

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A No.101/DEL/2019
Assessment Year 2013-14

Sumitra Devi Mehta, (Wife & Legal Heir of Late Shri Dina Nath Mehta) 137, SFS DDA Flots, Punjabi Bagh Apartments, New Rohtak Road, Delhi	v.	ITO Ward-61(1), New Delhi
TAN/PAN: AAKPM7492E		
(Appellant)		(Respondent)

Appellant by:	Shri Kamlesh Kumar Chaurasia, CA		
Respondent by:	Shri Anuj Garg, CIT-DR		
Date of hearing:	07	06	2023
Date of pronouncement:	12	06	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the legal heir and wife of the deceased-assessee (Dina Nath Mehta) against the order of the Commissioner of Income Tax (Appeals)-36, New Delhi ('CIT(A)' in short) dated 15.10.2018 arising from the assessment order passed by the Assessing Officer dated 03.02.2016 under Section 143(3) of the Income Tax Act.

2. As per the grounds of appeal, the assessee has challenged the reduction in the claim of deduction under Section 54 of the Act by the Assessing Officer from Rs.1,86,41,207/- to Rs. 1,03,79,734/- while framing the assessment under Section 143(3) of the Act.

3. When the matter was called for hearing, the Id. counsel for the assessee challenged the issue of jurisdictional notice issued under Section 143(2) of the Act on the dead person and also the consequent assessment order passed against the dead person (late Shri Dina Nath Mehta) on his PAN without bringing on record of his legal representatives. The Id. counsel thus asserts that the issue of notice under Section 143(2) which confers the jurisdiction for framing assessment under Section 143(3) is *void ab initio* as it is issued in the name of deceased person and hence the consequent assessment order are also null and void and thus deserves to be quashed at the threshold. To support such assertions, the Id. counsel referred to notice under Section 143(2) dated 18.09.2014 issued in the name of Shri Dina Nath Mehta and submitted that legal heir of the assessee, on her part, duly informed the Department about the death of the assessee and a confirmation from Income Tax Department was also issued vide intimation dated 28.08.2014, i.e., prior to issue of notice under Section 143(2). Under the circumstances, where the notice under Section 143(2) has been issued in the name of dead person despite intimation made to the Revenue in this regard, the whole proceedings beginning from issue of notice under Section 143(2) as well as the consequent assessment order for Assessment Year 2013-14 in question is vitiated at the threshold and is bad in law.

4. Per contra, the Id. DR for the Revenue submits that in the event an adverse view is taken, the matter should be remanded back to the Assessing Officer for framing the assessment in the hands of the legal heir.

5. We have carefully considered the rival submissions and perused the material on record. The appellant – Sumitra Devi Mehta

is a widow of Shri Dina Nath Mehta. The assessee namely, Dina Nath Mehta expired on 14.02.2014. The ITR of deceased assessee for Assessment Year 2013-14 was signed by the legal heir where deduction of Rs.1,86,41,207/- was *inter alia* claimed under Section 54 of the Act. The widow of the assessee also registered herself as legal heir of the deceased-assessee on the website of Income Tax Department vide Transaction Id No. 1707202159 dated 28.08.2014 by uploading a copy of death certificate which was duly acknowledged by the Income Tax Department on 28.08.2014. Subsequently, notices under Section 143(2) dated 03.09.2014 and 18.09.2014 for Assessment Year 2013-14 were issued by the Income Tax Department in the name of the deceased assessee and the jurisdiction to assess the income of the assessee under Section 143(3) was assumed. Under the circumstances, where the assessee has died prior to filing of return and necessary steps were taken on behalf of the legal heir of the assessee and the Department was made aware of the death, the issuance of notice under Section 143(2) in the name of the dead person is *void ab initio* and devoid of legal sanction.

6. The Hon'ble Delhi High Court in the case of *Dharamraj vs. ITO, WP (C) 9227/2021 dated 17.10.2022* 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 passed 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 (1) 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.

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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. ”

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.”

7. The Hon'ble Delhi High Court has earlier expressed the aforesaid view in *Braham Prakash vs. ITO, 275 ITR 242 (Del)*. Similar view has been consistently expressed in plethora of other judgments of different High Courts as well as Co-ordinate Benches of Tribunal.

8. In terms of the explicit observations made in the aforesaid judgment of the Hon'ble Delhi High Court, we find considerable

merit in the preliminary grounds raised on behalf of the legal heir for the assessee that the entire proceedings beginning from issuance of notice under Section 143(2) and culminating in assessment order passed under Section 143(3) of the Act is a *non est* exercise and cannot be given effect in law. The assessment order passed under Section 143(3) for Assessment Year 2013-14 is thus quashed.

9. In view of this finding that the assessment order in question itself is found to be bad in law, other grounds on aspects of merits are not required to be looked into.

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

Order pronounced in the open Court on 12/06/2023.

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: 12/06/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**