

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISA KHAPATNAM BENCH, VISA KHAPATNAM

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.227/VIZ/2017  
(निर्धारण वर्ष/ Assessment Year:2007-08)

Sri Aemala Venkateswara Rao  
Asst.in the name of  
Aemala Nirmala Devi  
L/R of Sri Aemala Venkateswara Rao  
5-93-39; 6/13 Brodipet  
Guntur  
[PAN :AESPA0834Q]

Vs. Income Tax Officer  
Ward-2(1)  
Guntur

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से/ Respondent by

: Shri C.Kameswara Rao, AR  
: Smt.Suman Malik, DR

सुनवाई की तारीख / Date of Hearing

: 21.03.2019

घोषणा की तारीख/Date of Pronouncement

: 03.03.2019

**आदेश /ORDER**

**PER D.S. SUNDER SINGH, Accountant Member:**

This appeal is filed by the Legal Representative(LR) of the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Guntur vide I.T.A.No.197/CIT(A-1)/GNT/2013-14 dated 30.12.2016 for the Assessment Year (A.Y.) 2007-08.

2. During the appeal hearing, the assessee filed additional ground vide petition dated 17.12.2018, requesting to admit the additional ground and adjudicate the same. Additional ground is related to validity of issue of notice on a dead person. Since the additional ground involved legal issues, no enquiries are required to be made, after hearing both the parties, the additional grounds raised by the assessee are admitted for adjudication. The additional grounds are related to the validity of issue of notice u/s 148 on a dead person and the consequent assessment order made in the name of his wife Smt.A.Nirmala Devi who happens to be the legal heir of the assessee.

3. Brief facts of the case are that the assessee Shri Aemala Venkateswara Rao has expired in the year 2009. For the A.Y. 2007-08, the AO issued the notice u/s 148 on 26.03.2012 i.e after the death of the assessee in the name of dead person. The notice was received by Smt.A.Nirmala Devi, W/o Shri Late Venkateswara Rao who replied to the Assessing Officer (AO) stating that her husband Shri Venkateswara Rao has expired in 2009 and did not furnish the return of income. Since there was no compliance for the notice u/s 148, the AO had issued the notice u/s 142(1) and the assessment was completed u/s 144 r.w.s 147 dated

20.03.2013 determining total income of Rs.1,72,76,310/-and raised the demand of Rs.64,50,000/-. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the order of the AO and dismissed the appeal of the assessee.

4. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal. During the appeal hearing, the Ld.AR submitted that the assessee late Shri A.Venkateswara Rao has expired in 2009 and subsequently, the AO reopened the assessment u/s 147 and issued notice u/s 148 in the name of dead person, which was served on Smt.A.Nirmala Devi, legal heir of the assessee. Smt.A.Nirmala Devi had informed the death of the assessee to the AO. Ld.AR argued that even after informing the death of the assessee, the AO chose to complete the assessment in the name of the legal heir. Since the notice issued u/s 148 on dead person is invalid, consequent assessment framed u/s 144 r.w.s. 147 is also invalid, hence, requested to quash the notice issued by the AO u/s 148 of the Act.

5. On the other hand, the Ld.DR argued that the notice was issued u/s 148 in the name of the assessee, late Shri A.Venkateswara Rao and the communication regarding the death of the assessee was received after

serving the notice on the legal representative, Hence, the same is in accordance with the provisions of section 159. Therefore, argued that the proceedings initiated u/s 148 is valid and requested to uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee.

6. We have heard both the parties and perused the material placed on record. In the instant case, the assessee was expired on 03.11.2009, in support, death certificate is also enclosed in the paper book. Subsequent to the death of the assessee, reassessment proceedings were initiated and the notice u/s 148 was issued in the name of the dead person. In response to the notice issued by the AO, the wife of the deceased had intimated the death of the assessee. However, no effort was made by the AO to bring the legal heir on record, instead, the AO proceeded to complete the assessment in the name of the legal heir without issuing notice u/ 148. The Ld.AR relied on the provisions of section 159 of the Act. For the sake of clarity and convenience, we extract relevant part of the provisions of section 159 which reads as under :

*159. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.*

*(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under [section 147](#)) of the income of the deceased and for the*

*purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—*

*(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;*

*(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and*

*(c) all the provisions of this Act shall apply accordingly.*

*(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.*

6.1. As per sub section 2(a) of section 159, in case the proceedings are already taken against the deceased person before his death, it is deemed that the proceedings are taken against the legal representative and the same would continue against the legal representative from the stage at which it stood on the date of death of the deceased. In the instant case the proceedings were initiated against the dead person after the death of the assessee, hence the notice issued on the dead person cannot make the legal heirs binding unless a proper notice is issued on the legal heirs. After the death of the assessee, proceedings must be initiated against the legal heirs to treat the legal heirs as deemed assesseees. As per section 159 (2)(b), the AO is free to initiate proceedings against the legal representatives which could have been initiated against the deceased and determine the tax liability of the deceased person and the same is binding on the Legal

representatives. Any notice issued in the name of a deceased person is invalid and cannot be enforced in the law. The Ld.AR relied on the decision of Hon'ble Madras High Court in the case of Alamelu Veerappan Vs. ITO, Non Corporate, Ward 2(2), Chennai, Writ Petition No.30060 of 2017 and WMP No.32631 of 2017. Hon'ble Madras High Court held that the notice issued on a dead person is invalid and cannot be enforced. For the sake of clarity and convenience , we extract para No.14-23 which reads as under :

*14. The issue, which falls for consideration, is as to whether the impugned notice under [Section 148](#) of the Act issued in the name of the dead person - the said Mr.S.Veerappan is enforceable in law and the subsidiary issue being as to whether the petitioner, being the wife of the said Mr.S.Veerappan, can be compelled to participate in the proceedings and respond to the impugned notice. The fact that the said Mr.S.Veerappan died on 26.1.2010 is not in dispute. If this fact is not disputed, then the notice issued in the name of the dead person is unenforceable in the eye of law.*

*15. The Department seeks to justify their stand by contending that they were not intimated about the death of the assessee, that the legal heirs did not take any steps to cancel the PAN registration in the name of the assessee and that therefore, the Department was justified in directing the petitioner to cooperate in the proceedings pursuant to the impugned notice.*

*16. The settled legal principle being that a notice issued in the name of the dead person is unenforceable in law. If such is the legal position, would the Revenue be justified in contending that they, having no knowledge about the death of the assessee, are entitled to plead that the notice is not defective. In my considered view, the answer to the question should be definitely against the Revenue.*

*17. This Court supports such a conclusion with the following reasons :*

*Admittedly, the limitation period for issuance of notice for reopening expired on 31.3.2017. The impugned notice was issued on 30.3.2017 in the name of the dead person. On being intimated about the death, the Department sent the*

notice to the petitioner - his spouse to participate in the proceedings. This notice was well beyond the period of limitation, as it has been issued after 31.3.2017. If we approach the problem sans complicated facts, a notice issued beyond the period of limitation i.e. 31.3.2017 is a nullity, unenforceable in law and without jurisdiction. Thus, merely because the Department was not intimated about the death of the assessee, that cannot, by itself, extend the period of limitation prescribed under the Statute. 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.

18. In such circumstances, the question would be as to whether [Section 159](#) of the Act would get attracted. The answer to this question would be in the negative, as the proceedings under [Section 159](#) of the Act can be invoked only if the proceedings have already been initiated when the assessee was alive and was permitted for the proceedings to be continued as against the legal heirs. The factual position in the instant case being otherwise, the provisions of [Section 159](#) of the Act have no application.

19. The Revenue seeks to bring their case under [Section 292](#) of the Act to state that the defect is a curable defect and on that ground, the impugned notice cannot be declared as invalid.

20. The language employed in [Section 292](#) of the Act is categorical and clear. The notice has to be, in substance and effect, in conformity with or according to the intent and purpose of the Act. Undoubtedly, the issue relating to limitation is not a curable defect for the Revenue to invoke [Section 292B](#) of the Act.

21. All the above reasons are fully supported by the decision in the case of Vipin Walia. In that case, the notice dated 27.3.2015 was issued under [Section 148](#) of the Act to the assessee, who died on 14.3.2015. The validity of the said notice was put to challenge. The Income Tax Officer took a stand that since the intimation of death of the assessee on 14.3.2015 was not received by her, the notice was issued on a dead person. However, the fact regarding the death of the assessee could not be disputed by the Department. The Department continued the proceedings under [Section 147/148](#) of the Act and at that stage, the son of the deceased approached the High Court of Delhi. The High Court of Delhi pointed out that what was sought to be done by the Income Tax Officer was to initiate proceedings under [Section 147](#) of the Act against the deceased assessee for the assessment year 2008-09, for which, the limitation for issuance of notice under [Section 147/148](#) of the Act was 31.3.2015 and on 02.7.2015 when the notice was issued, the assessee was already dead and if the Department intended to proceed under [Section 147](#) of the Act, it could have done so prior to 31.3.2015 by issuing the notice to the legal heirs of the

*deceased and beyond that date, it could not have proceeded in the matter even by issuing notice to the legal representatives of the assessee. The decision in Vipin Walia fully supports the case of the petitioner herein.*

*22. The decision in the case of Vipin Walia was followed in the decision of the High Court of Gujarat in the case of Rasid Lala, in which, the re-assessment proceedings were initiated against the dead person, that too, after a long delay. The Court pointed out that even if the provisions of [Section 159](#) of the Act are attracted, in that case also, the notice was required to be issued against and in the name of the heirs of the deceased assessee and under the said circumstances, [Section 159](#) of the Act shall not be of any assistance to the Revenue.*

*23. In the decision of the Delhi High Court in the case of Spice Entertainment Ltd., one of the questions, which fell for consideration, is as to whether such framing of assessment against a non existing entity or a dead person could be brought within the ambit of [Section 292B](#) of the Act and after referring to the decisions on the point including the decision of the Allahabad High Court in the case of Sri Nath Suresh Chand Ram Naresh Vs. CIT [reported in (2006) 280 ITR 396], it has been held that the provisions of [Section 292B](#) of the Act are not applicable and that framing of assessment against a non existing entity/person goes to the root of the matter, which is not a procedural irregularity, but a jurisdictional defect, as there cannot be any assessment against a dead person.*

7. Hon'ble Mumbai High Court in the case of Sumit Balkrishna Gupta v. Assistant Commissioner of Income-tax, Circle 16(2), Mumbai 103 taxmann.com 188 held that the notice issued on a dead person is invalid unenforceable in law. We extract the relevant part of the order of Hon'ble Bombay High court in Sumit Balkrishna Gupta supra which reads as under:

*"7. The issue of a notice under Section 148 of the Act is a foundation for reopening of assessment. 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 a merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. Thus, a notice which has been issued in the name of the*

*dead person is also not protected either by provisions of Section 292B or 292BB of the Act. This is so as the requirement of issuing a notice in the name of correct person is the foundational requirement to acquire jurisdiction to reopen the assessment. This is evident from Section 148 of the Act, which requires that before a proceeding can be taken up for reassessment, a notice must be served upon the assessee. The assessee on whom the notice must be sent must be a living person i.e legal heir of the deceased assessee, for the same to be responded. This in fact is the intent and purpose of the Act. Therefore, Section 292B of the Act cannot be invoked to correct a foundational / substantial error as it is meant so as to meet the jurisdictional requirement. Therefore, both the impugned notice dated 29.3.2018 and the impugned order dated 13.11.2018 are quashed and set aside. It is made clear that this order will not prohibit the Revenue from issuing a fresh notice for reassessment, if requirement of Sections 147/ 148 of the Act are satisfied, including the limitation period therein."*

The Ld.DR did not submit any other case law or the decision supporting the notice issued on a dead person is valid or to controvert the submissions made by the Ld.AR. Therefore, we hold that the notice u/s 148 on a dead person is invalid and accordingly quashed. Consequent assessments made u/s 144 r.w.s. 147 is annulled.

8. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 3<sup>rd</sup> April, 2019.

Sd/-

(वी.दुर्गा राव)

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 03.04.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

**(D.S. SUNDER SINGH)**

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Sri Aemala Venkateswara Rao, Asst.in the name of Aemala Nirmala Devi, L/R of Sri Aemala Venkateswara Rao, 5-93-39; 6/13 Brodipet, Guntur
2. राजस्व/ The Revenue – Income Tax Officer, Ward-2(1), Guntur
3. The Pr.Commissioner of Income Tax, Guntur
4. Commissioner of Income-Tax (Appeals)-1, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary  
ITAT, Visakhapatnam