**(1958) 04 MP CK 0006**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Petition No. 157 of 1957

Shaikh Abdul Kadar APPELLANT

Vs

The Income Tax Officer RESPONDENT

**Date of Decision :** 23-04-1958

**Acts Referred:**
Income Tax Act, 1922 — Section 24B(2), 34

**Citation :** AIR 1959 MP 101 : (1958) ILR (MP) 156 : (1958) JLJ 779 : (1958) 3 MPLJ 659

**Hon'ble Judges :** M. Hidayatullah, C.J;V.R. Sen, J

**Bench :** Division Bench

**Advocate :** R.S. Dabir, for the Appellant; M. Adhikari, General, for the Respondent

**Final Decision :** Allowed

# Judgement

This petition under Article 226 of the Constitution of India has been filed by one Shaikh Abdul Kadar son of Shaikh Shakir Hussain (deceased), challenging a notice u/s 34 of the Indian Income Tax and the assessment proposed to be made on the basis of that notice.

The facts of the case are as follows. One Shaikh Shakir Hussain Abdul Kadar was carrying on the business of Kattha. He died on 23rd September 1947. Previous to his death, he was assessed as an individual. After his death, his three sons and one daughter inherited his property in specified shares but they continued as an "association of persons" and were assessed in subsequent years as such.

The notice in question was issued by the Income Tax Officer purporting to be u/s 34 of the Income Tax Act on 23rd March 1957, asking for a return of the income for assessment year 1948-49. The notice was addressed to "Shri Shakir Hussain, Abdul Qadir, Damoh". It was not delivered to any person but was affixed to the house of the present petitioner Abdul Kadar on 29th March 1957.

Therefore, Abdul Kadar made an inquiry and then made an application to the

Income Tax Officer, saying that Shakir Hussain was dead, that he had not received the papers enclosed with the said notice and made an equiry whether it was proposed to assess him or his dead father. He also informed the Income Tax Officer that all papers and persons connected with the transactions of the accounting year 1947-48 were not readily available and that he required time. The Income Tax Officer overruled the request for information as to whether it was proposed to assess Abdul Kadar or his deceased father, and all that he did was to supply a duplicate of the return of Shakir Hussain in Form 11 and asked him to furnish the return. Abdul Kadar made other application but no information was supplied to him. He, therefore, challenged the proposed assessment for want of jurisdiction on the ground that the notice, which was issued, was bad, inasmuch as it was addressed to a dead person and not to him.

We need not discuss the arguments as to whether the notice was affixed to the house of Abdul Kadar in accordance with Rule 17 or Rule 20 of order 5 of the Code of Civil Procedure, because, in our opinion, the notice suffers from quite another defect. u/s 24B (2) of the Income Tax Act, a notice u/s 34 of the Act in respect of the Income of a deceased assesses has to be issued to his executor, administrator or legal representatives.

In the present case the notice and all the communications were addressed to Shri Shakir Hussain who, admittedly, was dead at that time, and had been so dead for a long time. The Income Tax Officer knew from the records of his own office that Shakir Hussain was not living, and he also knew who his legal representatives were, because the legal representatives had been assessed in subsequent years, taking into account the assets of the deceased Shakir Hussain

In these circumstances, it was incumbent on the Income Tax Officer to cause the notice to be issued to, the legal representatives of Shakir Hussain. See E. Alfred v. First Addl. Income Tax Officer, Salem AIR 1958 Mad. 11 with the knowledge that the original assessee was dead, and that he was succeeded by his sons and daughter, there was no point in sending a notice as well as all the communications in the name of the dead person.

The notice u/s 34 is the foundation of jurisdiction, and that notice has to be correct. When a notice is issued to a dead person, the taxing authority cannot catch any living person into whose hands the notice goes and attribute notice to him. In the present case all notices and communications are addressed to Shri Shakir Hussain, which shows that they are all sent to a dead person.

It may be that the legal representatives of Shakir Hussain continue to utilize the name of their father for their own business, but the distinction is quite apparent that they are an "association of persons" and it is not the case of the Department that the notice which was addressed to Shri Shakir Hussain was sent to this association of persons". The wording of the notice as well as the letters which have been written by the Department on subsequent occasions clearly show that, in so far as the Department was concerned, it was dealing with Shakir Hussain who, they knew, was dead. In our opinion, the notice was defective. As such a notice is a condition precedent for action u/s 34 of the Income Tax Act, the assessment cannot be made. The Income Tax Officer is prohibited from making an assessment on the strength of the notice which he has issued. An appropriate writ shall issue.

The petition is, therefore, allowed, but in the circumstances of the case we make no order about costs.