

(2024) 11 KL CK 0115
In the High Court Of Kerala
Case No : Writ Appeal No. 2093 Of 2023

N. Binoj

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 29-11-2024

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 148A(b), 148A(d)

Citation : (2024) 11 KL CK 0115

Hon'ble Judges : Dr. A.K.Jayasankaran Nambiar, J;K. V. Jayakumar, J

Bench : Division Bench

Advocate : Latha Anand, S.Vishnu, Keerthivas Giri, P.G. Jayashankar

Final Decision : Allowed

Judgement

K. V. Jayakumar, J.

1. In this Writ Appeal, the appellants are the writ petitioners in W.P(C).No.34850/2023 impugning the judgment of the learned Single Judge dated 31.10.2023. The appellants are the legal heirs of late Naringaparambil Bhaskaran who was an assessee under the Income Tax Act, 1961 [hereinafter referred as 'the Act'] with PAN AXJPB736M.

2. The said Naringaparambil Bhaskaran, the assessee, expired on 30.10.2021. Notice dated 27.03.2023 under Section 148A(b) of the Act was served on the address of the late assessee. In the said notice, the deceased assessee was required to show cause why a notice under Section 148 of the Act should not be issued. The said notice was with respect to the assessment year 2019-2020. The notice under Section 148A(b) of the Act is a preliminary notice issued as a precursor to the exercise of jurisdiction under Section 148 of the Act and ordinarily, such a notice if issued against a dead person is void and all further proceedings thereto are 'non-est'.

3. On receipt of the notice, the 1st appellant namely, Sri. N. Binoj appeared before the Assessing Officer and informed him about the death of the assessee.

The 1st appellant also submitted a copy of the death certificate. He was then required to submit a report in writing, which he did.

4. Thereafter, the 1st respondent/Revenue issued an order dated 10.04.2023 under Clause (d) of Section 148A of the Act in the name of the deceased assessee. Following that, he also issued a notice dated 10.04.2023 under Section 148 of the Act in the name of the deceased assessee.

5. Contending that the issuance of notices under Sections 148A(b) and 148 of the Act are the foundation on which the Assessing Officer derives jurisdiction to conduct assessment under Section 147 of the Act and that the notice issued in the name of the dead person is not a valid notice, the appellant approached the writ court, through W.A.No.2093/2023, for a declaration that the assessment proceedings sought to be initiated under Section 147 of the Act is unsustainable.

6. When the case was taken up for admission on 31.10.2023, learned Single Judge passed the impugned judgment dismissing the Writ Petition. Impugning the said judgment of the learned Single Judge, the appellants are now before us through this writ appeal.

7. We have heard the learned counsel for the appellants and Adv.P.G.Jayashankar, learned Standing Counsel for the respondent.

8. Before us, the submission of the learned counsel for the appellants is that the issuance of valid notices under Section 148A(b) and 148 of the Act are the foundation on which the Assessing Officer derives jurisdiction to conduct assessment under Section 147 of the Act. Notice issued in the name of a dead person is not valid and in the absence of issuance of a valid notice, the assessment proceedings sought to be initiated under Section 147 is unsustainable. It is further submitted that, all the notices issued are against the deceased assessee. A notice issued against a non-existent person is a nullity and therefore the consequent notice issued under Section 148 and the purported re-assessment/assessment under Section 147 is also invalid. It is submitted that, learned Single Judge had failed to appreciate the above contention in the proper perspective.

9. Per contra, the learned Standing Counsel for the Income Tax Department submitted that, no interference is warranted in this matter. The learned Single Judge is justified in holding that the notices issued to the dead person under Sections 148A(b) and 148A of the Act are only mere irregularities, which can be cured. Learned Single Judge is also justified in holding that since the legal heirs of the deceased assessee have already participated in the proceedings, they are estopped from taking a different plea in the writ petition.

10. The sole question before us is whether notices issued under Sections 148A(b) and 148 of the Act to a deceased person are sufficient to continue the proceedings thereafter with the legal representatives of the deceased assessee if the prescribed period of limitation for issuing such notice has expired vis-a-vis

such LR?

11. The above said notices were issued with respect to the assessment year 2019-2020. The assessee expired on 30.10.2021. Admittedly, notice under Section 148A(b) of the Act was issued in the name of deceased assessee on 27.03.2023. In response to the same, the LR appeared before the assessing authority on 05.04.2023 and appraised him of the death of the assessee. By that time, the limitation period for issuing a fresh notice under Section 148A(b) in the name of the LR had also expired. The Assessing Officer nevertheless proceeded to pass an order dated 10.04.2023 under Section 148A(d) and thereafter issue the notice under Section 148 on the same day.

12. The learned counsel for the appellants has placed reliance on the decision reported in *Chandreshbhai Jayantibhai Patel v. Income Tax Officer* [(2019) 413 ITR 276 (Guj)]. In *Chandreshbhai's* case (supra), the Gujarat High Court held that notice under Section 148 of the Income Tax Act 1961 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 re-assess under Section 147. It was further observed that a notice 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.

13. The learned counsel for the appellants has further placed reliance on the decision reported in *Commissioner of Income Tax v. Sumantbhai v. Munshaw* [(1981) 5 Taxman 27 (Gujarat)]. In *Sumantbhai's* case (supra), it was observed that, no hard and fast line can be drawn between a nullity and an irregularity; but this much is clear, that an irregularity is a deviation from a rule of law which does not take away the foundation or authority for the proceeding or apply to its whole operation, whereas a nullity is a proceeding that it taken without any foundation for it or is so essentially defective as to be of no avail or effect whatever or is void and incapable of being validated?

14. The learned counsel for the appellants also placed reliance on the decision reported in *Vipin Walia vs. Income Tax Officer* [(2017) 295 SCTR (Del) 505]. In *Vipin Walia's* case (supra), the High Court of Delhi opined that the issuance of notice to the legal representative of the deceased assessee under Section 147/148 of the Act within the period of limitation would be a plain illegality and not a mere irregularity. Paragraph 14 of the above judgment reads as follows:

'The court fails to understand how the above decision in *CTT v. Jai Prakash Singh* (supra) is of any help to the Revenue in the present case where the initial notice under Section 147/148 of the Act was issued to a dead person. The Revenue was unable to issue a notice to the legal representatives of the deceased assessee under Section 147/148 of the Act within the period of limitation. That would be a plain illegality and not a mere irregularity.'

15. The Apex Court in *Sheela Devi v. Principal Commissioner of Income Tax* [2022 SCC OnLine ITAT 75] held that, notice issued against a dead person is null

and void and all consequent proceedings/orders being equally tainted, are liable to be set aside.

16. In *Shabina Abraham and Others v. Collector Central Excise and Customs* [(2015)10 SCC 770] the Apex Court had occasion to discuss about the tax liability of the dead person. In *Shabina Abraham's* case (supra) the Apex Court would observe that "nothing is certain, except death and taxes". To tax the dead is a contradiction in terms. Tax laws are made by the living to tax the living.

17. The crucial question that arises before us in this case is whether a notice issued in the name of a dead person after the prescribed period of limitation is a nullity or a mere irregularity which can be cured?.

18. The learned counsel for the Revenue would submit that it is an irregularity which could be cured, particularly when the legal representatives of the deceased assessee appear before the Assessing authority and subjected themselves to the jurisdiction of the Assessing Officer. According to the learned counsel for the appellants, however it is a nullity and 'non-est' in the eye of law.

19. Learned counsel for the Revenue would submit that the department came to know of the factum of death of Sri.Naringaparambail Bhaskaran only when the legal heirs of the deceased appeared before the assessing authority on 05.04.2023.

20. Upon hearing the rival submissions of the parties, we are of the view that the Appeal must succeed. The precedents referred above would make it amply clear that the notices issued under Sections 148A(b) and 148 of the Act in the name of a dead person are invalid and 'non-est' in the eye of law. It is a nullity and not a mere irregularity which could be cured. It is true that, on the receipt of the above said notices, the legal heirs of the deceased Naringaparambail Bhaskaran/appellants herein appeared before the assessing authority. However, that by itself would not change the situation. We are of the opinion that the consent of the parties cannot confer jurisdiction to the assessing authority for initiation of an action which is otherwise illegal and 'non-est'.

21. In the light of the above discussions, we cannot agree with the view taken by the learned Single Judge that the legal heirs of the deceased assessee are estopped from taking a different stand in the writ petition, since they have appeared before the assessing authority and participated in the proceedings. Therefore, we are of the view that the initiation of proceedings against a dead person under Sections 148A(b) and 148 of the Income Tax Act are illegal and 'non-est'.

The Appeal succeeds. The impugned order passed by the learned Single Judge dated 31.10.2023 in W.P(C).No.34850/2023 is hereby set aside and the Writ Petition is allowed by quashing the notices and order impugned in the writ petition.