OD-4

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/408/2025

KRIPA SHANKAR MAHAWAR
VS
THE PRINCIPAL CHIEF COMMISSIONER OF
INCOME TAX-1, ROOM NO. 6, KOLKATA AND ORS

BEFORE:
The Hon'ble JUSTICE OM NARAYAN RAI
Date: 18th November, 2025.

APPEARANCE:
Mr. Anirban Banerjee, Adv.
Mr. Deep Agarwal, Adv.
Mr. B.C. Halder, Adv.
…for the petitioner

Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv.
…for the respondents

1. This writ petition assails an assessment order dated March 28, 2025 passed in respect of assessment year 2019-2020, inter-alia on the ground that the assessment proceeding had been initiated by issuing notice against a dead person.

2. The case run in the writ petition is that a notice under section 148A (b) of the Income Tax Act, 1961 (hereinafter referred to as 'the 1961 Act') dated March 29, 2023 was issued in the name of one Laxmi Kant Mahawar. The said Laxmi Kant Mahawar breathed his last on January 12, 2025. The notice under section 148A (b) of the Income Tax Act, 1961 was thus issued in the name of a dead person. The petitioner filed a reply thereto, thereby bringing to the notice of the authorities that the original noticee Laxmi Kant Mahawar had died on

January 12, 2020. By the said reply, it was contended that the proceeding had become null and void and should be discontinued.

3. The respondent/Income Tax Authorities, however, concluded the proceeding by issuing subsequent notices in the name of the writ petitioner. Ultimately, the impugned assessment order was passed on March 28, 2025. The same contains the name of Laxmi Kant Mahawar as the assesse and in the address column the name of the petitioner has been recorded by describing him as "Legal Heir Kripa Shankar Mahawar".

4. It is submitted by Mr. Banerjee appearing on behalf of the petitioner that the entire assessment proceeding deserves to be set at naught in view of the fatal and incurable defect of the same having been initiated in the name of a dead person. It is further submitted that the other legal representatives of the deceased assesse have not been served with any notice and such defect has also vitiated the assessment proceedings. In support of his submission, he relies on a judgment of the High Court of Gujrat rendered in the case of ***Bhupendra Bhikhalal Desai Vs Income Tax Officer*** reported at ***2021 SCC Online Guj 3074***.

5. Mr. Bhattacharjee appearing for the respondents supports the assessment order. He however submits that in any case the defects as pointed out by the petitioner, if any, would not nullify the proceeding. In support of his contention he relies on the judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax vs Jai Prakash Singh*** reported at ***(1996)85 Taxman 407***.

6. Heard the learned Advocates appearing for the respective parties and considered the material on record.

7. Once it was brought to the notice of the respondent/Revenue Authorities that the original assessee had expired, it was incumbent for the department to re-initiate the proceeding in the name(s) of the legal representative(s) of the deceased assessee.

8. The material on record reveals several inconsistencies. The notice under section 148A(b) of the said Act of 1962 has been issued in the name of the deceased asessee (Laxmi Kant Mahawar). The order under section 148A(d) and the consequential notice under section 148 of the said Act of 1962 have been issued in the name of the writ petitioner without referring to his status as the legal representative of the deceased assesse. The order granting approval for issuance of the said order under section 148A(d) and the consequential notice under section 148 of the said Act of 1962 has also been issued in the name of the writ petitioner without referring to his status as the legal representative of the deceased assesse. The assessment order has, however, been issued in the name of the deceased asessee.

9. In view of the fact that the proceeding has been initiated in the name of a dead person and in view of the several discrepancies as aforesaid, the assessment order impugned dated 28th March, 2025 and the preceding notice of re-opening under section 148 of 1961 Act dated 24th April, 2023 pertaining to the assessment year 2019-2020 are set aside.

10. However, in view of the binding declaration of law by the Hon'ble Supreme Court in the case of ***Jai Prakash Singh*** (supra), this order shall not prevent the respondent authorities from re-initiating assessment proceedings in accordance with law, by issuing fresh notice under section 148 of 1961 Act upon observing the statutory formalities prior to the issuance thereof to the legal representatives of the deceased assesee. The petitioner shall remain obliged to furnish to the respondent/Income Tax Authorities the names of the other legal representatives of the deceased assesse, if any, upon the department writing to the petitioner and seeking information about the same. It is clarified that in case the petitioner does not respond to the request made by the revenue for furnishing the names of the legal heirs of the deceased assessee, the department shall be free to proceed against the petitioner alone treating the petitioner to be the sole legal representative of the deceased assesse and the proceeding shall not be assailable on the ground of non-impleadment of all legal representatives.

11. WPO/408/20205 stands disposed of with the above observations.

(OM NARAYAN RAI, J.)

S. Mandi
A.R (CR)