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

+ **W.P.(C) 11517/2024**

LATE SH. TIRLOK KAMRA THROUGH HIS WIFE SMT.

RANJANA KAMRA

.....Petitioner

Through: **Mr. Akhil Krishan Maggu, Mr.
Vikas Sareen and Mr. Ayush
Mittal, Advocates.**

versus

INCOME TAX OFFICER WARD 46(1), DELHI....Respondent

Through: **Mr Shlok Chandra, Sr SC for
ITD , Ms. Priya Sarkar, Jr SC,
Ms. Madhavi Shukla , Jr SC for
ITD.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

21.08.2024

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CM APPL. 47792/2024 (for exemption)

Allowed, subject to all just exceptions.

This application stands disposed of.

W.P.(C) 11517/2024 & CM APPL. 47791/2024 (for stay)

1. The writ petitioner, who is the widow of the erstwhile-assessee impugns a demand notice dated 15 May 2024 in terms of which the outstanding tax liability for Assessment Year ['AY'] 2014-15 are sought to be recovered.

2. We, however, at the outset note that the demand notice is made out in the name of deceased-assessee. It is the aforesaid backdrop that Mr. Maggu, learned counsel for the petitioner, places reliance upon



the decision of the Court in **Savita Kapila vs. Assistant Commissioner of Income Tax** [2020 SCC OnLine Del 2540].

3. We note that while dealing with an identical issue and the question of whether notices in the name of a deceased assessee could be said to be valid in law, the Court in *Savita Kapila* had observed thus:-

“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.

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).

27. In *Chandreshbhai 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.

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. In Smt. Sudha Prasad (supra) the petitioner had challenged the assessment order and demand notice only. Neither non-issuance of notice was challenged nor the issue of proceedings being barred by limitation was raised or decided. Consequently, the said judgment is inapplicable to the present case and is therefore, of no help to the Revenue.

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.

30. Section 159 of the Act, 1961 applies to a situation where proceedings are initiated/pending against the assessee when he is alive and after his death the legal representative steps into the shoes of the deceased-assessee.

Since that is not the present factual scenario, section 159 of the Act, 1961 does not apply to the present case.

31. In Alamelu Veerappan v. ITO (2018) 12 ITR-OL 95 (Mad) ; [2018] (6) TMI 760—the Madras High Court, it has been held by the Madras High Court, "In such circumstances, the question would be as to whether section 159 of the Act would get attracted. The answer to this question would be in the negative, as the proceedings under section 159 of the Act can be invoked only if the proceedings have already been initiated when the assessee was alive and was permitted for the proceedings to be continued as against the legal heirs. The factual position in the instant case being otherwise, the provisions of section 159 of the Act have no application". In Rajender Kumar Sehgal (supra), a Co-ordinate Bench of this court has held, (page 291 of 414 ITR) "This court is of the opinion that the absence of any provision in the Act, to fasten revenue liability upon a deceased individual, in the absence



of pending or previously instituted proceeding which is really what the present case is all about, renders fatal the effort of the Revenue to impose the tax burden upon a legal representative".

There is no statutory requirement imposing an obligation upon legal heirs to intimate the death of the assessee.

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. ..

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.

34. Consequently, the legal heirs are under no statutory obligation to intimate the death of the assessee to the Revenue.

Section 292B of the Act, 1961 has been held to be inapplicable, vis-a-vis, notice issued to a dead person in Rajender Kumar Sehgal (supra), Chandreshbhai Jayantibhai Patel (supra) and Alamelu Veerappan (supra).

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.

36. In Sky Light Hospitality (supra) notice was issued to Sky Light Hospitality Pvt. Ltd. instead of Sky Light Hospitality LLP. In that factual context, this court had observed, "Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated April 11, 2017. They had objected to the notice being issued in the name of the company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was relied and dealt with by them". The Supreme Court while dismissing the special leave petition had also observed "In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under section 292B of the Income tax Act".

37. In any event, section 292B of the Act, 1961 has been held to be inapplicable, vis-a-vis, notice issued to a dead person in Rajender Kumar Sehgal (supra), Chandreshbhai Jayantibhai Patel (supra) and Alamelu Veerappan (supra). In all the aforesaid cases, the judgment of Sky Light Hospitality (supra) had been cited by the Revenue.

In Rajender Kumar Sehgal (supra) a Co-ordinate Bench of this court has held that section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative.

38. This court is also of the view that section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative. Further, in the present case one of the legal heirs of the deceased-assessee, i.e., the petitioner, had neither co-operated in the assessment proceedings nor filed return or waived the requirement of section 148 of the Act, 1961 or submitted to jurisdiction of the



Assessing Officer. She had merely uploaded the death certificate of the deceased-assessee. In CIT v. M. Hemanathan [2016] 384ITR 177 (Mad) ; [2016] (4) TMI 258-the Madras High Court it has been held (page 182 of 384 ITR) : "In the case on hand, the assessee was dead. It was the assessee's son, who appeared and perhaps co-operated. Therefore, the primary condition for the invocation of section 292BB is absent in the case on hand. Section 292BB is in place to take care of contingencies where an assessee is put on notice of the initiation of proceedings, but who takes advantage of defective notices or defective service of notice on him. It is trite to point out that the purpose of issue of notice is to make the noticee aware of the nature of the proceedings. Once the nature of the proceedings is made known and understood by the assessee, he should not be allowed to take advantage of certain procedural defects. That was the purpose behind the enactment of section 292BB. It cannot be invoked in cases where the very initiation of proceedings is against a dead person. Hence, the second contention cannot also be upheld".

39. Even a Co-ordinate Bench of this court in Rajender Kumar Sehgal (supra) has held (page 291 of 414 ITR) : "If the original assessee had lived and later participated in the proceedings, then, by reason of section 292BB, she would have been precluded from saying that no notice was factually served upon her. When the notice was issued in her name- when she was no longer of this world, it is inconceivable that she could have participated in the reassessment proceedings, (nor is that the Revenue's case) to be estopped from contending that she did not receive it. The plain language of section 292BB, in our opinion precludes its application, contrary to the Revenue's argument".

40. Consequently, the applicability of section 292BB of the Act, 1961 has been held to be attracted to an assessee and not to legal representatives.

41. To conclude, the arguments advanced by the respondent are no longer res integra and have been consistently rejected by different High Courts including this jurisdictional court. In view of consistent, uniform and settled position of law, to accept the submissions of the respondent would amount to unsettling the "settled law". In fact, in Pr. CIT v. Maruti Suzuki India Limited (supra), the Supreme Court speaking through hon'ble (Dr.) Justice Dhananjaya Y. Chandrachud has succinctly observed as under (page 638 of 416 ITR):

"We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this court in relation to the respondent for the assessment year 2011-12 must, in our



view be adopted in respect of the present appeal which relates to the assessment year 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.””

4. In view of the aforesaid and the admitted legal position that emerges, we find ourselves unable to sustain the impugned notice.

5. We accordingly allow the instant writ petition and quash the impugned notice dated 15 May 2024. The aforesaid, however, shall be without prejudice to the right of the respondents to adopt appropriate measures in terms contemplated under Section 159 of the Income Tax Act, 1961. All rights and contentions of respective parties on merits and in that respect are kept open.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 21, 2024/vp