

(2022) 09 RAJ CK 0042

In the Rajasthan High Court

Case No : D.B. Civil Writ Petition No. 6489 Of 2022

Late Shobha Mehta

APPELLANT

Vs

Assistant Commissioner Of Income Tax

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 144, 147, 148

Citation : (2022) 09 RAJ CK 0042

Hon'ble Judges : Sandeep Mehta, J; Kuldeep Mathur, J

Bench : Division Bench

Advocate : Mahendra Gargieya, Devang Gargieya, K.K. Bissa, G.S. Chouhan

Final Decision : Allowed

Judgement

Sandeep Mehta, J

The instant writ petition has been preferred on behalf of the assessee Late Smt. Shobha Mehta through her legal heir Shri Kanhaiya Lal Mehta for challenging the reassessment notice (Annexure-P/7) dated 23.03.2021 issued by the respondent ACIT under Section 148 of the Income Tax Act and the Assessment Order (Annexure-P/13) dated 30.03.2022 issued under Section 147 read with Section 144 of the Income Tax Act.

Learned counsel Shri Mahendra Gargieya assisted by Shri Devang Gargieya, Advocate representing the petitioner submitted that the impugned proceedings are absolutely bad in the eyes of law as the re-assessment notice was issued to the original assessee Smt. Shobha Mehta who had expired long back and this fact was already in the knowledge of the Income Tax Authorities. He submitted that Re-Assessment Order dated 30.03.2022 was issued against the assessee and was addressed to the legal heir of the assessee but, no prior notice of the reopening the assessment proceedings was given to the legal heir. Shri Gargieya submitted that the plea taken by the respondent authorities that the Income Tax Officers were apprised of the demise of the assessee for the first time after

issuance of the notice under Section 148 of the Income Tax Act, is absolutely incorrect inasmuch as, way back in the year 2015-16, reply to notice under Section 143(3) of the Act on behalf of Smt. Shobha Mehta was filed to the Deputy Commissioner of Income Tax, Circle-2, Udaipur intimating that the assessee had expired on 03.05.2015. Pursuant to receiving the said reply, an assessment order (Annexure-P/5) dated 21.12.2017 was passed wherein, the assessee has been addressed through her legal representative husband Shri Kanhaiya Lal Mehta. He thus urged that the fictitious plea taken by the respondent that the department was not aware regarding death of the assessee, has no foundation and is nothing but a ploy to somehow or the other justify non-service of notice upon the legal heir of the assessee before initiating the re-assessment proceedings. In support of his contentions, Shri Gargieya placed reliance on the Division Bench Judgment of this Court in the case of Smt. Kesar Devi vs. Commissioner of Income Tax reported in (2009) 227 CTR 621 (Rajasthan) wherein, the Division Bench had held that the notice was issued to the dead person. The case cannot be decided in absence of the affected party and hence, the notice was invalid. Reliance was also placed on the judgment rendered by Division Bench of the Hon'ble Gujarat High Court in the case of Bhupendra Bhikhalal Desai vs. Income Tax Officer, Ward 1(2)(1) reported in (2021) 130 taxmann.com 196 (Gujarat). On these submissions, Shri Gargieya implored the Court to accept the writ petition and set aside the notice dated 23.03.2021 as well as the assessment order dated 30.03.2022.

Per contra, Shri K.K. Bissa, learned counsel representing the respondent, vehemently and fervently opposed the submissions advanced by the petitioner's counsel. He urged that the Income Tax authorities were not aware regarding death of the assessee. However, it is a fact that notice issued to the assessee Smt. Shobha Mehta was received by her husband who filed a reply stating that the assessee had expired. Thereafter, intimation was given to the legal representative and he was notified on the proceedings whereafter, the impugned assessment order came to be passed. He thus urged that there is no violation of either principles of natural justice or any statutory mandate in the impugned proceedings and hence, the writ petition should be dismissed.

We have given our thoughtful consideration to the submissions advanced at bar and, have gone through the material available on record.

A perusal of the orders passed in the earlier round of proceedings under Section 143(3) of the Income Tax Act for the assessment year 2015-16 would clearly indicate that the Dy. Commissioner of Income Tax, Circle-2, Udaipur had been intimated regarding the death of the assessee. The assessment order dated 21.12.2017 (Annexure-P/5) was passed taking into account the fact that the assessee had expired.

Thus, the plea of the respondent authorities that they were not intimated regarding the death of the assessee Smt. Shobha Mehta, is factually incorrect. It is not in dispute that the notice of re-assessment under Section 148 of the

Income Tax Act was issued to the assessee Smt. Shobha Mehta who had expired about 6 years back. No notice whatsoever was issued to the legal representative/s of the assessee before undertaking the re-assessment proceedings. Thus, the impugned re-assessment and the assessment order having been passed against the dead assessee, is invalid and the same cannot be sustained in the eyes of law.

Hence, the impugned re-assessment notice (Annexure-P/7) dated 23.03.2021 issued by the respondent under Section 148 of the Income Tax Act and the Assessment Order (Annexure-P/13) dated 30.03.2022 issued under Section 147 read with Section 144 of the Income Tax Act, are herewith declared invalid and are struck down.

The writ petition is allowed in these terms.

No order as to costs.