Sagar Jain. It is an undisputed fact that the assessee was issued two PAN nos. namely PAN No. ADPPJ6930L and PAN No. ACRPJ0286A, which was also intimated to the Revenue *vide* letter dated 28.02.2014. *Vide* aforenoted letter, the assessee informed the Revenue that from the AY 2009-10, the assessee was filing his Income Tax Return ["**ITR**"] on PAN no. ACRPJ0286A (hereinafter referred to as 'new PAN') and had requested the Revenue to cancel his other PAN No. ADPPJ6930L (hereinafter referred to as 'old PAN').

3. On 09.02.2019, the assessee expired and thereafter *vide* notices dated 31.03.2021 and 19.04.2021, the Revenue sought to initiate the proceedings in the case of the assessee under the old PAN as well as the new PAN respectively for AY 2013-14.

4. Pursuant thereto, the petitioner filed a reply *vide* letter dated 25.03.2022 and intimated the Revenue that the notices under Section 148 of the Act were issued in the name of a dead person and the action was sought to be initiated on the old PAN.

5. Thereafter, the Revenue proceeded to investigate further and on 31.03.2022, an assessment order was passed in the case of the old PAN and on 20.07.2022, an order was passed under Section 148A(d)

of the Act in the case of the new PAN, both for AY 2013-14.

6. Aggrieved by the said recourse taken by the Revenue, the petitioner has approached this Court in the instant petition.

7. Mr. Udaibir Singh Kochar, learned counsel appearing on behalf of the petitioner, submitted that the initiation of action under Section 148 of the Act in the case of the assessee on both new and old PAN is *void-ab-intitio* as the notices under Section 148A(b) of the Act were issued in the name of a dead person. Furthermore, he assailed the order on the ground that the Revenue has already dropped the proceedings in the case of the assessee for AYs 2010-11 and 2012-13 on the ground that the notice under Section 148A(b) of the Act was issued to a dead person and the assessee has already surrendered his old PAN. He argued that despite knowing that the assessee had expired and proceedings for previous AYs had been dropped, the Revenue has proceeded to initiate action under Section 148 of the Act. In order to substantiate his arguments, he placed reliance on the decisions of this Court in **Savita Kapila v. Asst. CIT** [2020 SCC OnLine Del 2540] and **Vikram Bhatnagar v. CIT** [2022 SCC OnLine Del 3899].

8. *Per contra*, Mr. Debesh Panda, learned counsel appearing on behalf of the Revenue has vehemently opposed the submissions and argued that the impugned orders were passed in accordance with the legislative mandate of Section 148 of the Act. He submitted that the assessee was using two PANs for different transactions in the relevant AY. Furthermore, he submitted that the case of the assessee was picked up for scrutiny for AY 2013-14 and therefore, the proceedings of the previous AY have no bearing over the AY in question.

9. We have heard the learned counsels on behalf of the parties and

perused the record.

10. The solitary question that arises before us is whether the impugned action which is sought to be initiated under Section 148 of the Act is permissible against a dead person.

11. It is pertinent to point out that *vide* order dated 25.09.2017, for the AY 2010-11, the Revenue has dropped the proceedings on the ground that the proceedings were initiated on an old PAN which was not operational during the relevant AY. For the sake of clarity, the relevant extracts of the aforementioned order are reproduced herein below:-

> "In the instant case information was received from DIT (I&CI), New Delhi regarding receipt of interest income to the tune of Rs. 9,14,265/- and the assessee had not filed any return of income for the A.Y. 2010-11. Accordingly the case was re-opened u/s 147 of the IT Act after recording reasons u/s 148 (2) of the IT Act. Noticed u/s 148 of the IT Act was issued on 31.03.2017 and was duly served upon the assessee.
>
> 2. In response to the notice, AR of the assessee filed his submission vide reply dated 08.09.2017 stating that the assessee was allotted two PANs and TDS was erroneously deducted on the PAN which is not being used by the assessee. Further, the assessee has also submitted with supporting evidence that the whole amount of interest which is in dispute has already been accounted for and disclosed truly on the retained PAN-ACRPJ0286A. In support to his submission the assessee has submitted copy of bank statement showing the receipt of interest, confirmation from the bank, copy of ledger and return of income. The assessee has also submitted an affidavit stating that said amount of interest has already been accounted for and due taxes have already been paid. The facts have been duly verified from the information available on AST.
>
> **3. Since the reasons were recorded on the de-activated PAN/other PAN which is not operational and that whole amount of interest in dispute has already been brought to tax ambit, the proceedings initiated u/s 147 of the IT Act are technically invalid and needs to be dropped.**
>
> **Moreover, the information with regards to the receipt of interest income stands examined in the light of the documentary evidence available on records. Hence, no**

adverse inference can be drawn in this regard.

5. In view of the above facts and discussion of the case with JCIT Range 63, New Delhi, and proceedings initiated u/s 147 of the IT Act in the case of Prem Sagar Jain are hereby dropped."

12. It be noted that similarly *vide* order dated 21.11.2019 for AY 2012-13, the Revenue had already dropped proceedings on the score that the notice was issued to a dead person. For the sake of clarity, the relevant extracts of the aforementioned order are reproduced herein below:-

> "Notings/Remarks: The case has been selected for scrutiny for A.Y. 2012-13 through Non Filers Monitoring System (NMS). As per the system, the assessee had large receipts u/s 194A amounting to Rs. 33,82,804/-. Subsequently, upon accordance of approval u/s 151 of the I. T. Act, 1961, Notice u/s 148 dated 26.03.2019 was issued and served upon the assessee.
>
> Also, during the course of assessment proceedings it was gathered that the correct receipts u/s 194A is at Rs. 16,91,402/-, there has been duplicate entries in ITS whereas the correct receipts are appearing in form 26AS which has duly been verified. **The assessee in reply to notice u/s 142(1) of the Income Tax Act, 1961 has submitted that the assessee is regularly filing his return of income against PAN-ACRPJ0286A since 2012-13 till latest of A. Y. 2018-19, the claim of the assessee is found to be true and has been verified on ITBA Portal. The assessee has submitted ITR for A.Y. 2012-13 filed against PAN-ACRPJ0286A, computation of income, P&L account and Balance Sheet for F.Y. 2011-12. On perusal of F&L Account it is evident that assessee has shown interest income at Rs. 17,78,935/- which has been taken on account. Also, as per the death certificate submitted against notice u/s 142(1), the assessee had died on 09.02.2019 i.e. before the date of issue and serving of notice u/s 148 of the IT Act, 1961. In view of the above assessment proceeding in this case is hereby dropped. However, penalty for de-duplication of PAN u/s 272B is being initiated separately."**

13. In light of the abovementioned undisputed position of facts and the Revenue's consistent stand in the case of the assessee for previous

AYs, we now proceed to examine the challenge that stands raised before us.

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:-

> "**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."

<u>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.</u>
<u>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.</u>

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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<u>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".</u>

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. ..
>
> 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>**
>
> **<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>**
>
> **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. 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. 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. 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. 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. 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, 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.

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.

20. In view of the aforesaid, the writ petitions are allowed and disposed of, along with pending applications, if any.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 16, 2024/MJ