Tikam

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 744 OF 2025

Amjad Ahmed Shaikh
(Legal heir of late
Ahmed Gulamnabi Shaikh) …Petitioner

Versus

Income Tax Officer,
Ward 22 (1) (1), Mumbai and Ors. …Respondents

Ms. Priyanka Jain a/w. Mr. Pankaj Soni i/by Vaish Associates, for the Petitioner.

Ms. Mamta Omle, for Respondent No.1.

Mr. Ravi Rattesar, for Respondent No.5.

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 4 March 2025

ORAL JUDGMENT: [Per M.S. Sonak, J.]

1. Heard learned counsel for the parties.

2. Rule. Rule made returnable immediately at the request and with the consent of the learned counsel for the parties.

3. The petitioner seeks the following substantive reliefs:

> *"(a) issue a Writ of Certiorari or any other writ order or direction under Article 226 of the Constitution of India calling for the records of the case leading to the issuance of the **Impugned Notice (Exhibit -A)** dated 06.04.2022 issued under Section 148, **Impugned 148 Order (Exhibit -B)** dated 06.04.2022 passed under section 148A(d), **Impugned***

> ***Assessment Order (Exhibit- C)*** *dated 08.03.2024 passed under Section 147 read with section 144 read with section 144B of the Act and the* ***Impugned Demand Notice (Exhibit- D)*** *dated 08.03.2024 issued under section 156 of the Act and after going through the same and examining the question of legality thereof quash, cancel and set aside the* ***Impugned Notice (Exhibit – A)*** *dated 06.04.2022 issued under Section 148,* ***Impugned 148 Order (Exhibit -B)*** *dated 06.04.2022 passed under section 148A (d),* ***Impugned Assessment Order (Exhibit – C)*** *dated 08.03.2024 passed under Section 147 read with section 144 read with section 144B of the Act and the* ***Impugned Demand Notice (Exhibit -D)*** *dated 08.03.2024 issued under section 156 of the Act;*
>
> *(b) issue a Writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate Writ, Order or direction under Article 226 of the Constitution of India, ordering and directing the Respondents to withdraw the* ***Impugned Notice (Exhibit -A)*** *dated 06.04.2022 issued under Section 148,* ***Impugned 148 Order (Exhibit -B)*** *dated 06.04.2022 passed under section 148A(d),* ***Impugned Assessment Order (Exhibit -C)*** *dated 08.03.2024 passed under Section 147 read with section 144 read with section 144B of the Act and the* ***Impugned Demand Notice (Exhibit -D)*** *dated 08.03.2024 issued under section 156 of the Act.*
>
> *(c) issue a Writ of Prohibition or any other writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondents not to take any action in furtherance to the* ***Impugned Notice (Exhibit -A)*** *dated 06.04.2022 issued under Section 148,* ***Impugned 148 Order (Exhibit -B)*** *dated 06.04.2022 passed under Section 147 read with section 144 read with section 144B of the Act and the* ***Impugned Demand Notice (Exhibit -D)*** *dated 08.03.2024 issued under section 156 of the Act;*

4. Ms. Priyanka Jain, learned counsel for the petitioner, states that several grounds have been raised to support the reliefs now claimed in this petition. However, she submits that the impugned notices and order were issued in the name of Late Ahmed Gulamnabi Shaikh, who had expired on 13 August 2016. She points out that the fact of his demise was intimated to the Income-tax Officer, Ward 22(1) (1), Mumbai

on 22 May 2018 [Exhibit 'E' at page 90]. She submits that despite the notice, the impugned notices and impugned orders were issued in the name of the dead person. She submits that the impugned notices and orders are null and void. She relies on (i) ***Devendra v. Additonal/Joint Commissioner of Income-tax***[1]***;*** (ii) ***Gourang Anil Wakade v. Income-tax Officer***[2]***;*** and (iii) ***Sumit Balkrishna Gupta v. Assistant Commissioner of Income-tax, Circle 16(2), Mumbai***[3]***.***

5. Mr. Ravi Rattesar, learned counsel for the revenue submitted that in these cases the assessees had furnished the email IDs of their chartered accountant. As such, all notices were being addressed to the chartered accountant. No intimation was given by the chartered accountant about the demise. He submitted that in terms of section 159 of the Income-tax Act, proceedings can be carried out or continued against the legal representatives. The petitioner claimed to be the legal representative. Therefore, there was no question of any nullities involved, and no reliefs could be granted to the petitioner.

6. The rival contentions now fall for our determination.

7. The record shows that Late Ahmed Gulamnabi Shaikh, the assessee expired on 13 August 2016. Even the death certificate is placed on record. The records also show that Samad Shaikh, the son of Late Ahmed Gulamnabi Shaikh informed the Income-tax Officer, Ward 22(1) (1), Mumbai about such demise vide communication dated 22 May 2018. This communication bears the endorsement of the receipt.

---

1 **[2023] 153 taxmann.com 520 (Bombay)**
2 **[2024] 169 taxmann.com 731 (Bombay)**
3 **[2019] 103 taxmann.com 188 (Bombay)**

Along with this communication, the death certificate was enclosed. Based on all this, it is evident that the department had notice of Ahmed Gulamnabi Shaikh's demise by May 2018.

8. Despite the above, the impugned notice and finally the orders were issued in the name of deceased Ahmed Gulamnabi Shaikh. The explanation that the department was corresponding with the chartered accountant is not quite relevant or convincing. Once it is established that Ahmed Gulamnabi Shaikh had expired by the time the notices were issued and the department had knowledge of demise, there was no justification for issuing the notices and, finally, the impugned orders in the name of the dead person.

9. The argument based on Section 159 of the Act also does not appeal to us in the facts of the present case. Admittedly, no notices were issued to the legal representatives. The notices were issued to the dead person, and consequently, the legal representatives cannot be said to know about such notices. In such circumstances, the impugned notices or the impugned order made based thereon and same binds the legal representatives.

10. In ***Devendra (supra.)***, ***Gourang Anil Wakade (supra.), and Sumit Balkrishna Gupta (supra.),*** the Coordinate Benches of this Court have consistently held that notices to a dead person or orders against a dead person are null and void. Following the reasoning in these decisions, the rule will have to be made absolute in terms of prayer clause (a) of this petition.

11. Accordingly, we quash and set aside the impugned notices and the impugned orders referred to in prayer clause (a) of the petition. The rule is made absolute in terms of prayer of (a) without any cost order.

12. However, we clarify that nothing in this judgment and order will preclude the respondents from proceeding against the legal representatives following the law. All other contentions raised in this petition are, however, kept open because we have not adverted to the other contentions and allowed this petition on the grounds that the impugned notices/orders were issued against a dead person.

(Jitendra Jain, J) **(M.S. Sonak, J)**