

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “G”: NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 7303 /DEL/2019

A.Y.: 2010-11 (U/s 147/144)

AND

ITA No. 927 /DEL/2020

A.Y.: 2010-11 [U/s 271(1)(c)]

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| Sh. Satyaveer Singh, L/H of Late Sh. Charan Singh, 52, Village Mehrauli, NH-24, Ghaziabad. | <u>Vs</u> | Income-tax Officer, Ward-1(2), Ghaziabad |
| PAN- BAGPS1353F | | |
| APPELLANT | | RESPONDENT |
| Assessee represented by | Shri Somil Agarwal, Adv. & Shri Deepesh Garg, Adv. | |
| Department represented by | Shri Yogesh Nair, Sr. DR | |
| Date of hearing | 13.06.2023 | |
| Date of pronouncement | 21.06.2023 | |

ORDER

PER ANUBHAV SHARMA, JM:

The assessee as legal heir of late Shri Charan Singh has come in appeal against the order dated 30.04.2019 passed by the Commissioner of Income Tax (Appeals), Ghaziabad (hereinafter referred as “learned First Appellate Authority” or in short “FAA”) in Appeal no. 92/2017-18/GZB, for the assessment year 2010-11, arising out of the assessment order dated 20.12.2017 u/s 144 read with section

147 of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the Income-tax Officer, Ward-1(2), Ghaziabad (hereinafter referred in short as “Ld. AO”). The assessee has also filed appeal against the order dated 04.10.2019 passed by the learned CIT(Appeals), Ghaziabad arising out of penalty order dated 20.12.2017 passed by the ITO, Ward-1(2), Ghaziabad u/s 271(1)(c) of the Act. Both the appeals were heard together and are being disposed of by a common order for the sake of convenience.

2. Heard and perused the record.

3. Primarily the learned AR raised argument on the basis that the assessee Charan Singh had died and in his life time he was not served notice u/s 147/148 of the Act and even his son Satyaveer Singh who is appellant was not served any notice during the period prescribed under law to invoke jurisdiction u/s 147/148 of the Act.

4. Learned DR, however, has supported the orders of learned tax authorities, primarily submitting that the legal heirs were all served and the name is mentioned in the order of assessment. It was submitted that as they have joined the assessment so at this stage they cannot dispute the assessment. Reliance was placed on the judgment of Hon’ble M.P. High Court in the case of **Smt. Kaushalyabai Vs. CIT (1999) 238 ITR 1008 (MP)**.

5. On the other hand, learned AR has heavily relied on the judgment of the Hon'ble Delhi High Court in the case of **Savita Kapila L/H of Late Shri Mohinder Paul Kapila Vs. ACIT (2020) 426 ITR 502 (Del.)** and submitted that re-assessment notice was issued against dead person and the whole proceedings were vitiated.

6. In the aforesaid context it can be appreciated that at time of hearing as Bench had desired a Copy of reasons recorded u/s 147 of the Act were provided to the Bench and also to Ld. DR. The Same show that deceased assessee Charan Singh was found to have deposited cash of Rs. 38,42,500/- in savings bank account held in his name during the F.Y. 2009-10, which to the belief of learned AO had escaped assessment his income. The order of learned AO shows that he does not mention anything with regard to the fact as to if notices were first issued on the deceased assessee. He only mentions that the notices were served upon Shri Satyaveer Singh, legal heir of the assessee. Thereafter the AO proceeded to pass assessment order u/s 144 read with section 147 of the Act.

6.1 Learned CIT(Appeals) primarily based his order on the observation that as per section 159 of the Act when a person dies, his legal representative is liable to pay any sum the deceased would have liable to pay if he had not died in the like

manner and to same extent as the deceased. Learned CIT(Appeals) also observed that Satyaveer Singh had never challenged the proceedings during assessment.

7. It comes up from the order of learned CIT(Appeals) that remand report was submitted by learned AO, wherein he was asked to explain the validity of assessment order as appellant had claimed that notices u/s 148, 142(1) and 144 were not served upon the deceased assessee and, therefore, opportunity was sought to produce additional evidence justifying the deposits.

8. Learned AO in the remand report mentions that after getting approval from the Pr.CIT, Ghaziabad, notices were issued u/s 148 on 22.3.2017 and 30.3.2017. He mentions that later on he came to know that assessee had died on 2.12.2011, therefore, notices issued u/s 148 on 22.3.2017 and 30.3.2017 were served upon legal heir Satyaveer Singh on 8.11.2017. Further notices were issued u/s 144 on 7.9.2017 and 28.9.2017 and served upon Satyaveer Singh on 8.11.2017.

9. The Bench having considered aforesaid is of the view that learned AO had fallen in error in issuing notices on the dead person. At the time of reopening itself the learned AO was expected to be sure that reassessment proceedings could be initiated. Then learned AO has fallen in error in following strange procedure of serving the already issued notices u/s 148 dated 22.3.2017 and 30.3.2017 upon the appellant Satyaveer Singh on 8.11.2017. In any case, if Satyaveer Singh was

impleaded, as observed by learned CIT(Appeals), for the purpose of section 159, then the notices should have been specific to that effect. In this context the judgment which learned AR has relied of Hon'ble Delhi High Court in **Savita Kapila case (supra)** squarely applies and covers all the legal aspects. Hon'ble Delhi High Court in paragraphs 25 to 40 has observed as follows:

“25. In the present case the notice dated 31st March, 2019 under Section 148 of the Act, 1961 was issued to the deceased assessee after the date of his death [21st December, 2018] and thus inevitably the said notice could never have been served upon him. Consequently, the jurisdictional requirement under Section 148 of the Act, 1961 of service of notice was not fulfilled in the present instance.

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 Vs. Asstt. Commissioner of Income Tax, Circle 16(2), Mumbai & Ors., (2019) 2 TMI1209 - Bombay High Court].

27. In Chandreshbhai Jayantibhai Patel Vs. The Income Tax Officer, 2019 (1) TMI 353 - Gujarat High Court has also held, "the question that therefore arises for consideration is whether the notice under Section 148 of the Act issued against the deceased assessee can be said to be in conformity with or according to the intent and purposes of the Act. In this regard, it may be noted that a notice under Section 148 of the Act is a jurisdictional notice, and existence of a valid notice under Section 148 is a condition precedent for exercise of jurisdiction by the Assessing Officer to assess or reassess under Section 147 of the Act. The want of valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects the validity of the proceedings for assessment or reassessment.

A notice issued under Section 148 of the Act against a dead person is invalid, unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection. " 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.

ALSO, NO NOTICE UNDER SECTION 148 OF THE ACT, 1961 WAS EVER ISSUED UPON THE PETITIONER DURING THE PERIOD OF LIMITATION. CONSEQUENTLY, THE PROCEEDINGS AGAINST THE PETITIONER ARE BARRED BY LIMITATION AS PER SECTION 149(l)(b) OF THE ACT, 1961.

28. *Also, no notice under Section 148 of the Act, 1961 was ever issued to the petitioner during the period of limitation and simply proceedings were transferred to the PAN of the petitioner, who happens to be one of the four legal heirs of the deceased assessee vide letter dated 27th December, 2019. Therefore, the assumption of jurisdiction qua the Petitioner for the relevant assessment year is beyond the period prescribed and consequently, the proceedings against the petitioner are barred by limitation in accordance with Section 149(l)(b) of the Act, 1961.*

29. *In Smt. Sudha Prasad (supra) the petitioner had challenged the assessment order and demand notice only. Neither non-issuance of notice was challenged nor the issue of proceedings being barred by limitation was raised or decided. Consequently, the said judgment is inapplicable to the present case and is therefore, of no help to the revenue.*

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. *In Alamelu Veerappan Vs. The Income Tax Officer, Non Corporate Ward 2 (2), Chennai, 2018 (6) TMI 760 - Madras High Court, it has been held by the Madras High Court, "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." In Rajender Kumar Sehgal (supra), a Coordinate bench of this Court has held, "This court is of the opinion that the absence of any provision in the Act, to fasten revenue liability upon a deceased individual, in the absence of pending or previously instituted proceeding which is really what the present case is all about, renders fatal the effort of the revenue to impose the tax burden upon a legal representative."

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

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) 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."*

33. *The judgment in Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited (supra) offers no assistance to the respondents. In Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited (supra) the Supreme Court was dealing with Section 170 of the Act, 1961 (succession to business otherwise than on death) wherein notice under Section 143(2) of the Act, 1961 was issued to non-existing company. In that case, Department by very nature of transaction was aware about the amalgamation. However, the said judgment nowhere states that there is an obligation upon the legal representative to inform the Income Tax Department about the death of the assessee or to surrender the PAN of the deceased assessee. The relevant portion of the said judgment is reproduced hereinbelow:-*

"35. In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non-

existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B.

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39. *In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainment on 2 November 2017. The decision in Spice Entertainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainment.*

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 VIZ-A- VIZ NOTICE ISSUED TO A DEAD PERSON IN RAJENDER KUMAR SEHGAL (SUPRA), CHANDRESHBHAI JAY ANTI BHAI PATEL (SUPRA) AND ALAMELU x VEERAPPAN (SUPRA). \

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.*

36. *In Skylight Hospitality (supra) notice was issued to Skylight Hospitality Pvt. Ltd. instead of Skylight Hospitality LLP. In that factual context, this Court had observed, "Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated April 11, 2017. They had objected to the notice being issued in the name of the company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was relied and dealt with by them." The Supreme Court while dismissing the*

SLP had also observed "In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292B of the Income Tax Act."

37. *In any event, Section 292B of the Act, 1961 has been held to be inapplicable viz-a-viz notice issued to a dead person in Rajender Kumar Sehgal (supra), Chandreshbhai Jayantibhai Patel (supra) and Alamelu Veerappan (supra). In all the aforesaid cases, the judgment of Skylight Hospitality (supra) had been cited by the revenue.*

IN RAJENDER 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. In Commissioner of Income Tax-VIII, Chennai Vs. Shri M. Hemanathan, 2016 (4) TMI 258 - Madras High Court it has been held "In the case on hand, the assessee was dead. It was the assessee's son, who appeared and perhaps cooperated. Therefore, the primary condition for the invocation of Section 292BB is absent in the case on hand. Section 292BB is in place to take care of contingencies where an assessee is put on notice of the initiation of proceedings, but who takes advantage of defective notices or defective service of notice on him. It is trite to point out that the purpose of issue of notice is to make the noticee aware of the nature of the proceedings. Once the nature of the proceedings is made known and understood by the assessee, he should not be owed to take advantage of certain procedural defects. That was the purpose behind the enactment of Section 292BB. It cannot be invoked in cases where the very initiation of proceedings is against a dead person. Hence, the second contention cannot also be upheld."*

39. *Even a Coordinate Bench of this Court in Rajender Kumar Sehgal (supra) has held "If the original assessee had lived and later participated in the proceedings, then, by reason of Section 292BB, she would have been precluded from saying that no notice was factually served upon her. When the notice was issued in her name- when she was no longer of this world, it is inconceivable that she could have participated in the reassessment proceedings, (nor is that the revenue's case) to be estopped from contending*

that she did not receive it. The plain language of Section 292BB, in our opinion precludes its application, contrary to the revenue's argument."

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. The aforesaid observations of Hon'ble High Court leave no space to consider the findings of learned CIT(Appeals) to be sustainable. Ld. AO exercised jurisdiction in erroneous way. The ground raised in this regard stands allowed. **The appeals of the assessee are allowed.** The impugned orders of Ld. Tax authorities below are quashed.

Order pronounced in open court on 21.06.2023.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
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