

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 89/Ind/2021
(Assessment Year:2010-11)

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|----------------------------------------------------------------------------------|--------------------------|-----------------------|
| Late Smt. Sushila Bisarya L.H. Pramod Bisarya 125 Malviya Nagar, Bhopal | Vs. | Pr. CIT-1 Bhopal |
| (Appellant / Assessee) | | (Respondent/ Revenue) |
| PAN: AEWPB 2587 D | | |
| Assessee by | Shri Gagan Tiwari, AR | |
| Revenue by | Shri P.K. Mishra, CIT-DR | |
| Date of Hearing | 10.08.2023 | |
| Date of Pronouncement | 16.08.2023 | |

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the revision order dated 28.02.2020 of Pr. Commissioner of Income Tax-1 Bhopal, passed u/s 263 of the Act for Assessment Year 2010-11.

2. The assessee filed her return of income on 28.09.2010 declaring total income of Rs.18,12,980/- and agricultural income of Rs.4,25,000/-. Thereafter the assessment was reopened vide notice u/s 148 dated 30.03.2017 and reassessment was framed on 31st July 2017 accepting income declared in the original return of income. Thereafter the Pr. CIT on perusal of the assessment record noticed that the assessee has constructed a multi-story building in the areas of 1781 sq. ft. out of 5,400 sq. ft. of a

plot. The assessee calculated long term capital gain on sale of first and second floor of the five-storey building after deducting index cost of each floor of Rs.29,86,200/- whereas the index cost of the constructed area of 1781 sq. ft come to Rs.39,39,572/- and therefore, index cost of each floor of building comes to Rs.7,87,914/-. The Pr. CIT was of the view that long term capital gain calculated by the assessee was not in order and accordingly issued a show cause notice u/s 263 on 1st January 2020. In response to the show cause notice Ld. Counsel for the assessee filed the reply and pointed out that the assessee has already expired on 30th December 2010 and even the assessment order passed by the AO in the name of the dead person is not valid. The Pr. CIT then issued a fresh show cause notice u/s 263 on 19.02.2020 in the name of legal heir of the deceased assessee. The assessee raised objection of invoking provisions of section 263 when the assessment order itself is not valid and sustainable in law. The Pr. CIT did not accept these objections of the assessee and passed the impugned revision order whereby the assessment order passed u/s 147 r.w.s. 143(3) dated 31st July 2017 was held to be erroneous and prejudicial to the interest of the revenue and consequently set aside u/s 263 with the direction to the AO to make afresh assessment order after giving reasonable opportunity of being heard to the assessee. Aggrieved by the impugned order of Pr. CIT the assessee has filed present appeal and raised following grounds of appeal:

“1. That the order u/s 263 passed by The Pr. Commissioner of Income Tax (I)-Bhopal is unlawful.

2. On the fact and in the circumstances of the case, the Ld. Principal Commissioner of Income Tax (I)-Bhopal has erred in holding the assessment order passed by the Learned A.O. on 31.07.2017 as erroneous and prejudicial to the interest of revenue. The assessment order is neither erroneous nor prejudicial to the interest of revenue as the A.O. has raised specific query regarding this and was allowed by the A.O. after application of mind. Thus the order u/s 263 passed by The Pr. Commissioner of Income Tax (I)- Bhopal is against the provisions of law.”

3. Ld. AR of the assessee has submitted that the impugned order passed u/s 263 is invalid and unlawful as the same has been passed against the dead person. He has referred to the impugned order and submitted that despite the fact was brought to the knowledge of the Pr. CIT that the assessee expired on 30.12.2010 and the reassessment order was also passed by the AO against the dead person is invalid the impugned order is passed against dead person. The Pr. CIT has discussed this objection raised by the assessee and was of the view that when the assessee did not challenge the assessment order then this objection is an afterthought.

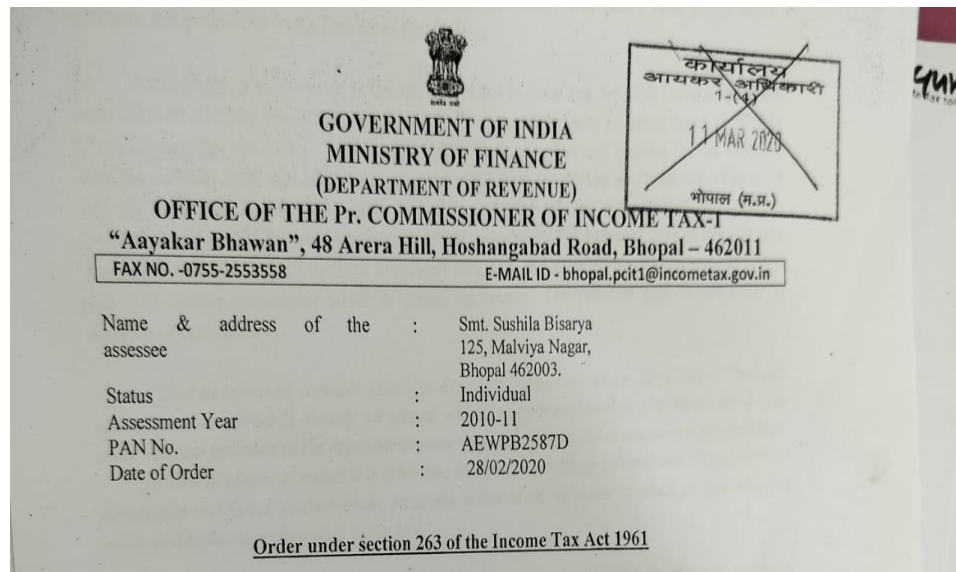
4. Ld. AR has submitted that the impugned order passed in the name of dead person is not sustainable in law. Further the assessment order itself is not valid as passed against the dead person then the provision of section 263 cannot be invoked against the invalid assessment order. He has relied upon the following judgments:

1. *ITO vs. Durlabhbai Kanubhai Rajpara* 270 taxman 9 (SC)
2. *Sheel Devi vs. Pr. CIT, in ITANo.1853/Del/2021 (ITAT Delhi)*
3. *Hiraben Babubhai Patel vs. Pr. CIT in ITANo.700/Ahd/2019 (ITAT, Ahmedabad)*
4. *Jignesh Lilachand Shah vs. Pr. CIT in ITANo.149/Ahd/2021 (ITAT, Ahmedabad)*

5. On the other hand, Ld. DR has submitted that the Pr. CIT dealt with this objection of the assessee in para 4 of the impugned order and he has remanded the matter to the AO for fresh assessment with the direction to consider the relevant evidence as well as giving reasonable opportunity of hearing to the assessee. He has relied upon the impugned order of the Pr. CIT.

6. We have considered the rival submissions as well as relevant material on record. At the outset we note that the impugned order has

been passed by the Pr. CIT against the dead person as it is apparent from array of parties on the first page of the impugned order as under:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
OFFICE OF THE Pr. COMMISSIONER OF INCOME TAX-1
"Aayakar Bhawan", 48 Arera Hill, Hoshangabad Road, Bhopal - 462011
FAX NO. -0755-2553558 E-MAIL ID - bhopal.pcit1@incometax.gov.in

क्याबलिय
आयकर अडिकाश
1-14
11 MAR 2020
भोपाल (म.प्र.)

Name & address of the assessee : Smt. Sushila Bisarya
125, Malviya Nagar,
Bhopal 462003.
Status : Individual
Assessment Year : 2010-11
PAN No. : AEWPB2587D
Date of Order : 28/02/2020

Order under section 263 of the Income Tax Act 1961

7. It is also not in dispute that the assessee raised this objection against the show cause notice issued by the Pr. CIT dated 1st January 2020 and accepting this fact that the assessee has already expired on 30th December 2010 another show cause notice was issued on 19.02.2020 in the name of legal heir of the assessee. The objection raised by the ld. Representative of the assessee against validity of reassessment order passed u/s 147 r.w.s. 143(3) was rejected by the Pr. CIT in para 4 as under:

"4.The contention of the assessee is an afterthought as the assessee did not challenge the assessment order before any appellate forum. Accordingly I proceed with my findings. After careful examination of the facts placed on record and submission of the assessee, it is noticed that the Assessing Officer during the assessment did not examine all the material facts of the case particularly with regard to claim regarding Long Term Capital Gain calculated by the assessee. Also no query was raised by the AO with regard to documentary evidence regarding cost of construction incurred by the assessee nor the same was furnished by the assessee during assessment."

8. It is pertinent to note that when the AO while passing the reassessment order u/s 147 r.w.s. 143(3) on 31st July 2017 has not made

any addition to the return of income of the assessee and therefore, there was no occasion for the assessee to challenge the assessment order before the appellate authority. Since the assessment order was not prejudicial to the interest of the assessee as no tax demand was raised therefore, the assessee was not supposed challenge the assessment order having no addition to the return of income of the assessee. The first occasion for challenging validity of the assessment order for the assessee was in the reply to the show cause notice issued by the Pr. CIT u/s 263 and it was very well raised by the assessee in reply dated 27.01.2020, 17.02.2020 & 18.02.2020. Therefore, rejecting the objection of the assessee simply on the ground of afterthought is not proper and justified on the part of the Pr. CIT. The issue ought to have been decided by passing speaking order on this issue. Even otherwise despite having knowledge and material on record including dead certificate of the deceased assessee the Pr. CIT has passed the impugned order in the name of dead person which is an invalid order not sustainable in law. Further when reassessment orders itself is not valid as passed against dead person the provision of section 263 cannot be invoked against invalid order of AO. It is pertinent to note that the assessee expired on 30th December 2020 whereas the AO issued notice u/s 148 on 30.03.2017 against a dead person and subsequently passed reassessment order in the name of dead person. The Hon'ble Supreme Court in case of *ITO vs. Durlabhbai Kanubhai Rajpara* (supra) has dismissed the SLP filed by the revenue against the judgment of Hon'ble Gujarat High Court reported in 114 taxmann.com 482 wherein the Hon'ble High Court has considered this issue in para 7 to 11 as under:

“7. In the present case, the assessee-petitioner has at first point of time objected to the issuance of notice under section 148 of the Act and has not participated or filed any return pursuant to notice. Therefore, legal representatives not having waived requirement of notice under section 148 of the Act and not having submitted to the jurisdiction of the Assessing Officer pursuant to impugned notice,

provisions of section 292A of the Act also would not be attracted and hence notice under section 148 of the Act has to be treated as invalid.

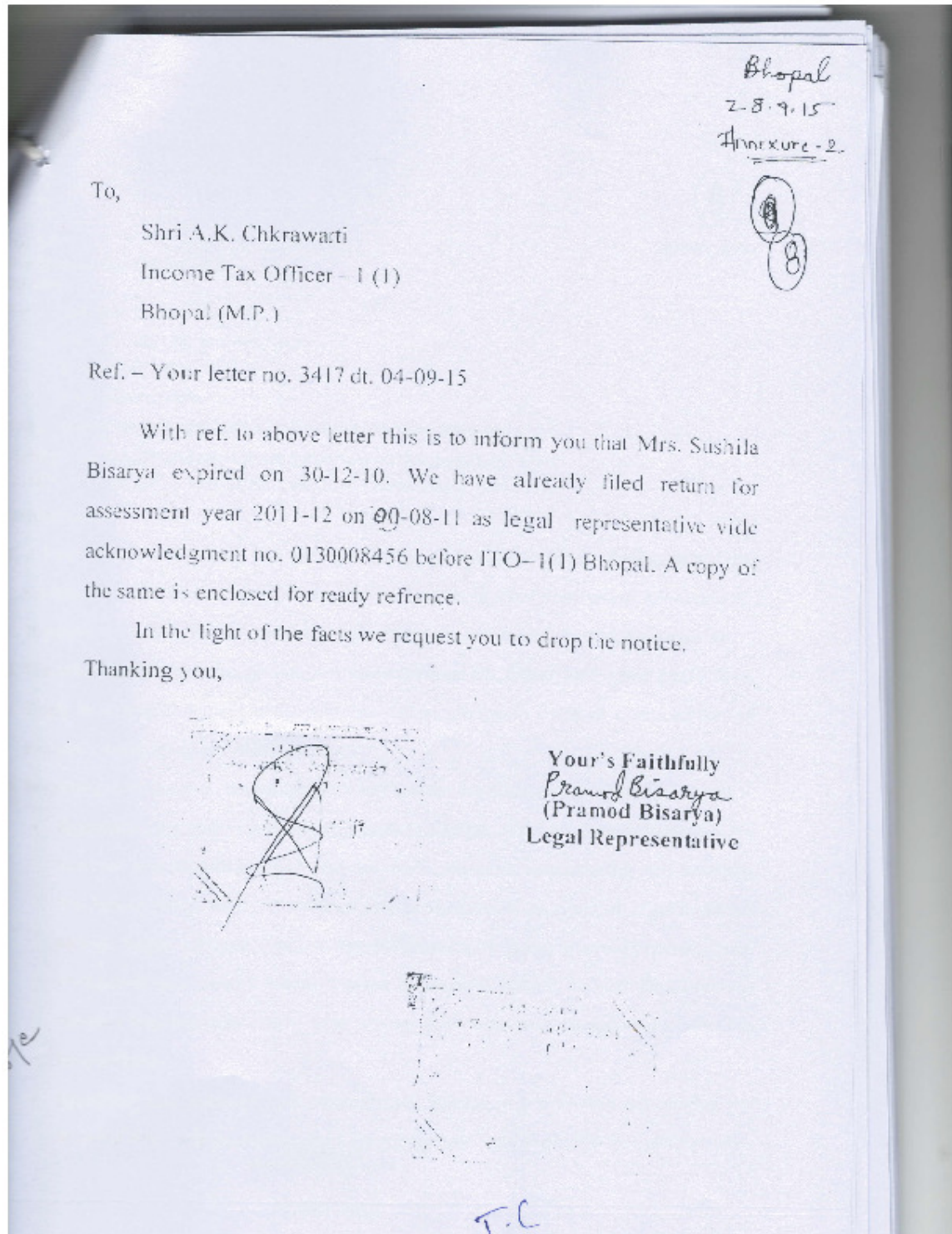
8. The facts in the present case are identical to the case of Chandreshbhai Jayantibhai Patel (supra), as in the facts of the present case also father of the petitioner expired on 12.6.2016 and impugned notice was issued on 28.3.2018. In facts of the present case, even prior to issuance of notice, department was aware about the death of the petitioner's father since on 13.3.2018 in response to the summons issued under section 131(1A) of the Act, the petitioner had intimated to the department about the death of his father. Therefore, it cannot be said that the respondent was not aware about the death of the father of the petitioner and he could have belatedly issued notice under section 159 of the Act upon the legal representatives of late Shri Kanubhai Nagjibhai Rajpara.

9. The contention advanced by the learned senior standing counsel for the respondent that since Permanent Account Number of late Shri Kanubhai Nagjibhai Rajpara was active, it can be presumed that tax payer was alive, cannot be sustained in view of the fact that only because Permanent Account Number is active, petitioner or any assessee is not liable to file the return of income and on that basis it cannot be presumed that the assessee is alive, more particularly, when the department is made to know about the death of the assessee prior to issuance of the impugned notice.

10. In view of the aforesaid settled legal proposition that no valid notice can be issued against a dead person, the impugned notice is required to be quashed and set aside.

11. For the foregoing reasons, petition succeeds and is accordingly allowed. Resultantly, impugned notice dated 28.3.2018 issued by the respondent under section 148 of the Act as well as further proceedings thereto are quashed and set aside.”

9. In case in hand the assessee filed the reply to the notice issued by the AO through its legal heir dated 28.09.2016 and 30.09.2016 at page no.8 to 10 of the paper book as under:



O/C
Annexure
(9)

30/09/2016

To,
The Income Tax Officer -1(1),
Bhopal.

Re: Late Smt. Sushila Bisarya,
Plot No. 180/125, Malviya Nagar,
Bhopal - 462003
PAN: AEWPB2587D

SUB : - QUERY ON TRANSACTIONS FOR FINANCIAL YEAR 2009-10.

(F. NO.:- ITO-1(1)/BPL/F.Y.09-10/PAN AIR/2016-17/12/dated.16.09.2016)
(F. NO.:- ITO-1(1)/BPL/F.Y.09-10/PAN AIR/2016-17/74/dated.16.09.2016)

Respected Sir,

1. It is submitted that assessee was assessed to Income Tax vide PAN no. **AEWPB2587D**. The assessee has died on 30.12.2010. Copy of death certificate is enclosed as per **Annexure 1**.
2. The return of income for the assessment year 2010-11 has been duly filed by the assessee.
3. The return is submitted through vide Acknowledgement No. 0130012482 dated 28.09.2010. Copy of Acknowledgment of Income Tax Return alongwith copy of computation of income is enclosed as per **Annexure 2**.
4. Regarding your query on transactions as mentioned in the notice it is submitted as under :-
 - Regarding your query on transaction of Rs.51,50,000/-, it is submitted that during the financial year 2009-10 assessee had not made any cash deposited for Rs.51,50,000/-. The transaction of Rs.51,50,000/- is of sale of immovable property at 125 Sai Sadan Malviya Nagar, Bhopal, which is duly disclosed by her in her return of income. Copy of registered sale deed is enclosed as per **Annexure 3**. Further, it is submitted that the assessee had duly paid capital gain tax and there is no non-compliance of income tax provisions.
 - Regarding your query on transaction of Rs.81,50,000/-, it is submitted that during the financial year 2009-10 assessee had not made any cash deposited for Rs.81,50,000/-.

क्याम्प्लायड
आयकर अधिकारी
1-13

- 3 OCT 2016

भोपाल (म.प्र.)

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The transaction of Rs.81,50,000/- is of sale of immovable property at 125 Sai Sadan Malviya Nagar, Bhopal, which is duly disclosed by her in her return of income. Copy of registered sale deed is enclosed as per Annexure 4. Further, it is submitted that the assessee had duly paid capital gain tax and there is no non-compliance of income tax provisions.

- It is submitted that the aforesaid payments are clearly made through bank accounts and there is no undisclosed transaction and duly disclosed in the Income Tax return.

5. Further we are also enclosing copy of Death certificate of Late Shri Sushila Bisariya enclosed as per Annexure 4.1.

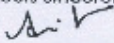
Submitted for favor and kind consideration, it is further requested in case Your Goodself wants further clarification then please inform and it is requested that please do not initiate Re- Assessment proceedings without providing us the details and fill further verification of our submission after that.

We also place reliance on following judicial pronouncements:-

- Bhar Industries Ltd. V/s. ACIT- [(2004) 267 ITR 161 (Bom)]
- Hindustan Lever Ltd. V/s. R.B. Wadkar, ACIT [(2004) 268 ITR 332 (Bom)]
- Bhogwati Sahakari Sakhar Karkhana Ltd. V/s. Dy. CIT, [(2004) 269 ITR 186 (Bom)]
- Ajanta Pharma Ltd. V/s. ACIT, [(2004) 267 ITR 200 (Bom)]
- Grindwell Norton V/s. Jagdish Prasad Jabgid, ACIT [(2004) 267 ITR 673 (Bom)]

Submitted,

Thanking You,
Yours Sincerely,


(CA AMIT JAIN)
Counsel For Assessee
9303131056

10. From these replies it is evident that the assessee has specifically informed the AO that assessee expired on 30.12.2010 and also given the details of the return of income filed for A.Y.2011-12 through legal

representative. Despite this fact was brought to the knowledge of the AO and brought on the record of the assessment the AO passed the assessment order in the name of dead person. The Delhi benches of the tribunal in case of Sheela Devi vs. Pr. CIT (supra) has considered this issue in para 8 & 9 as under:

“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.

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.

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 TM11209- Bombay High Court),*

27. ****** 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.*

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). CHANDRESHBHAI JAYANTIBHAIPATEL 12019 (1) TM1353 GUJARAT HIGH COURT AND ALAMELU VEERAPPAN 2018 (6) TMI 760-MADRAS HIGH COURT.

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 29288 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.

40. Consequently, the applicability of Section 2928B of the Act. 1961 has been held to be attracted to an assessee and not to legal representatives."

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

11. A similar view has been taken by the Ahmedabad Benches of Tribunal in case of Hiraben Babubhai Patel vs. Pr. CIT (supra) while considering the validity of the order passed u/s 263 in para 6 to 6.10 as under:

“6. We have heard the rival contentions and perused the material on record. Before going into the merits of the order passed under [section 263](#) of the Act, we shall first deal with the assessee's challenge to jurisdiction of the order passed under [section 263](#) of the Act. It is a well-settled principle of law that no order can be passed in the name of a deceased person, and various Courts, including the Hon'ble Supreme Court and jurisdictional Gujarat High Hiraben Babubhai Patel L/H Babubhai Shankarbhai Patel. vs. Pr. CIT Court, have consistently taken a view that such order passed in the name of the deceased person, is not valid in the eyes of law.

6.1 In the case of ITO v. Bhupendra Bhikhalal Desai[2021] 131 taxmann.com 40 (SC), the original assessee, namely 'B', passed away on 23-4-2017. The Assessing Officer issued a notice under [section 153C](#) in name of 'B' on 29-3-2019. After receiving said notice legal heir informed Assessing Officer that his father, B had passed away and requested to drop proceedings as notice was issued to a dead person. The Assessing Officer rejected objections raised by legal heir on ground that no information was provided about demise of B and even after his death income tax returns were filed in name of B for relevant assessment years. The High Court by impugned order held that impugned notice under [section 153C](#) issued against dead person, is unenforceable in law and revenue could not contend that as they had no knowledge about death of assessee, they were entitled to plead that notice was not defective and, therefore, impugned notice as well as order were to be quashed and set aside. The Hon'ble Supreme Court held that Special Leave petition filed against impugned order by the Revenue, was to be dismissed.

6.2 In the case of ITO v. Durlabhbai Kanubhai Rajpara[2020] 114 taxmann.com 482 (SC), pursuant to summons issued in name of assessee's father under [section 131\(1A\)](#), assessee brought to notice of Revenue Authorities that his father had already died. Despite

knowing said fact, Assessing Officer issued notice in name of assessee's father under [section 148](#) seeking to reopen assessment. The assessee thus filed petition before Hiraben Babubhai Patel L/H Babubhai Shankarbhai Patel. vs. Pr. CIT High Court contending that impugned notice was without any jurisdiction, which was issued against a dead person. The High Court held that no valid notice could be issued against a dead person and, thus impugned notice was required to be quashed and set aside. In light of the above facts, the Hon'ble Supreme Court held that SLP filed by the Revenue against order of High Court was to be dismissed.

6.3 In the case of [Chandreshbhai Jayantibhai Patel v. ITO](#) 101 taxmann.com 362 (Gujarat), the Gujarat High Court held that where original assessee died and thereafter Assessing Officer issued notice under [section 148](#) in his name to reopen assessment and petitioner being heir and legal representative of deceased raised an objection that assessee had already expired and, therefore, notice in his name was not valid, merely because petitioner had informed Assessing Officer about death of assessee and asked him to drop proceedings, it could not be construed that petitioner had participated in proceedings and, therefore, provisions of [section 292B](#) would not be attracted and notice under [section 148](#) was to be treated as invalid. 6.4 In the case of [Urmilaben Anirudhhasinhji Jadejav. ITO](#)117 taxmann.com 504 (Gujarat), the Gujarat High Court held that reopening notice under [section 148](#) issued against a dead person would be a nullity and; proceedings pursuant to a reopening notice issued to a dead person could not be continued against legal representatives.

6.5 In the case of [Smt. Madhuben Kantilal Patel v. UOI](#) [2023] 148 taxmann.com 202 (Gujarat), the Hon'ble Gujarat High Court held that here petitioner-legal heir of assessee-deceased had supplied death certificate of Hiraben Babubhai Patel L/H Babubhai Shankarbhai Patel. vs. Pr. CIT assessee to concerned officer within a short period after her demise, impugned reopening notice issued subsequently under [section 148](#) in name of deceased was illegal and thus liable to be set aside.

6.6 In the case of [Inox Wind Energy Ltd.](#)[2023] 148 taxmann.com 289 (Gujarat), the Hon'ble Gujarat High Court held that where amalgamated company brought facts of amalgamation to notice of Assessing Officer, show cause notice cum draft assessment order issued in name of non- existing company would be void and same could not be said to be a procedural irregularity which could be cured under [section 292B](#).

6.7 In the case of [Krishnaawtar Kabra v. ITO](#) [2022] 140 taxmann.com 423 (Gujarat), the Hon'ble Gujarat High Court held that reopening notice under [section 148](#) issued upon deceased assessee was void ab initio and therefore, consequential proceedings and

orders passed thereon were without any jurisdiction and were to be quashed and set aside.

6.8 In the case of [Kanubhai Dhirubhai Patel v. ITO](#) [2022] 139 taxmann.com 580 (Gujarat), the Hon'ble Gujarat High Court held that where Assessing Officer issued notice under [section 148](#) to assessee to file return on 31-3-2021 and writ applicant, legal representative of assessee, had informed about death of assessee on 22-11-2020, since writ applicant had not surrendered to jurisdiction of Assessing Officer by submitting return in response to impugned notice and Assessing Officer had not issued notice to him as legal representative representing estate of deceased assessee, Hiraben Babubhai Patel L/H Babubhai Shankarbhai Patel. vs. Pr. CIT impugned notice issued by Assessing Officer was invalid and should be quashed.

6.9 In the case of [Bharti Harendra Modi v. ITO](#) 109 taxmann.com 389 (Gujarat), the original assessee, namely, BHM died on 26-5-2017. The Assessing Officer issued a reopening notice under [section 148](#) in name of BHM on ground that on basis of information in Annual Information Return (AIR), it was found that said deceased assessee had sold one immovable property amounting to Rs. 82.89 lakhs but did not file any income tax return, thus, income to said extent had escaped assessment due to failure of BHM to submit her return of income. The Petitioner being heir and legal representative of BHM contended that BHM had already expired and, therefore, impugned notice in name of BHM was not valid. The Hon'ble High Gujarat Court held that a notice issued under [section 148](#) in name of a dead person would not be a valid notice and therefore, the impugned notice issued under [section 148](#) against BHM was to be quashed and set aside.

6.10 Now coming to the facts of the instant case, we observe that at the time when the notice under [section 263](#) of the Act dated 15-02-2019 was issued by the Principal CIT, the assessee had already expired (on 23-02-2018). Further, during the course of 263 proceedings, this fact was brought to the notice of the Principal CIT, and a specific request was made to drop the 263 proceedings, since the assessee had expired. However, the Principal CIT did not deal with this aspect in the order passed u/s 263 of the Act, by him. It is a well settled proposition that a notice issued /order passed in name of a dead person is not a valid notice/order. Accordingly, keeping in view Hiraben Babubhai Patel L/H Babubhai Shankarbhai Patel. vs. Pr. CIT the facts of the instant case and the decisions rendered by Hon'ble Supreme Court and Hon'ble High Court Gujarat High Court on this issue, we are of the considered view that the order passed under [section 263](#) of the Act is not valid in the eyes of law, having been passed on a deceased person. In the result, it is directed that the order passed under [section 263](#) be set aside.”

12. The Ahmedabad Benches of the Tribunal in case of Jignesh Lilachand Shah vs. Pr. CIT (supra) has also considered the validity of the order passed u/s 263 in para 5 & 6 as under:

“5. Before going into the merits of the order passed under section 263 of the Act, it would be appropriate to first adjudicate on the issue of jurisdiction raised by the Ld. Counsel for the assessee before us. The primary thrust of the argument of the counsel for the assessee is that the initial notice of assessment was issued by the ITO Ward-4 Palanpur and without completing the procedure as laid out under section 127 of the Act for transfer of jurisdiction without any prior intimation to the assessee, the case file of the Shri Jignesh Lilachand Shah vs. Pr. CIT assessee was transferred to ITO Ward 3(3)(2) Ahmedabad and therefore the assessment order itself was bad in law. In view of the arguments of the counsel for the assessee, two issues for consideration have come before us for adjudication: firstly, whether the assessment order passed in the instant set of facts by ITO Ward 3(3)(2) Ahmedabad is valid in the eyes of law and secondly, if the assessment order itself is not valid in the eyes of law, can the same be subject to revision under section 263 of the Act. It is a well-settled principle of law that before the jurisdiction of assessment is transferred by the assessing Officer to another jurisdiction, the necessary procedures that need to be carried out under section 127 of the Act have to be complied with. Before us, the Ld. DR has not been able to bring forth any material on record to substantiate that the procedure as envisaged under section 127 of the Act for transfer of files was fulfilled in the instant set of facts. It is a well-settled principle of law that power of transfer is a quasi-judicial function and was to be exercised in a fair and reasonable manner and not in an arbitrary or mechanical way. Therefore, notice has to be given to the assessee under section 127 of the Act whenever it is proposed transfer case from one Officer to another. It has also been held by various Courts that it is also necessary to mention in the notice the reasons for the proposed transfer so that the assessee can make an effective representation with reference to those reasons. Further, the opportunity of being heard must be given to the assessee not only when the case is to be transferred despite the objection of the assessee, but also when it is not to be transferred despite his request. Needless to say, the objections raised by the assessee must be appropriately dealt with by the Commissioner and an order that does not consider the objections is liable to be quashed. In the case of Benz Corporation v. ITO Shri Jignesh Lilachand Shah vs. Pr. CIT 232 ITR 807 (Kerala), the High Court held that power of transfer of assessment files from one authority to another vested in Commissioner under section 127(1) is quasi - judicial power and such power should be exercised in fair and reasonable manner and not in a mechanical or arbitrary way. In the case of Vijayasanthi

Investments (P.) Ltd. v CIT 56 Taxman 190 (Andhra Pradesh), the High Court held that where neither show-cause notice nor intimation sent to assessee gives any reasons for proposed transfer, such transfer order passed under section 127 can be said to be vitiated and liable to be set aside. In the case of Melco India (P.) [Ltd. v. CIT](#) 260 ITR 450 (Delhi), the High Court held that since no notice u/s 127 of the Act was issued to petitioners giving them an opportunity of being heard, impugned order passed by Commissioner was invalid and liable to be set aside. Accordingly, in light of the above observations by various high Courts, we are of the considered view that since the necessary procedure for transfer of case was not followed in the instant set of facts, the assessment order in the instant set of facts is null and void.

5.1 We further observe that in the case of PCIT v. Nopany & Sons [136 taxmann.com 414 \(Calcutta\)](#) where case of assessee was transferred from ITO, Ward-3 to ITO, Ward-4 and impugned order under section 143(3) was passed by ITO, Ward-4 without issuing notice under section 143(2) and only in pursuance with notice issued by ITO, Ward-3, who had no jurisdiction over assessee at relevant time, said impugned order would be null and void. In the instant case, we observe that no fresh notice of assessment was issued by ITO Ward 3(3)(2) and for this reason also, the assessment order passed [Shri Jignesh Lilachand Shah vs. Pr. CIT](#) by ITO Ward 3(3)(2) is null and void since there is a legal requirement to issue a separate notice of assessment to the assessee.

6. The next issue for consideration before us is that once it is held that the assessment order itself is null and void, can such assessment order be the subject matter of revision under section 263 of the Act. In our view, it is a well-settled principle of law that once the assessment order passed itself is null and void, the same cannot be the subject matter revision under section 263 of the Act. In the case of Pioneer Distilleries Limited Vs Pr. CIT ITA No. 479/PUN/2017(ITAT Pune) the ITAT held that revisionary jurisdiction cannot be exercised against Void order. In this case, the ITAT held that when the said order is void and did not stand in eyes of law, it cannot be held to be erroneous and prejudicial to the interest of revenue by the Commissioner. Again in the case of Westlife Development Ltd. v. PCIT vide order dated 24.06.2016 (ITAT Mumbai), the ITAT held that when an Assessment order passed under section 147 of the Act was illegal the CIT cannot invoke the jurisdiction under section 263 of the Act against such void or non-est order. In the case of [Inder Kumar Bachani \(HUF\) v. ITO](#) (2006) 101 TTJ 450 (ITAT Lucknow), the ITAT held that as the order of the Assessing Officer passed under section 147 / 143(3) was itself void, the order of PCIT passed under section 263 for quashing this order was without jurisdiction. In view of the above observations, we are of the considered view that since the assessment order passed by ITO Ward 3(3)(2), Ahmedabad itself was null and void, the same could not be

the subject matter of revision under section 263 of the Act. In the result, we are Shri Jignesh Lilachand Shah vs. Pr. CIT allowing the appeal of the assessee on the ground of jurisdiction itself. We are accordingly not separately adjudicating into the merits of the case.

13. Accordingly in the facts and circumstances of the case where the assessment order was passed in the name of dead person despite the AO was having knowledge of death of the assessee as well as the impugned order was again passed against the dead person and in view of the legal precedence as referred above the impugned order passed by the Pr. CIT is not valid and liable to be quashed. We order accordingly.

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

Order pronounced in the open court on 16.08.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 16 .08.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

sd/-

(VIJAY PAL RAO)
Judicial Member

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*