**(2001) 02 RAJ CK 0045**

**In the Rajasthan High Court**

**Case No :** DB IT Ref. No. 52 of 1995 20 February 2001 & IT Reference No. 52 of 1995

Commissioner of Income Tax APPELLANT

Vs

Smt. Pushpa Devi RESPONDENT

**Date of Decision :** 20-02-2001

**Acts Referred:**
Income Tax Act, 1961 — Section 142, 143, 144

**Citation :** (2001) 168 CTR 94

**Hon'ble Judges :** S.K. Garg, J;Rajesh Balia, J

**Bench :** Full Bench

**Advocate :** Sundeep Bhandawat, for the Revenue and None, for the Assessee, for the Appellant;

## Judgement

Rajesh Balia, J.

Heard learned counsel for the revenue . None, appeared for the respondent in spite of service.

2. The Appellate Tribunal Jaipur Bench, Jaipur by its order dated 13-7-1994, has referred following two questions of law arising of two separate appeals filed by the assessee and the department for the assessment year 1985-86 :

1. "Whether, on the facts and in the circumstances of the case the Tribunal was legally justified in holding that the action of the assessing officer in non-issuing of notices of one assessing officer was not bona fide and diligent.

2. Whether on the facts and in the circumstances of the case the Tribunal was legally justified in annulling the assessment order passed by the assessing officer ?"

3. The relevant facts for the present purposes are that the assessee who was liable to be assessed for assessment year 1985-86 was Kantilal Saraf as individual who was deriving his income as partner from registered firm M/s Usha

 

Bleaching Centre, Pali and also from tuitions. He died on 9-7-1986. Leaving behind him the following legal heirs and representatives namely : 1. Smt. Pushpa Devi (widow), Shri Dileep Kumar (son), Smt. Usha (daughter) Kum. Raj Kumari (daughter), Shri Praveen Kumar (son), Shri Kakesh Kumar (son) and Kum. Pooja (daughter). It appears that because of death of Kantilal no return was filed initially by the deceased for the assessment year 1985-86. However, in pursuance of letter, dated 26-9-1986, and notice under sections 142(1) and 143(2) both dated 15-12-1986, his widow, Smt. Pushpa Devi filed a return on 30-7-1987, declaring the income of the deceased-assessee for assessment year1985-86 at Rs. 19,020. The Income Tax Officer completed the assessment u/s 143(3) on 30-3-1988, assessing the deceased on total income of Rs. 1,46,590. Smt. Pushpa appealed against that order before Commissioner (Appeals) challenging the validity and legality of assessment order, dated 30-3-1988, of deceased-assessee through Pushpa Devi one of his legal representative. Smt. Pushpa raised the ground that all the LRs of the deceased had not been made party to the proceedings hence the assessment order made without notice to all legal representatives was invalid. The learned Commissioner (Appeals) finding that the factual position is true that notices were not issued to the legal representatives held that it was case of procedural irregularity rectifiable by issue of notices to all the LRs of the deceased-assessee. He for reaching this conclusion relied upon the decision of the Calcutta High Court in Sajjan Kumar Saraf v. CIT (1978) 114 ITR 115 : TC 9R.328. He, therefore, set aside the assessment and remanded the case back to the Income Tax Officer for making fresh assessment in accordance with law, The order of Commissioner (Appeals) was passed on 3-8-1989, which was made subject-matter of the appeal by the assessee which was appeal No. 1409/89.

Meanwhile, in compliance of the order passed by Commissioner (Appeals), dated 3-8-1989, the Income Tax Officer issued notice to the five LRs out of seven LRs of the deceased assessee. By his letter dated 12-10-1990, Shri Arvind Bhatt, Advocate appeared before the Income Tax Officer and requested to keep proceedings in abeyance as an appeal against the order dated 3-8-1989, was pending for the decision of the Tribunal. The Income Tax Officer did not accept the request letter because the same was not accompanied with power of attorney in favour of Shri Bhatt and she completed the assessment u/s 144 on 18-12-1990. She again assessed the income of the assessee at the same figure as Rs. 1,46,590. The five LRs approached the Commissioner (Appeals) in appeal once again.

The validity of the order passed by the assessing officer was challenged on the ground that the composite notice in the name of five LRs in one envelope sent to and delivered at wrong address did not amount to sufficient compliance of Commissioner (Appeals)''s earlier order. It was contended that two of the LRs were issued no notices at all. In sum it was submitted that no proper opportunity of being heard was given to the LRs representing the estate of the deceased.

 

The learned Commissioner (Appeals) found substance in these submissions. He pointed out that no notice had been issued to Smt. Usha and Ku. Puja and that remaining LRs had complied with the notices issued to them but the Income Tax Officer had not even marked their attendance in the order-sheet. He, therefore, held that the order made by the Income Tax Officer u/s 144 was bad and the assessment so made was not proper. He however once again set aside the assessment and sent it back to the Income Tax Officer directing him to again issue the notices to all legal representatives in accordance with law and then complete the assessment afresh in accordance with law after considering the material on record and giving proper opportunity of being heard to all the LRs.

Against the order passed by the Commissioner (Appeals) on 13-3-1991, both the assessee as well as the revenue preferred their respective appeals before the Tribunal. The five LRs of the deceased contended that the order passed by the Income Tax Officer was without notice to the LRs second time and was void ab initio. The contention of the department in its appeal was that the Commissioner (Appeals) should have confirmed the assessment order instead of setting aside the same and sending it back to the Income Tax Officer for assessment.

The Tribunal found that despite clear direction by the Commissioner (Appeals) the Income Tax Officer had not brought all the legal representatives of the deceased on record by issuing requisite notice to them particularly when the Income Tax Officer was having fun knowledge of the LRs of the deceased assessee. Not issuing requisite notice to all the LRs separately and individually the Income Tax Officer had not acted bona fide and diligently and the Income Tax Officer had proceeded to complete assessment in the manner she has in spite of objections having been made and raised before her, the heirs cannot be deemed to have waived their rights. In this connection it was concluded by both the authorities namely Commissioner (Appeals) as well as the Tribunal that two minors were not at all brought on the record and not even their natural guardian were informed of pending proceedings. With these findings, the Tribunal held the second assessment to be void ab initio and annulled the same.

 