



2024:DHC:7438-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI**Judgment reserved on: 20 September 2024****Judgment pronounced on: 26 September 2024**

+ W.P.(C) 16438/2022

**MR KINSHUK GOEL LEGAL HEIR OF LATE SHRI VIJAY
SHANKER GOEL**

.....Petitioner

Through: Mr. Gaurav Gupta & Mr.
Jaspal Singh, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE

49(1)

.....Respondent

Through: Mr. Abhishek Maratha,
SSC with Mr. Apoorv
Agarwal, Mr. Parth
Semwal, JSCs, Ms. Nupur
Sharma, Ms. Muskaan
Goel, Ms. Paridhi Kohli,
Mr. Gaurav Singh, Mr.
Himanshu Gaur, Mr.
Bhanukaran Singh Jodha
& Mr. Adash Nigam,
Advs.**CORAM:****HON'BLE MR. JUSTICE YASHWANT VARMA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****J U D G M E N T****RAVINDER DUDEJA, J.**

1. The present Writ Petition has been filed by the writ petitioner, who is the son of late Sh. Vijay Shankar Goel, assessee, therein, assailing the notice under Section 148A (b) of the Income Tax Act, 1961 ["Act"] dated 26.05.2022, impugned order under Section 148A(d) dated 30.07.2022 and the notice under Section 148 both even dated



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30.07.2022 for the Assessment Year [“AY”] 2015-16.

2. The background facts, leading to the filing of the present petition are that late Sh. Vijay Shankar Goel (assessee) filed his income tax return for AY 2015-16 on 31.10.2015. A notice under Section 148 dated 08.04.2021 for AY 2015-16 was issued in the name of the assessee. Assessee expired on 10.05.2021.

3. In compliance to the aforesaid notice under Section 148 of the Act, petitioner filed income tax return on 29.05.2021.

4. Respondent issued notice under Section 143(2) of the Act in the name of the deceased assessee. In response to the said notice, petitioner filed replies dated 13.07.2021 and 01.08.2021, wherein, he informed the respondent about the death of the assessee. Particulars of the legal heirs were added on the Income Tax Portal on 16.09.2021, which were approved on 08.10.2021.

5. Thereafter, another notice in the name of the deceased assessee was issued under Section 142(1) dated 27.11.2021. Petitioner responded to the notice vide reply dated 30.11.2021, informing the respondent that the notices post 31.03.2021 under Section 148 of the Act are challenged by the other assesses before the High Court.

6. Yet another notice under Section 148A(b) dated 26.05.2022 was issued in the name of the deceased assessee in terms of order dated 04.05.2022 rendered by the Supreme Court in the case of **Union of India vs. Ashish Agarwal (2023) 1 SCC 617**.

7. Petitioner in his capacity as legal heir of the deceased assessee, filed reply to the notice dated 26.05.2022.

8. Respondent thereafter sent an e-mail dated 21.07.2022,



requesting for furnishing the declarations of the legal heirs of the deceased. Such information was furnished vide e-mail dated 29.07.2022.

9. Respondent issued impugned order under Section 148A (d) on 30.07.2022 upholding the reopening proceedings. The impugned notice under Section 148 dated 30.07.2022 for the AY 2015-16 was also issued in the name of the deceased assessee.

10. The principal challenge to the initiation of action for reassessment is that the notices were issued in the name of a dead person. It is argued that despite having been informed that the assessee had expired, respondent have proceeded to initiate action under Section 148 of the Act in the name of the deceased assessee.

11. Learned counsel representing the respondent has submitted that the initial notice under Section 148 of the Act had been issued and served upon the assessee on 08.04.2021 and such notice was later converted in a Show Cause Notice under Section 148A (b) of the Act in consonance with the directions issued by the Supreme Court in the case of Ashish Agarwal Vs. Union of India (supra). The proceedings were initiated while the assessee was alive and after his death, the proceedings were completed with the legal heirs of the assessee, who duly participated in the proceedings, so much so, petitioner even filed the income tax return on 25.08.2022 in the name of the deceased assessee.

12. We have considered the submissions made by the learned counsels for the parties.

13. The issue of validity of a notice issued against a dead person and



the validity of the proceedings held subsequent thereto is no longer res-integra. This Court in **Savita Kapila v. Assistant Commissioner of Income Tax in W.P. (C) No. 3258 of 2020** has held as under:-

“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- Bombay High Court).

27. In *Chandresh Jayantibhai Patel v ITO* [2019] 413 ITR 276 (Guj), [2019] (1) TMI 353-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.

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.”

14. The above judgment has been followed by this Court in **Sangeeta Goyal v. Commissioner of Customs (Exports), WP (C)**



13025/2019 and Meenu Gupta (Legal Heir of late Sh. Vipin Gupta v. Assistant Commissioner of Income Tax, Circle 67(1), Delhi & Ors. WP (C) 10162/2024.

15. In the case of Income Tax Officer Ward 1(3)(7), **Surat v. Durlabhbhai Kanubhai Rajpara [2020] 114 taxmann.com 481 (Guj.)**, Court had set aside the reassessment proceedings on the ground that no valid notice under Section 148 could be issued against a dead person. The SLP filed against the said order was also dismissed.

16. The requirement of issuing notice in the name of a right 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. Even though, the initial notice under Section 148 dated 08.04.2021 was issued during the lifetime of the assessee, the eventual reassessment action was commenced on the basis of notice under Section 148A(b) dated 26.05.2022 which resulted in issuance of impugned notice under Section 148 of the Act dated 30.07.2022. Admittedly, both the impugned notices dated 26.05.2022 and 30.07.2022 are in the name of the deceased person. Petitioner had duly informed the Department about the death of the assessee and had even furnished the particulars of the legal heirs on the Income Tax Portal. Having derived knowledge of the death of the assessee and the particulars of the legal heirs, it was incumbent upon the respondents who have taken remedial measures by revising the notice in the name of the legal heirs, which admittedly, has not been done in the present case. Since the petitioner had already informed the Department about the death of the deceased, his participation in the reassessment proceedings cannot be regarded as



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waiver or submitting to the jurisdiction of the Assessing Officer without objection. The notice under Section 148A (b) dated 26.05.2022 therefore suffers from a fundamental jurisdictional error, having been issued in the name of a dead person. Not only this, the proceedings initiated consequent to such notice have also been proposed in the name of a dead person. No steps were taken to bring the legal heirs of the deceased on record even at the time of issuance of final notice under Section 148 of the Act dated 30.07.2022.

17. Hence, on the touchstone of the principles that emerge from the judicial pronouncements discussed above, in the facts and circumstances of this case, we are of the view that action under Section 148 cannot be initiated as the impugned notice under Section 148A (b) dated 26.05.2022, impugned order under Section 148A (d) and the impugned notice under Section 148 of the Act, both even dated 30.07.2022 for the AY 2015-16 cannot be sustained and are set aside.

18. Petition is accordingly allowed in the above terms.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

26 September 2024

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