

(2021) 07 DEL CK 0103

In the Delhi High Court

Case No : Civil Writ Petition No. 2678 Of 2020, Civil Miscellaneous No. 9286 Of 2020

Sripathi Subbaraya Manohara L/H Late Sripathi Subbaraya
Gupta

APPELLANT

Vs

Principal Commissioner Of Income Tax 22, N.Delhi & Anr.

RESPONDENT

Date of Decision : 14-07-2021

Acts Referred:

Income Tax Act, 1961 — Section 144, 147, 148, 159, 271(1)(c), 271F, 274, 392B, 292BB

Citation : (2021) 07 DEL CK 0103

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : Piyush Kaushik, Ruchir Bhatia

Final Decision : Allowed

Judgement

Navin Chawla, J

1. This petition has been filed by the petitioner challenging the Notice dated 22.03.2019 issued under Section 148 of the Income Tax Act, 1961

(hereinafter referred to as the "Act"); Assessment Order dated 14.11.2019 under Section(s) 144/147 of the Act; as also the Penalty Notice(s)

dated 14.11.2019 under Section 274 read with Section 271(1)(c) and Section 274 read with Section 271F of the Act.

2. The above-mentioned Impugned Notices and the Assessment Order have been issued / passed by the respondents in the name of Late Shri Sripathi

Subbaraya Gupta "the Assessee and relate to the Assessment Year 2012-13.

3. It is the case of the petitioner, that Late Shri Gupta had, however, expired on 17.06.2014 and in support of this submission, the petitioner has placed

on record the Death Certificate of Late Shri Gupta issued by the Department of Public Health, Corporation of Chennai.

4. It is the case of the petitioner that she was not aware of the above proceedings emanating from the Impugned Show Cause Notice dated 22.03.2019, until 21.11.2019, when the petitioner received the Impugned Assessment Order and the Penalty Notices. Thereafter on enquiry, representation and follow-up, the petitioner became aware of the Impugned Notice under Section 148 of the Act, leading to filing of the present petition.

5. The learned counsel for the petitioner submits that the Impugned Notice dated 22.03.2019 having been issued in favour of a dead person, was invalid and all proceedings thereafter, were non-est. In support of this contention, the petitioner places reliance on the judgment of this Court in *Savita Kapila vs. Assistant Commissioner of Income-Tax*, (WP(C) 3258/2020).

6. On the other hand, while the learned counsel for the respondents does not deny the factum of the death of the assessee- Late Shri Gupta, he raises a preliminary objection on the maintainability of the present petition on the ground of availability of an alternate efficacious remedy in form of an appeal, being open to the petitioner.

7. On facts, he further submits that information was received by the Department that the assessee had deposited a cash amount of Rs.11,55,000/-

(Rupees Eleven Lakhs Fifty-five Thousand) in a savings bank account maintained with the Indian Bank. As the assessee had not filed his return of

income, the Assessing Officer, having reason to believe that the said amount had escaped assessment for the Assessment Year 2012-13, re-opened

the same under Section 147 of the Act and Impugned Notice under Section 148 of the Act was issued to the assessee, after getting the prior approval

of the Principal Commissioner of Income Tax. As the assessee failed to file the return of income, further Notices were issued to the assessee and as

no explanation was received from the assessee, the Impugned Assessment Order dated 14.12.2019 was passed. He submits that the Assessing

Officer was not aware and had no knowledge about the demise of the assessee as in spite of issuance of various Notices to the petitioner, the same

was not informed to the Assessing Officer by the petitioner.

8. We have considered the submissions made by the learned counsels for the

parties.

9. The objections raised by the learned counsel for the respondents on the maintainability of the present petition, as also on merit, are no longer res

integra, having been elaborately discussed and rejected by this Court in its judgment in Savita Kapila (supra) authored by one of us (Honâ??ble Mr.

Justice Manmohan). Therefore, instead of re-visiting the issues raised, we would merely reproduce the findings given by this Court in its referred

judgment:

â?? AN ALTERNATIVE STATUTORY REMEDY DOES NOT OPERATE AS A BAR TO MAINTAINABILITY OF A WRIT PETITIN WHERE THE

ORDER OR NOTICE OR PROCEEDINGS ARE WHOLLY WITHOUT JURISDICTION TO INITIATE ASSESSMENT PROCEEDINGS. THE

MERE FACT THAT SUBSEQUENT ORDERS HAVE BEEN PASSED WOULD NOT RENDER THE CHALLENGE TO JURISDICTION

INFRUCTUOUS.

24. Further, the fact that an assessment order has been passed and it is open to challenge by way of an appeal, does not denude the

petitioner of its right to challenge the notice for assessment if it is without jurisdiction. If the assumption of jurisdiction is wrong, the

assessment order passed subsequent would have no legs to stand. If the notice goes, so does the order of assessment. It is trite law that if the

Assessing Officer had no jurisdiction to initiate assessment proceeding, the mere fact that subsequent orders have been passed would not

render the challenge to jurisdiction infructuous. xxxxx

THE SINE QUA NON FOR ACQUIRING JURISDICTION TO REOPEN AN ASSESSMENT IS THAT NOTICE UNDER SECTION 148

SHOULD BE ISSUED TO A CORRECT PERSON AND NOT TO A DEAD PERSON. CONSEQUENTLY, THE JURISDICTIONAL

REQUIREMENT UNDER SECTION 148 OF THE ACT, 1961 OF SERVICE OF NOTICE WAS NOT FULFILLED IN THE PRESENT

INSTANCE.

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26. In the opinion of this Court the issuance of a notice under Section 148 of the Act is the foundation for reopening of an assessment.

Consequently, the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the

correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but

is a condition precedent to the impugned notice being valid in law. [See Sumit Balkrishna Gupta v. Asst. Commissioner of Income Tax,

Circle 16(2), Mumbai & Ors., (2019) 2 TMI 1209- Bombay High Court].

27. xxxxx Consequently, in view of the above, a reopening notice under Section 148 of the Act, 1961 issued in the name of a deceased

assessee is null and void.

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AS IN THE PRESENT CASE PROCEEDINGS WERE NOT INITIATED/PENDING AGAINST THE ASSESSEE WHEN HE WAS ALIVE AND

AFTER HIS DEATH THE LEGAL REPRESENTATIVE DID NOT STEP INTO THE SHOES OF THE DECEASED ASSESSEE, SECTION 159

OF THE ACT, 1961 DOES NOT APPLY TO THE PRESENT CASE.

30. Section 159 of the Act, 1961 applies to a situation where proceedings are initiated/pending against the assessee when he is alive and

after his death the legal representative steps into the shoes of the deceased assessee. Since that is not the present factual scenario, Section

159 of the Act, 1961 does not apply to the present case.

31. xxxxx

THERE IS NO STATUTORY REQUIREMENT IMPOSING AN OBLIGATION UPON LEGAL HEIRS TO INTIMATE THE DEATH OF THE

ASSESSEE.

32. This Court is of the view that in the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate

the factum of death of an assessee to the income tax department. After all, there may be cases where the legal representatives are estranged

from the deceased assessee or the deceased assessee may have bequeathed his entire wealth to a charity. Consequently, whether PAN

record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In Alamelu

Veerappan (supra) [2018 (6) TMI 760 â?" Madras High Court] it has been held

nothing has been placed before this Court by the

Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased assessee to immediately intimate

the death of the assessee or take steps to cancel the PAN registration.

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34. Consequently, the legal heirs are under no statutory obligation to intimate the death of the assessee to the Revenue.

SECTION 292B OF THE ACT, 1961 HAS BEEN HELD TO BE INAPPLICABLE, VIS-À-VIS, NOTICE ISSUED TO A DEAD PERSON IN

RAJENDER KUMAR SEHGAL [2018 (12) TMI 697 (DELHI)], CHANDRESHBHAI JAYANTIBHAI PATEL [2019 (1) TMI 353 GUJARAT

HIGH COURT] AND ALAMELU VEERAPPAN [2018 (6) TMI 760 MADRAS HIGH COURT].

35. This Court is of the opinion that issuance of notice upon a dead person and non-service of notice does not come under the ambit of

mistake, defect or omission. Consequently, Section 292B of the Act, 1961 does not apply to the present case.

IN RAJINDER KUMAR SEHGAL (SUPRA) A COORDINATE BENCH OF THIS COURT HAS HELD THAT SECTION 292BB OF THE ACT,

1961 IS APPLICABLE TO AN ASSESSEE AND NOT TO A LEGAL REPRESENTATIVE.

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38. This Court is also of the view that Section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative. Further,

in the present case one of the legal heirs of the deceased assessee, i.e. the petitioner, had neither cooperated in the assessment proceedings

nor filed return or waived the requirement of Section 148 of the Act, 1961 or submitted to jurisdiction of the Assessing Officer. She had

merely uploaded the death certificate of the deceased assessee.

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40. Consequently, the applicability of Section 292BB of the Act, 1961 has been held to be attracted to an assessee and not to legal

representatives.

10. We have enquired from the learned counsel for the respondents as to whether the above judgment has been challenged. The learned counsel for

the respondents fairly submits that the same has not been challenged so far. He submits that this may be because the period of limitation has been

extended by the Supreme Court in the orders passed in Re: Cognizance for Extension of Limitation, in Suo Motu Writ Petition (Civil) No. 3 of 2020.

However, in our view, the judgment having been pronounced on 16.07.2020, we are bound by the same and, even otherwise, see no reason to differ

from the law laid down therein.

11. In the present case as well, the Impugned Notice dated 22.03.2019 under Section 148 of the Act, having been issued in the name of a dead person,

is null and void, and all consequent proceedings/orders, including the Assessment Order and Notices dated 14.11.2019, being equally tainted, are liable to be set aside.

12. Consequently, the Impugned Notice(s) dated 22.03.2019 and 14.11.2019 are set aside. The Impugned Assessment Order dated 14.11.2019 is also set aside.

13. The petition is accordingly allowed. There shall be no order as to costs.