

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**

**BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकरअपीलसं./ITA No.894/AHD/2016**

**(निर्धारणवर्ष / Assessment Year: (2006-07)**

**(Virtual Court Hearing)**

Sh. Haresh P. Shah, Legal Heir, Late Manjula P. Shah, Ram, Appartment, I/A, Block No.4, 1 <sup>st</sup> Floor, Opp. Ramwadi, Valsad, Valsad-396001.	<b>Vs.</b>	Income Tax Officer, Ward-2, Valsad
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AYEPS2205H</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

Assessee by : Shri Rasesh Shah - CA

Respondent by : Ms Anupama Singla – Sr. DR

**सुनवाईकीतारीख/ Date of Hearing : 09/10/2020**

**घोषणाकीतारीख/Date of Pronouncement: 06/11/2020**

**आदेश / O R D E R**

**PER Dr. A. L. SAINI, ACCOUNTANT MEMBER:**

By way of this appeal, the assessee has challenged correctness of the order dated 21.01.2016 passed by the learned CIT(A), in the matter of assessment under section 143(3) r.w.s 147 of the Income Tax Act 1961( for short 'the Act'), for the assessment year 2006-07.

2. At the outset, Shri Rasesh Shah, Learned Counsel for the assessee, begins by pointing out that in the assessee's case under consideration, reassessment proceedings under section 147/148 were initiated on a dead person. During the reassessment proceedings under section 147/148 of the Act, Authorized Representative of the assessee submitted death certificate before the assessing officer (vide para 1 page 2 of assessment order). During the appellate proceedings also the Authorized Representative of the assessee submitted death certificate before the ld.

CIT(A), [vide para 4 at page no.3 of CIT(A)]. Therefore, ld. Counsel submits before the Bench that ld. assessing officer as well as ld. CIT(A), both were aware about the fact that the assessee had died before the reassessment proceedings initiated by the assessing officer under section 147/148 of the Act. The reassessment notice under section 148 was issued in the name of dead person which is invalid in the eye of law hence, all consequential proceedings should be treated as invalid.

3. On the other hand, Ms. Anupama Singla, Departmental Representative (DR) for the Revenue submits that legal heir of the assessee has participated in the reassessment proceedings. She pointed out that as per section 292B of the Act, the notice issued under section 147/148 of the Act should not be treated invalid if such notice has been issued according to the intent and purpose of the Income Tax Act. Therefore at this stage the plea taken by the ld. Counsel that reassessment u/s 147/148 cannot be framed on 'dead person' is not tenable. She also argued that jurisdiction of assessing officer has been defined in section 124 of the Income Tax Act, whereby virtue of any order issued under section 120 (1) of the Act, the assessing officer has been vested with jurisdiction over any area, in respect of any person carrying on a business therefore assessing officer may issue notice under section 148/147 of the Act.

She further pointed out that the legal heirs of the assessee had participated in the assessment proceedings and filed the details and documents required by the Assessing Officer. The Legal heirs also had participated in appellate proceedings therefore at this stage the assessee cannot make a different plea that reassessment has been framed on a dead person. On behalf of the dead person(assessee), the legal heirs were making the compliance during the assessment stage, therefore order passed by the Assessing Officer under section 147/148 cannot be treated illegal merely because the assessee had died. Therefore reassessment proceedings initiated by the assessing officer is valid in law.

4. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied

upon, and perused the fact of the case including the findings of the Id. CIT(A) and other materials brought on record. We note that Assessing Officer has framed the assessment order under section 143(3) r.w.s. 147 of the Act on 27.03.2014, for the assessment year 2006-07. During the reassessment proceedings, the Authorised Representative (AR) of the deceased person submitted before the AO by way of letter dated 28.03.2014 stating that assessee had died on 17.12.2005. The letter submitted during the reassessment proceedings is reproduced below ( to the extent relevant for our analysis) :

*“To  
The Income Tax Officer,  
Ward-2  
Valsad*

*28<sup>th</sup> Mar,2014*

*Sub: Assessment Proceedings in case of Manjula P Shah for AY 2006-07*

*Ref: Your Letter no ITO/Ward-2/MPS/147/2013-14 dated 20.3.2014*

*Dear Sir,*

*With reference to the above mentioned subject and your show cause notice we submit as under:*

*1. The assessee dies on 17 Dec, 2005. After this date the cash deposited into her saving bank a/c is were under:.....”*

Therefore, it is clear that during the assessment stage, the Authorised Representative of the deceased person had intimated to the assessing officer that assessee had died.

5. We note that during the reassessment proceedings, the Assessing Officer had issued notice under section 148 dated 22/03/2013 in the name of Smt. Manjula Prabhudas Shah (Dead Person),which is reproduced below ( to the extent relevant for our analysis), for ready reference:

*“Notice under Section 148 of the Income Tax Act, 1961*

*Office of the INCOME TAX OFFICER WARD-2[NEW], VAPI*

*Dated: 22/03/2013*

***SMT MANJULABEN PHABHDAS SHAH***  
*1<sup>ST</sup> FLOOR*  
*RAJHAKS COMPLEX*

**GIDC VAPI**  
**GUJARAT 396195**

*Sir/Madam,*

*Whereas I have reasons to believe that your income chargeable to tax for the assessment year 2006-07 has escaped assessment within the leaning of section 147 of the Income Tax Act/ 1961.....”*

The notice under section 148 was issued on the dead person, Smt. Manjulaben Prabhudas Shah, on 22.03.2013, ( she died on 17.12.2005), and it is also clear that notice under section 148 was issued after her death.

6. In response to notice under section 148 of the Act, the Authorised Representative of the deceased person, filed reply before the Assessing Officer stating that notice issued in the name of Manjulaben Prabhudas Shah (dead person) on 22.03.2013 was not a valid notice. The relevant portion of the reply given by the Authorised Representative, in response to notice under section 148 of the Act, is reproduced below ( To the extent relevant for our analysis):

*“We acknowledge the receipt of the Notice u/s. 148 for A.Y. 2006-07, dated 22/03/2013 requiring us to deliver the return of income in the prescribed form.*

*We submit that the notice issued in the name of Manjulaben Prabhudas Shah on 22/03/2013 is not a valid notice, as the same has been issued in the name of the dead person. We are enclosing herewith a copy of Death Certificate issued by Chala Nagarpalika, Chala.”*

7. The Authorised Representative had also filed a death certificate during the assessment proceedings, stating that Smt.Manjulaben Prabhudas Shah had died on 17.12.2005. The letter submitted by the Authorized Representative to the Assessing Officer is reproduced below:

*Date: 11/03/2013*

*“To,  
ASST. COMMISSIONER OF INCOME TAX  
VAPI CIRCLE,*

*VAPI.*

*Sub: Verification of Financial Transaction of Rs 2508000/- during F.Y. 2005-06 in the case of Manjulaben Prabhudas Shah.*

*Ref: Your letter No. ACIT/Vapi/Transaction dated 13/02/2013  
Respected Sir,*

*With reference to above mentioned subject we state as under:  
Manjulaben Prabhudas Shah has expired on 17.12.2005*

*In support of this we are enclosing here with copy of death certificate issued by Chef Officer, Chala Nagar Palika, Chala.*

*Hope you find above in order.*

*Thanking You,*

*Yours faithfully,*

*For H P SHAH ASSOCIATES”*

8. We note that income tax return for assessment year 2006-07 was filed by M/s. Estate of Late Shah Manjulaben Prabhudas Shah, which is placed at paper book at page 9. This clearly shows that return of income was filed by the legal heirs of the deceased assessee and not by the deceased assessee.

9. Taking into account the facts narrated above, the undisputed facts are that Smt. Manjulaben Prabhudas Shah (assessee) died on 17.12.2005. The Assessing officer issued notice under section 148 of the Act on Smt. Manjulaben Prabhudas Shah (died person) on 22.03.2013. Thus, notice under section 148 of the Act was issued after her death. The Assessing Officer framed the reassessment under section 147/148 on 27.03.2014, which is after her death. During the appellate proceedings, the legal heirs of the deceased assessee submitted that no notice under section 147/148 was issued in the name of legal heir, although it was issued on dead person Smt. Manjulaben Prabhudas Shah, which is not valid notice in the eye of law. Therefore the reassessment proceedings initiated under section 147/148 of the Act on the dead person should be treated invalid and reassessment proceedings may be quashed. We note that original assessee Smt Manjulaben Prabhudas Shah died on

17.12.2005 and after a period of seven years, the assessing officer issued notice under section 148 of the Act in her name to reopen the assessment. We note that despite pointing out by her legal heirs that Smt. Manjulaben Prabhudas Shah had died long back, the assessing officer continued reassessment proceedings against her, which is not valid, therefore reassessment proceedings initiated against her by the assessing officer under section 147/148 of the Act should be quashed. At this juncture it is appropriate to quote the judgement of the Hon'ble Gujarat High Court in the case of Rasid Lala vs. ITO, [2017] 77 taxmann.com 39 (Gujarat), wherein it was held as follows:

*“It is an admitted position that the original assessee 'B' died on 2-12-2009. It is also an admitted fact that the notice under section 148 to reopen the assessment for the assessment year 2009-10 has been issued against the dead person, i.e., the deceased assessee. Thus the reassessment proceedings have been initiated after the death of the assessee. Though it was pointed out by the heir of the deceased assessee that the assessee has expired long back and, therefore, the notice issued in her name and/or against a dead person is not valid, instead of taking corrective measures as provided under section 292B and to issue fresh notice against the legal heir of the deceased, the Assessing Officer has continued with the reassessment proceedings against the dead person. Section 159 which has been relied upon by the revenue shall not be applicable to the facts of the case on hand. [Para 6]*

*In the instant case, admittedly, the reassessment proceedings have been initiated against the dead person and that too after a long delay, therefore, even if section 159 is attracted, in that case also, the notice was required to be issued against and in the name of the heir of the deceased assessee. Under the circumstances, section 159 shall not be of any assistance to the revenue. [Para 7]*

*In view of the above and for the reasons aforesaid, the impugned notice issued under section 148 was liable to be set aside. [Para 10]”*

10. We note that on the identical facts, the Hon'ble Bombay High Court in the case of Rupa Shyamsundar Dhumatkar vs. ACIT & Ors., in Writ Petition No. 404 of 2019 dated 05.04.2019, held. as follows:

*“1. Heard learned Counsel for the parties for final disposal of the Petition. This Petition is filed by the widow of Late Shri Shyamsundar Pundalik Dhumatkar. Late Shri Shyamsundar Dhumatkar was engaged in his individual business. He filed return of his income till the year 2007-2008. According to Petitioner, however, since thereafter he had no taxable income, he had stopped filing returns of income. The Assessing Officer issued a notice dated 27/03/2018 in the name of Late Shri Shyamsundar Dhumatkar under section 148 of the Income Tax Act, 1961 (for short the Act) reopening*

*the assessment for the assessment year 2011-2012. Shri Shyamsundar Pundalik Dhumatkar expired on 14/10/2016. Thus, the notice dated 27/03/2018 was issued on a dead person. The Petitioner as a widow and legal heir of the deceased Shri Shyamsundar Dhumatkar brought these facts to the notice of the income tax department. Despite this, the Assessing Officer issued a notice under section 142(1) of the Act on 29/08/2018 and therefore the Petitioner has filed this Petition challenging the said notice dated 27/03/2018.*

*2. The facts are not seriously in dispute. The Petitioner had produced the death certificate of Shri Shyamsundar Dhumatkar before the Income Tax authorities, indicating that he died on 14/10/2016. Thus, the impugned notice of reopening of assessment was issued on a dead person. There are several \ judgments of different High Courts hold.ing that the notice/or reopening of assessment is invalid in law. A reference in this respect can be made to a decision of Gujarat High Court in the case of **Chandreshbhai Jayantibhai Patel Vs The Income Tax Officer (Special Civil Application No. 15172 of 2018, decided on 10/12/2018)**. As also the decision of Madras High Court in the case of **Alamelu Veerappon Vs. Income Tax Officer, Noncorporate Ward-2(2), Chennai, reported in (2018) 257 Taxman 72 (Madras)**. It is not necessary to refer to all the judgments on the point. Suffice it to say, as per the settled law, notice for reopening of assessment against a dead person is invalid.*

*3. In the result, the impugned notice is set aside. Petition is disposed of accordingly. Consequentially, the order of assessment dated 31/12/2018 also stands annulled.”*

From the above precedents, it is clear that reassessment notice under section 147/148 issued on a dead person is not valid in the eye of law.

11. We do not agree with the contention of Id. DR for the Revenue to the effect that as per section 292B of the Act, the notice issued under section 147/148 of the Act should not be treated invalid if such notice has been issued according to the intent and purpose of the Income Tax Act. We note that the language employed in section 292B 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.

Regarding the second contention of Id. DR that jurisdiction of assessing officer has been defined in section 124 of the Income Tax Act, whereby virtue of any order

issued under section 120 (1) of the Act, the assessing officer has been vested with jurisdiction over any area, in respect of any person carrying on a business therefore assessing officer may issue notice under section 148/147 of the Act. We note that section 124 of the Act talks about the jurisdiction of assessing officer to issue notices. However, in the assessee's case the assessing officer issued a notice u/s 148 of the Act on dead person which is not valid in the eye of law therefore the provisions of section 124 are applicable. The third contention of Id. DR was that on behalf of the dead person(assessee), the legal heirs were making the compliance during the assessment stage, therefore order passed by the Assessing Officer under section 147/148 cannot be treated illegal merely because the assessee had died. As we have noted that Ld. Authorised Representative of the assessee had produced the death certificate before the Income Tax authorities, indicating that she died on 15/12/2005. Thus, the impugned notice of reopening of assessment was issued on a dead person. There are several judgments of different High Courts holding that the notice issued on dead person is invalid in law. Therefore, provisions of section 124 do not help the Revenue and hence the statement made by the Id. DR is not acceptable.

12. Considering the above narrated facts and the precedents applicable to the facts, it is abundantly clear that reassessment proceedings in the assessee's case under consideration under section 147/148 should not be initiated by the Assessing Officer on a dead person. We note that Legal heir of the assessee had filed death certificate during the reassessment proceedings, stating that Smt.Manjulaben Prabhudas Shah had died on 17.12.2005. The assessing officer issued notice under section 148 of the Act in the name of dead person (Smt.Manjulaben Prabhudas Shah). Thus, it is settled position of law that notice issued in the name of dead person is not enforceable in the eye of law, hence the consequential reassessment framed by the Assessing Officer under section 147/148 of the Act is not valid, therefore, we quash the reassessment proceedings under section 147/148 of the Act. As we have decided the legal issue in favour of the assessee quashing the reassessment framed under section 147/148 of the Act therefore, we need not to adjudicate issues of assessee's appeal on merit.

12. In the result, the appeal filed by the assessee is allowed.

Order is pronounced on 06/11/2020, as per Rule 34 of Income Tax Appellate Tribunal, Rule 1963.

**Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER**

**Sd/-  
(Dr. A.L. SAINI)  
ACCOUNTANT MEMBER**

सूरत /Surat

दिनांक/ Date:06/11/2020

Samanta, PS

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat