

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 24/Asr/2021**  
Assessment Year: 2011-12

Sh. Tarsem Singh Gill,  
Son & legal heir of  
Sh. Tarlok Singh Gill  
(Deceased) VPO Fatehpur  
Kalan, Garhshankar,  
Hoshiarpur, (Punjab)

[PAN: AUSPG 0483F]

**(Appellant)**

Vs. Pr. Commissioner of Income  
Tax-1, Jalandhar

**(Respondent)**

Appellant by : Sh. Surinder Mahajan, CA  
Respondent by : Sh. Rohit Mehra, CIT-DR

Date of Hearing: 08.12.2022  
Date of Pronouncement: 20.12.2022

**ORDER**

**Per Dr. M. L. Meena, AM:**

This appeal has been filed by the assessee against the order dated 28.03.2021 passed by the Id. Pr. Commissioner of Income Tax, Jalandhar-1 in respect of the Assessment Year 2011-12.

2. The assessee has raised the following grounds of appeal:

- “1. That on facts and circumstances of the case, notice issued u/s 263 of the Act is illegal & bad in law since notice was issued in the name of dead person and consequent order passed u/s 263 of the Act in the name of dead person is also illegal and bad in law.
2. That order u/s 263 of the Act, passed by Learned Commissioner of Income Tax, Jalandhar-I ('Ld. CIT'), is illegal & without jurisdiction since notice u/s 263 of the Act has never been served on the assessee. Assessee died on 24.01.2020 whereas show cause notice u/s 263 of the Act is dated 19.03.2021.
3. That without prejudice to our grounds of appeal no. 1 & 2 even otherwise also order passed u/s 263 of the Act is against principles of natural justice since show cause notice dated 19.03.2021 was issued through speed post fixing the case for 23.03.2021, as such giving one clear day notice to assessee. Only one clear day notice to assessee to reply show cause notice itself makes the order passed illegal and bad in law.
4. That Learned Commissioner of Income Tax, Jalandhar-I ('Ld. CIT') has grossly erred in holding that assessment order passed by the Assessing Officer ('AO') was erroneous and prejudicial to the interest of revenue. Action of the Learned Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') in invoking provisions of section 263 of the Act is illegal & bad in law.
5. That on the facts and circumstances of the case, Learned Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') has grossly erred in law in holding that Assessing Officer has completed the assessment without carrying out necessary verification regarding source of cash deposit in the bank account.
6. That order u/s 263 of the Act passed by the Learned Commissioner of Income Tax, Jalandhar-I ('Ld. CIT') is illegal and bad in law since proceedings initiated u/s 148 of the Act on the issue of taxability of Rs. 88,64,100/- deposited in the bank account were completed by the Assessing Officer by accepting the explanation filed by the assessee, which clearly implies that Assessing Officer has applied his mind at the time of assessment proceedings and necessary verification of source of cash deposited in the bank account has been carried out.

7. *That the order of the Learned Commissioner of Income Tax, Jalandhar-I ('Ld. CIT') u/s 263 is arbitrary, unjust, is based on assumptions & presumptions since no error existed or prejudice was caused to revenue, therefore, the order of the Learned Commissioner of Income Tax, Jalandhar-I('Ld. CIT') passed u/s 263 of the Act deserves to be quashed.*
8. *That on the facts & circumstances of the case, Learned Commissioner of Income Tax, Jalandhar-1 ('Ld. CIT') has grossly erred in setting aside the assessment framed with the directions to pass fresh order after making necessary enquiries/investigation in the light of discussion made above. Non-issuance of specific directions for assessment to be framed clearly proves that it is a case of only change of opinion and the assessment framed is neither erroneous nor prejudicial to the interest of the revenue.*
9. *That the Appellant requests for leave to add or amend the grounds of appeal before the appeal is heard or disposed off."*

3. A proposed ground no. 1, the assessee has challenged the validity of the show cause notice issued and order passed u/s 263 of the Act as illegal and bad in law since the show cause notice was issued in the name of the deceased person.

4. In the present case, the assessee died on 24.01.2020 as per death certificate (APB, Pg. 20) and the show cause notice vide letter no. 3225 dated 19.03.2021 was issued u/s 263 to the deceased person Sh. Tarlok Singh Gill instead of its legal heirs. The Id. counsel argued that the show cause notice issued in the name of deceased person is non-est, and thus liable to be quashed. The counsel has taken an alternative plea that a notice issued in the name of deceased person and never be claimed to

have served on the assessee. The Id. AR contended that it is a settled law that a notice required to be issued in name of the assessee is served upon him and not on the dead person. There was no statutory requirement imposing the obligation upon legal heirs to intimate, death of the assessee and that the provisions of section 292B of the Act are held to be inapplicable vis-à-vis notice issued to a dead person. In support he placed reliance on the order of the ITAT of Delhi Bench in the case of Sheela Devi (wife of legal heir Vas Dev) vs. Pr. CIT in ITA No. 1853/DEL/2021 A.Y. 2011-12 dated 03.03.2022. The relevant paras of the judgment are reproduced hereunder:

*“6.1 Firstly, it was contended that the assessee, namely, Vas Dev expired on 04.12.2020 whereas the show cause dated 20.03.2021 has been issued and addressed to the deceased-assessee, namely, Vas Dev instead of legal heir. It was thus contended that the show cause notice issued in the name of a deceased person is nonest and thus liable to be quashed at the threshold. For this proposition, the Id. counsel for the assessee vehemently referred to the judgment rendered by the Hon’ble Delhi High Court in the case of Dharamraj vs. ITO, WP (C) 9227/2021 dated 17.10.2022 and Savita Kapila vs. ACIT WP (C) No.3258/2020 judgment dated 16.07.2020; (ii) secondly, show cause notice was issued initially on 20.03.2021 asking the assessee to appear on 05.04.2021, i.e., after the expiry of the limitation on 31.03.2021. However, the aforesaid show cause notice was later modified and the fresh notice dated 25.03.2021 was issued through e-mail and the matter was fixed for hearing on the immediate next date on 26.03.2021 in grave violation of principle of natural justice. There was no participation on behalf of the deceased-assessee in the proceedings and no further opportunity was given to the assessee/legal heir to defend his case. The revisional order was summarily passed on 28.03.2021 whereby the*

assessment order in question and the revision was set aside for fresh consideration. It was submitted by the Id. counsel for the assessee that the revisional order is not sustainable in law in the absence of mandatory requirement of opportunity enshrined in Section 263 itself. It was thus urged for cancellation of the revisional order passed under Section 263 of the Act in question.

7. Ld. Sr. DR, on the other hand, relied upon the contents of the revisional order.

8. We have heard the rival submissions and perused the material placed before us and case laws cited. Firstly, we consider it expedient to address ourselves on legality of show cause notice and consequent revisional order passed under Section 263 of the Act. The issue of validity of a notice and proceedings held subsequent thereto against a dead person is no longer *res integra*. The Hon'ble Delhi High Court in the case of *Dharamraj vs. ITO (supra)* has examined the issue in length and held that the notice issued against a death person is null and void and all consequent proceedings/orders being equally tainted are liable to be set aside. The relevant operative paragraph in *Dharamraj's* case is reproduced herein for the sake of completeness of the point.

8. The issue of validity of a notice and proceedings held subsequent thereto against a dead person is no longer *res integra*. This Court in *Savita Kapila vs. Assistant Commissioner of Income-Tax*, in W.P. (C) No.3258/2020 has held as under:

"AN ALTERNATIVE STATUTORY REMEDY DOES NOT OPERATE AS A BAR TO MAINTAINABILITY OF A WRIT PETITION WHERE THE ORDER OR NOTICE OR PROCEEDINGS ARE WHOLLY WITHOUT JURISDICTION. IF THE ASSESSING OFFICER HAD NO 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.*

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*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 TMI1209- 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 - 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-A- VIS. NOTICE ISSUED TO A DEAD PERSON IN RAJENDER KUMAR SEHGAL 12018 (12) TMI 697 (DELHI)]. CHANDRESHBHAJ JAYANTIBHAIPATEL 12019 (I) TMI353 - GUJARAT HIGH COURT1 AND ALAMELU VEERAPPAN f2018 (6) TMI 760 - MADRAS HIGH COURT1.**

*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.

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. ”

9. The above judgment was followed by this Court in W.P.(C) No.2678/2020 titled Mrs. Sripathi Subbaraya Manohara L/H Late Sripathi Subbaraya Gupta vs. Principal Commissioner of Income Tax 22, N.Delhi & Anr.

10. In the present case also, as the notice under Section 148 of the Act was issued against a dead person, the same is null and void and all consequent proceedings/orders, including the assessment order and the subsequent notices, being equally tainted, are liable to be set aside.

11. Consequently, the impugned notice dated 30.03.2019 issued under Section 148 of the Act is set aside along with all consequential proceedings/notices/assessment orders.

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

9. In terms of the explicit observations made in the judgment of the Hon'ble Delhi High Court, we find considerable merit in the plea on behalf of the legal heir for the assessee that the entire proceedings beginning from issue of show cause notice and culminating in revisional order under Section 263 of the Act is a

*non est exercise and cannot be given effect in law regardless of the fact whether the revenue was privy to death or otherwise.”*

5. The Id. DR Stands by the impugned order.
6. Heard. Admittedly, the assessee was died on 24.01.2020 as per and the show cause notice vide letter no. 3225 dated 19.03.2021 was issued u/s 263 to the deceased person Sh. Tarlok Singh Gill instead of its legal heirs, the appellant. In our view, the show cause notice issued in the name of deceased person is non-est, and thus liable to be quashed. We appreciate the contention of the Ld. Counsel that it is a settled law that a notice required to be issued in name of the assessee is served upon him and not on the dead person and that there was no statutory requirement imposing the obligation upon legal heirs to intimate, death of the assessee and that the provisions of section 292B of the Act are held to be inapplicable vis-à-vis notice issued to a dead person.
7. It is settled law on legality of show cause notice issued in the name of dead person, the consequent revisional order passed under Section 263 of the Act is invalid. In our view, the issue of validity of a notice and proceedings held subsequent thereto against a dead person is no longer res integra. The Hon'ble Delhi High Court in the case of "Dharamraj vs. ITO", (supra) has examined the issue at length and held that the notice

issued against a death person is null and void and all consequent proceedings/orders being equally tainted are liable to be set aside.

8. In the above view, we find considerable merit in the plea of the appellant assessee that the entire proceedings beginning from issue of show cause notice and culminating in revisionary order under Section 263 of the Act is a nonest and therefore, the order passed u/s 263 of the act is hereby quashed as bad in law.

9. In the result, the appeal of the assessee is allowed

*Order pronounced in the open court on 20.12.2022*

**Sd/-  
(Anikesh Banerjee)  
Judicial Member**

**Sd/-  
(Dr. M. L. Meena)  
Accountant Member**

*\*GP/Sr/PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy  
By Order