

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No.502/JPR/2023  
निर्धारण वर्ष / Assessment Years : 2012-13

Late Sh. Birdi Chand Through Legal Heir Mukesh Sharma 07, Mathurawala, Beelwa Sanganer, Jaipur.	बनाम Vs.	ITO, Ward-7(2), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AYHPC4265G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri P.C. Parwal (C.A.)  
राजस्व की ओरसे / Revenue by: Shri Anup Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 17/01/2024  
उदघोषणा की तारीख / Date of Pronouncement: 09/04/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee aggrieved from the order of the Id. CIT(A), National faceless Appeal Centre, Delhi dated 19.06.2023 [herein after referred to as "NFAC/CIT(A)"] for the assessment year 2012-13, which in turn arise from the order dated 22.11.2018 passed under section 143(3)/147 of the Income Tax Act (here in after "Act") by the AO.

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

*“1. The Ld. CIT(A), NFAC has erred on facts and in law in upholding the validity of assessment order passed u/s 143(3)/147 of the IT Act, 1961 by the AO in the name of deceased assessee even when the fact of his death was initiated to him and the order passed by Ld. CIT(A), NFAC in the name of deceased assessee is also illegal & bad in law.*

*2. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the computation of long term capital gain on sale of agricultural land at Rs. 2,69,38,751/- by not allowing the deductions claimed u/s 54F of the Act.*

*3. The appellant craves to alter, amend and modify any ground of appeal.*

*4. Necessary cost be awarded to the assessee.”*

3. Brief facts of the case are that the assessee retired from Rajasthan State Electricity Board from the post of lineman in the year 1996. No return of income was filed u/s 139(1) of the Act as his income was below the taxable limit. The assessee expired on 09.01.2018. The ld. AO on the basis of information received from O/o ITO(CRU) O/o Pr. CIT(Inv.), Jaipur that assessee along with 3 other person have sold a land situated at Village- Beelwa Kalan, Tehsil- Sanganer, Jaipur for Rs.11,03,09,000/- on 01.12.2011 issued notice u/s 148 of the Act on 15.05.2017. This notice was issued when the assessee was alive.

3.1 However, after his death, in response to this notice the legal heir of the assessee Sh. Mukesh Sharma filed return of income on 15.08.2018 declaring total income of Rs.1,640/-. The fact of the death of assessee was also intimated to the ld.

AO vide letter dated 17.06.2018 and letter dated 15.08.2018. Thereafter ld. AO again issued notice u/s 142(1) dated 30.10.2018 in the name of assessee instead of in the name of legal heir. In response thereto the A/R of assessee vide letter dated 03.11.2018 again brought to the notice of ld. AO that assessee has expired on 09.01.2018.

3.2 The AO in spite of the fact that assessee has expired on 09.01.2018 and this fact having been communicated to him time & again, passed the assessment order in the name of the assessee. This is challenged by the legal heir of assessee in the appeal filed before Id. CIT(A). Before Ld. CIT(A), Sh. Mukesh Sharma, legal heir of assessee, again filed letter dated 21.10.2022 & 15.03.2023 informing about the fact of expiry of assessee. The Ld. CIT(A), however, observed that when the assessee expired on 09.01.2018, how in the verification of return it is stated as "I, Birdi Chand..." instead of "I, Mukesh Sharma, L/II of Late Sh. Birdi Chand". He further relied on the decision of Delhi High Court in case of Sky Light Hospitality LLP Vs. ACTI 90 Taxman.com 413 (Case laws compilation PB 25-33) where it was held that notice issued to a dead juristic person is valid in the eyes of law as section 292B of the Act is applicable by stating that ld. AO was correct in issuing the notice in the name of assessee as he was alive at that time and technically assessment was completed in the name of assessee only, hence the case laws relied

upon by the assessee are not applicable. Accordingly, he passed the order in the name of assessee instead of in the name of the legal heir of assessee.

4. Feeling dissatisfied from the finding of the ld.AO the assessee preferred the appeal before the ld. CIT(A). The ld. CIT(A) dismissed the appeal of the assessee by observing:-

“10. I have considered the facts of the case, written submission of the appellant, various case laws relied upon by the appellant, virtual hearing and the order of AO. Regarding Ground No. 1 and 2 that order was passed in this case of the deceased inspite of intimating the fact of death of the AO and that issue of noticed u/s 148 is illegal. The appellant reportedly expired on 09.01.2018. The AR submitted reply on date of hearing on 02.11.2018 stating that they filled ITR u/s 148 on 15.08.2018 i.e. much after, notice u/s 148 was issued on 15.05.2017. The AR states in this letter that "As per information provided by assessee in income tax return all correct as per matter discuss with you". When ITR was filed on 15.08.2018 and appellant expired earlier on 09.01.2018, then how can AR say as per information provided by assessee, when the said return could not have been filed by assessee himself in August, as ITR mentions, I, Birdi Chand ..". It could have been filed by LH only and hence, non-est as the ITR should bear 'I, Mukesh Sharma, LH of Late Shri Birdi Chand. In the case of Sky Light Hospitality LLP vs. ACIT, 90 taxmann.com 413 (Delhi) (2018), it was held that notice issued to a dead jurist person is valid in the eyes of law as section 2928 of the Act is applicable. Further, the AO was correct in issuing notice in the name of appellant as he was alive at that time and technically, assessment was completed in the name of appellant only. Hence, the case laws relied upon by the appellant are not applicable in the above situation. Accordingly, in the above facts and circumstances of the appeal, ground Nos. 1 and 2 are dismissed.

11 In this case, information was received from Investigation Wing of Jaipur that appellant along with other person sold land for total consideration of Rs. 11,03,09,005/-, of which

appellant's share was Rs.2,75,77,251/- and the appellant did not file his ITR & disclosed the transactions and pay taxes. The land was within 8 kms of local limits of Jaipur Municipal Corporation. The appellant during the proceedings u/s 143(3)/147 filed submissions stating that no such sale took place in A Y 2012-13 but in 2014-15. However, the AO after discussion and giving detailed show cause, arrived at the finding that transaction took place on 2011-12 only as per copy of registered sale deed executed on 01.12.2011 provided by the appellant to the Department. The AR in reply used the wording that "all transaction not take place in A.Y. 2012-13"

12. Regarding the land sold, the AO after allowing cost of acquisition as claimed by the appellant, disallowed the cost of construction of Rs.89,88,610/- as appellant could not furnish the supporting documentary evidences. Further, the AO observed that in the ITR no claim u/s 54F was made for sale proceeds from agricultural land but only filed such details in computation only, hence, such claim cannot be allowed. In this regard, reliance is placed on rationale held in the cases of :-

1. CIT vs. Perlo Telecommunication and Electronic Components India Pvt. Ltd. 141 taxmann.com 388 (SC) (2022) when revised computation, not revised return can not claim any such additional deductions or exemption.
- 2 Ultratech Cement vs. Addl.CIT 81 taxmann.com 74 (Bombay) (2017)
- 3 CIT vs. G.S. Rice Mills 136 ITR 761 (1982) (Allahabad High Court)
4. Intex Link Petroleum Ltd. vs. DCIT 83 TTJ 274 (Allah ITAT) (2004).

13. Further, the investment in the house property was made in F.Y. 2013-14 which was beyond time limit of three years as per section 54F in F.Y. 2013-14. No evidence could be furnished before the AO regarding time of construction of residential house property.

14. Regarding investment in shop at Rs.22,81,000/-, out of sale proceeds of agricultural land, the claim of exemption for commercial property investments like shop does not come under the purview of section 54. There has to be investment in agricultural land within two

years after the date of such transfer provided the agricultural land purchased is not further transferred within a period of two years. No justification or legal basis for this claim is furnished by the appellant. Hence, investment in shop was rightly disallowed.

15. Further, the appellant claimed investment in residential land of Rs.54 Lakh. This was disallowed by the AO in the absence of any supporting documentary evidence justifying the said claim. The appellant has made claim u/s 54F in the computation and not in the return of income regarding investment in residential land by way of lost of construction from sale proceeds of agricultural land. The facts being similar to issue of disallowance made on account of construction in residential ancestral property discussed in earlier paras, this claim of investment of Rs.54 Lakh is also disallowed.

16. Similarly, the appellant claimed investment in JDA, Plot at Rs. 16,22,143/- and JOA land at Rs.2,39,396/- which was disallowed as this investment/ construction was also beyond the time limit as per section 54F i.e. made in F.Y. 2013-14, i.e. beyond three years after the date of transfer/ sale of agricultural land.

17. Regarding claim of deduction u/s 54 of Rs.76,57,580/- by investing a total of Rs. 1,01,01,010/-, the same was rightly not allowed as section 54 is applicable for residential property whereas in this case, the sold property was agricultural land. Besides, the investment in the residential property was made on 01.09.2015, which is beyond a period of three years as per section 54/54F, hence, the investment made u/s 54 of Rs. 1,01,01,010/- was rightly disallowed.

18. To summarize, the appellant's share of land sold at Rs.2,75,77,251/- on which capital gain was not disclosed as per Act despite it being a capital asset u/s 2(14) of the Act as the property was situated within the municipal limits. The appellant has mainly relied on technical ground that assessment is against a dead person, and not submitted any legal justification with supporting documents on the merits of various issues. Thus, as elaborated, against long term capital gain (Act) of Rs.2,69,38,751/-, the claim of deduction u/s 54B & 54F totaling to Rs.2,69,38,751/- is rejected and the grounds of appeal are dismissed.

19. Ground No. 8 relates to charging interest, which is consequential in nature. Hence, dismissed.”

5. As the assessee did not receive any relief from the order of the ld. CIT(A), assessee preferred the present appeal. The ld. AR for the assessee has filed a detailed submissions in support of the grounds so raised and is reproduced hereinbelow:-

“ Submission:-

1. There is no dispute as to the fact that assessee expired on 09.01.2018. The fact of his death was in the knowledge of AO/CIT(A) as explained above. Still the AO & 14. CIT(A) passed the assessment order/ appellate order in the name of deceased assessee. It is a settled law that where notice is issued or order is passed in the name of dead person, such notice or order is illegal and bad in law.

2. For this purpose reliance is placed on the decision of Hon'ble Supreme Court in case of ITO Vs. Bhupendra Bhikhalal Desai (2021) 283 Taxman 376 (Case laws compilation PB 1). In this case Hon'ble Supreme Court dismissed the SLP filed by the revenue against the decision of Hon'ble Gujarat High Court reported in 200 DTR 313 (Case laws compilation PB 2-19) stating that notice issued u/s 153C against dead person is unenforceable in law and in such case revenue cannot contend that as they have no knowledge about death of assessee, they are entitled to plead that notice is not defective. In the present case both the lower authorities have knowledge about the death of assessee but still they passed the order in the name of the deceased assessee. Hence the order so passed is illegal and bad in law. The relevant para of the order of Hon'ble Gujarat High Court is reproduced as under:-

“23. The following principles are discernible from the above referred judgment of this Court:

(i) The issuance of the notice to a dead assessee is not a mere technical defect which can be corrected under s. 292B of the Act. The issuance of the notice to a dead assessee and the consequent proceedings pursuant thereto would be without jurisdiction and therefore, null and void

(ii) The want of a valid notice affects the jurisdiction of the AO to proceed with the assessment and thus affects the validity of the proceedings for assessment or reassessment. A notice issued under s. 148 of the Act against a dead person is invalid,

unless the legal representative submits to the jurisdiction of the AO without raising any objection

24. We are of the view that the same principle as referred to above would apply even to a notice issued to a dead assessee under s. 153C of the Act. It is not in dispute that the legal heir of late Bhupendrabhai Desai had not participated in the proceedings. All that the legal heir of late Bhupendrabhai Desai did was to inform the AO about the death of his father and requested to drop the proceedings. It is true that although the father passed away in the year 2017, yet the legal heir did not inform the Department upto October, 2019. However, at the same time, we should not overlook the fact that even after coming to know about the demise of late Bhupendrabhai, the Department could have issued a valid notice to the legal heir as the period of limitation of 21 months had not expired. We fail to understand what prevented the Department from issuing a valid notice to the legal heir within the prescribed time period.

25. In the aforesaid context, we may refer to a recent pronouncement of the Supreme Court in the case of Principal CIT vs. Maruti Suzuki India Ltd. (2019) 309 CTR (SC) 433 (2019) 180 DTR (SC) 185 (2019) 107 taxmann.com 375 (SC). The ratio of this decision of the Supreme Court is that during the pendency of the assessment proceedings if the assessee company gets amalgamated with another company, it would lose its existence and the assessment order passed subsequently in the name of the said non-existing entity would be without jurisdiction and liable to be set-aside

26. In the facts of the case before the Supreme Court, although the AO was informed of the amalgamated company having ceased to exist as a result of the approved scheme of amalgamation, yet the jurisdictional notice was issued only in its name. The Supreme Court took the view that the basis on which the jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation

35. In view of the aforesaid discussion, we are left with no other option but to allow the present writ-application and hold that the impugned notice being invalid, the further proceedings pursuant thereto are not tenable in law

3. The aforesaid decision was followed by Hon'ble ITAT, Jaipur Bench in case of Late Sh. Om Prakash Choudhary Vs. JCIT ITA No.205/JP/2021 order dt. 25.05.2022 (Case laws compilation PB 20-24) where at Para 6.1 of the order it is held as under:-

“ We have heard both the parties, perused material available on record and gone through orders of the authorities below. From perusal of record, we observed that according to the averments made by the Ld AR for the assessee that the assessee has taken the ground before the CIT(A) that the show cause notice was issued on 10.10.2019 and reply to the show cause notice was sent by the assessee on 21.10.2019, where the assessee in its reply clearly explained that the cash received from the employer is accommodation in nature. We observed the Ld AR for the assessee explained that the ground was taken before the CIT(A) that penalty order was passed on 03.03.2020 in the name of the assessee, when

assessee has been expired on 22.02.2020 and the a copy of assessee's death certificate was submitted and which is a part of documentary evidence in the CIT(A) order in page 4 para No 6 of the order. The CIT(A) erred in upholding the penalty order which is bad in law and we observed that after the reply to show cause notice from 21.10.2019 to 03.03.2020, there is no communication by Additional Commissioner and he has directly passed the penalty order. In the meantime demise of the assessee is not known to the AO But CIT(A) failed to note that penalty order cannot be passed on the dead person. The CIT(A) order passed in name of deceased assessee is illegal. Further the question raised by the Bench is that when penalty notice was issued at that time assessee was alive and later after 11 days the assessee has dead. Based on this SC decision we don't have any hesitation to set aside the order of CIT(A) and allow the Ground No. I of the assessee.”

4. The Ld. CIT(A) has made a reference on the verification part of return but in doing so he ignored that the return is signed by the legal heir Sh. Mukesh Sharma (PB 6). Further when the fact of death of assessee has been communicated to both the authorities, the order passed in the name of deceased cannot be held valid in the eyes of law. The decision of Delhi High Court relied by Ld. CIT(A) is not applicable in the present facts as in that case, Sky Light Hospitality Pvt. Ltd. was converted into Sky Light Hospitality LLP and therefore it was held that the existence of juristic person remains and the notice issued in the name of the private limited is valid in the eyes of law read with section 292B of the Act. However, in the present case when the existence of person in whose name assessment order is passed was not there, the order passed in his name is illegal & bad in law.

In view of above, assessment order passed by AO and confirmed by L.d. CIT(A) be quashed.

Ground No.2

The Ld. CIT(A), NFAC has erred on facts and in law in confirming the computation of long term capital gain on sale of agricultural land at .38,751/ by not allowing the deductions claimed u/s 54F of the Act.

In case Ground No.1 of the assessee is not accepted, it is requested to set aside the issue of allowing deduction u/s 54F on construction of the residential house to the AO to provide adequate opportunity to furnish documentary evidences regarding the construction of the house.”

6. To support the arguments so raised the ld. AR of the assessee and has relied upon the following evidences in support of the contentions so raised:-

S. No.	Particulars	Pg. No.
1.	Copy of submission filed before Ld. CIT(A)	1-4
2.	Copy of Index of paper book filed before ld. CIT(A)	5.
3.	Copy of acknowledgement of return signed by the legal heir of assessment Mukesh Sharma	6-7
4.	Copy of letter dt. 15.08.2018 to AO intimating that return of Late Birdi Chand is filed on 15.08.2018	8
5.	Copy of letter dt. 17.06.2018 to AO intimating about death of Sh. Birdi Chand	9
6.	Copy of death certificate of Birdi Chand who expired on 09.01.2018	10
7.	Copy of letter dt. 21.10.2022 & 15.03.2023 intimating National Faceless Appeal Centre that Sh. Birdi Chand has expired and the letters & submission are filed by Mukesh Sharma as legal heir of Sh. Birdi Chand.	11-12

7. The ld. AR of the assessee to drive home to the contentions so raised has also relied upon the following decisions:-

- ITO vs. Bhupendra Bhikhalal Desai (2021) 283 Taxman 376 (SC)
- Late of Bhupendra Bhikhalal Desai vs. ITO (2021) 200 DTR 313 ( Gujarat H.C.)
- Late Sh. Im Prakash Choudhary vs. JCIT in ITA No. 205/JP/2021 dated 25.05.2022.
- Sky Kight Hospitality LLP vs. ACIT 90 Taxmann.com 413 ( Delhi H.C.)

8. Based on the submission so made the ld. AR of the assessee submitted that the assessment made on a dead person is not valid and is required to be quashed. The legal heirs submitted the fact that the assessee died and to that effect a specific information was given to the ld. AO even though the assessment is made on dead person which is not valid and is

required to be quashed. To drive home to this contention he relied upon the various case laws.

9. Per contra, the ld. DR relied upon the orders of the lower authorities. The ld. DR vehemently argued that the notice u/s. 148 was served to the assessee when assessee was alive. The judgment relied upon by the ld. AR of the assessee are on different fact where even the notice was not served to the assessee who alive on those case laws relied upon. As regards the merits of the case the assessee has not provided any document so as to claim the deduction as alleged u/s. 54F of the Act.

10. We have heard the rival contentions and perused material available on record. The bench noted that the assessee retired from Rajasthan State Electricity Board from the post of lineman in the year 1996. No return of income was filed u/s 139(1) of the Act as his income was below the taxable limit. The assessee expired on 09.01.2018. The ld. AO on the basis of information received from O/o ITO(CRU) O/o Pr. CIT(Inv.), Jaipur that assessee along with 3 other person have sold a land situated at Village- Beelwa Kalan, Tehsil- Sanganer, Jaipur for Rs.11,03,09,000/- on 01.12.2011 issued notice u/s 148 of the Act on 15.05.2017. This notice was issued when the assessee was alive and was accordingly served to him. The assessee left heavenly abode on 09.01.2018 and

thus after the death of the assessee in response to the notice the legal heir of the assessee Sh. Mukesh Sharma filed return of income on 15.08.2018 declaring total income of Rs.1,640/-. The fact of the death of assessee was also intimated to the ld. AO vide letter dated 17.06.2018 and letter dated 15.08.2018. Thereafter ld. AO again issued notice u/s 142(1) dated 30.10.2018 in the name of assessee instead of in the name of legal heir. In response thereto the A/R of assessee vide letter dated 03.11.2018 again brought to the notice of ld. AO that Late Shri Birdi Chand is no more and left heavenly abode on 09.01.2018. In spite of these information with the knowledge of the ld. AO he passed the assessment order raising the demand on the dead person which is not valid. Thus, it is clear that in the assessment proceeding the intimation of death of the assessee was submitted to the ld. AO even though the subsequent notices were issued in the name of the assessee was left heavenly abode. Thus, the issuance of the notice to a dead assessee is not a mere technical defect which can be corrected under s. 292B of the Act. The issuance of the notice to a dead assessee and the consequent proceedings pursuant thereto would be without jurisdiction and therefore, null and void. The want of a valid notice affects the jurisdiction of the AO to proceed with the assessment and thus affects the validity of the proceedings for assessment or reassessment. We get the support of our view from the decision of the Hon'ble Gujarat High Court in the case of

Bhupendra Bhikhalal Desai vs. Income Tax Officer, Ward 1(2)(1) [ 130 taxmann.com 196 (Gujarat) ] wherein the court held that ;

ANALYSIS :

**21.** Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is, whether the proceedings initiated by the Assessing Officer pursuant to the notice issued under section 153C of the Act to a dead person are sustainable in law.

**22.** A Coordinate Bench of this Court, in the case of *Chandreshbhai Jayantibhai Patel v. ITO* [2019] 101 taxmann.com 362/261 Taxman 137/413 ITR 276, had the occasion to consider an identical issue but in context with section 148 of the Act. We should look into the observations made by the Coordinate Bench in the judgment, which read thus :

'5. Mr.Chintan Dave, learned advocate for the petitioner submitted that the issuance of a valid notice is the foundation for the validity of the assessment. It was contended that the defect in procedure will normally not amount to lack of jurisdiction, however, the notice prescribed under section 148 of the Act for the purpose of initiation of reassessment proceedings is not a mere procedural requirement, but is a condition precedent to the validity of the assessment. If no notice is issued or if the notice issued is shown to be invalid, the proceedings initiated would be invalid and void. The notice issued in the name of a dead person is not a valid notice and in the absence of issuance of a valid notice, the proceedings initiated under section 147 of the Act cannot be said to be valid.

5.1 It was further submitted that in this case, the notice has been issued to a dead person and hence, such notice is null and void. To initiate proceedings under section 147 of the Act, issuance of notice under section 148 of the Act to the heirs and legal representatives of the deceased is mandatory, in the absence of which the proceedings cannot be continued by issuance of notices under section 142(1) of the Act against the heirs. Reliance was placed upon the decision of this court in *Rasid Lala v. Income Tax Officer, Ward-1(3)(6)*, [2017] 77 taxmann.com 39 (Guj.), wherein the notice under section 148 of the Act was issued to the assessee long after he had passed away. The heir of the deceased informed the Assessing Officer that the assessee has passed away and, therefore, the notice under section 148 of the Act is invalid, despite which the heir was told to file the return of income in compliance of the said notice. The court held that the notice issued in the name of a dead person was not valid and that despite being informed about the death of the original assessee, the assessee, instead of taking corrective measures as provided under section 292B of the Act and issuing fresh notice to the heirs of the deceased, continued with the reassessment proceedings against the

dead person. The court further held that section 159 of the Act would not be applicable to the facts of that case, and that, even if section 159 is attracted, the notice was required to be issued in the name of the heirs of the deceased assessee. Mr. Dave submitted that the aforesaid decision would be squarely applicable to the facts of the present case and that the impugned notice dated 28-3-2018 issued under section 148 of the Act having been issued against a dead person as well as the subsequent notices issued pursuant thereto, are invalid and are, therefore, required to be quashed and set aside.

5.2 The learned advocate for the petitioner also placed reliance upon the decision of the Madras High Court in the case of *Alamelu Veerappan v. Income-tax Officer, Non-corporate Ward-2(2)*, Chennai, [\[2018\] 257 Taxman 72 \(Madras\)](#), wherein the court held thus:

"16. The settled legal principle being that a notice issued in the name of the dead person is unenforceable in law. If such is the legal position, would the Revenue be justified in contending that they, having no knowledge about the death of the assessee, are entitled to plead that the notice is not defective. In my considered view, the answer to the question should be definitely against the Revenue.

17. This Court supports such a conclusion with the following reasons: Admittedly, the limitation period for issuance of notice for reopening expired on 31-3-2017. The impugned notice was issued on 30-3-2017 in the name of the dead person. On being intimated about the death, the Department sent the notice to the petitioner - his spouse to participate in the proceedings. This notice was well beyond the period of limitation, as it has been issued after 31-3-2017. If we approach the problem sans complicated facts, a notice issued beyond the period of limitation *i.e.* 31-3-2017 is a nullity, unenforceable in law and without jurisdiction. Thus, merely because the Department was not intimated about the death of the assessee, that cannot, by itself, extend the period of limitation prescribed under the Statute. 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.

18. 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.

19. The Revenue seeks to bring their case under section 292 of the Act to state that the defect is a curable defect and on that ground, the impugned notice cannot be declared as invalid.

20. The language employed in section 292 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."

5.3 It was, accordingly, urged that the petition deserves to be allowed by granting the reliefs as prayed for.

6. Vehemently opposing the petition, Mrs. Mauna Bhatt, learned Senior Standing Counsel for the respondent submitted that in this case, the assessee did not file return of income. When the assessee passed away, the department not being aware of his death, issued the notice under section 148 of the Act in his name, which was duly received by the petitioner who is the heir and legal representative of the deceased and hence, there is due service of such notice. Reference was made to sub-section (7) of section 2 of the Act, which defines "assessee", to submit that the same includes every person who is deemed to be an assessee under any provision of the Act. Referring to section 159 of the Act, it was pointed out that by virtue of sub-section (3) thereof, the legal representative of the deceased shall, for the purposes of the Act, be deemed to be an assessee. It was submitted that in view of sub-section (2) of section 159, for the purpose of making an assessment including reassessment under section 147 of the Act of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1) thereof, any proceeding taken against the deceased shall be deemed to have been taken against the legal representative, and therefore, the proceedings undertaken against the petitioner are legal and valid. It was submitted that therefore, under section 159(2) (b) of the Act, the legal heir steps into the shoes of the assessee and the proceeding can be continued against him.

6.1 Reference was made to the decision of the Supreme Court in the case of *Girijanandini Devi v. Bijendra Narain Choudhary*, AIR 1967 SC 1124, for the proposition that death of the person liable to render an account for property received by him does not affect the liability of his estate. It was submitted that therefore, even after his death, deceased Jayantibhai does not cease to be an assessee and consequently, the legal representative is responsible for filing the return of income and answering to the notice. It was submitted that the Madras High Court in the case of *Alamelu Veerappan (supra)*, on which reliance has been placed on behalf of the petitioner, does not refer to section 292B of the Act and, therefore, the said decision would be not applicable to the facts of the present case. It was submitted that in this

case, the petitioner had knowledge of the proceedings and has responded to the same as legal representative of the deceased and, therefore, the procedural defect which is otherwise curable may be permitted to be cured.

6.2 Reference was made to section 2(29) of the Act, which says that "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908.

6.3 The learned counsel further invited the attention of the court to the provisions of section 292B of the Act, which *inter alia* provide that no notice, summons or other proceeding, issued or taken in pursuance of any of the provisions of the Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons or other proceeding if such notice, summons or other proceeding is, in substance and effect, in conformity with or according to the intent and purpose of the Act. It was submitted that in the light of the provisions of section 292B of the Act, the defect in the notice by issuing the same to a dead person would not render the notice invalid, inasmuch as it is a purely procedural lapse.

6.4 Reliance was placed upon the decision of the Delhi High Court in the case of *Sky Light Hospitality LLP v. Assistant Commissioner of Income Tax*, [\[2018\] 405 ITR 296 \(Delhi\)](#), wherein the court has held thus:

"17. In the context of the present writ petition, the aforesaid ratio is a complete answer to the contention raised on validity of the notice under section 147/148 of the Act as it was addressed to the erstwhile company and not to the limited liability partnership. There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. 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 replied and dealt with by them. The fact that notice was addressed to M/s Sky Light Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused."

6.5 It was pointed out that the above decision of the Delhi High Court came to be challenged before the Supreme Court in *Sky Light Hospitality LLP v. Assistant Commissioner of Income Tax*, [\[2018\] 92 taxman.com 93 \(SC\)](#), which dismissed the special leave petition holding that the wrong name given in the notice was merely a clerical error which could be corrected under section 292B of the Act.

6.6 Reliance was also placed upon the decision of the Supreme Court in the case of *Commissioner of Income Tax, Shillong v. Jai Prakash Singh*, [\[1996\] 219 ITR 737](#),

wherein the assessee did not file returns for three assessment years and died in April 1967, leaving behind him, in all, ten legal heirs. The eldest son Jai Prakash Singh filed the returns for the three assessment years. Such returns were signed by him alone and not by the other legal representatives. Scrutiny assessment came to be carried out by the Income Tax Officer, during the course of which, notices under section 142(1) of the Act came to be issued to Jai Prakash to appear and produce documents, accounts and other material, who complied with the same and did not raise any objection that notices must be issued to the other legal representatives of the deceased. Assessment orders were made in the name of all the ten legal representatives who were described as legal representatives of the deceased. Appeals were filed by Jai Prakash contending that the assessments were illegal and invalid as no notice had been issued to all the legal representatives of deceased. The court placed reliance upon a decision of the Bombay High Court in *Maharaja of Patiala v. Commissioner of Income Tax (Central)*, Bombay, [1943] 11 ITR 201, for the proposition that an assessment made without strictly complying with section 24-B (section 159 in the present Act) is not void or illegal and that any infractions in that behalf can be waived by the assessee. The court also placed reliance upon its earlier decision in *Estate of Late RangalalJajodia v. Commissioner of Income Tax*, Madras, [\[1971\] 79 ITR 505](#), for the proposition that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where such liability is created by distinct substantive provisions (charging sections). Any such omission or defect may render the order made irregular - depending upon the nature of the provision not complied with, but certainly not void or illegal. Following the said decisions, the court held that in the facts and circumstances of the case, the orders of assessment made by the Income Tax Officer without notice to all the legal representatives are not null and void in law, but are merely irregular/defective proceedings which can be set right by remitting the matters to the Income Tax Officer for making fresh assessments with notice to all legal representatives.

6.7 Reliance was placed upon the decision of this court in the case of *Commissioner of Income Tax v. Sumantbhai C. Munshaw*, [\[1981\] 128 ITR 142](#), wherein though the notice was issued to the deceased person, the proceeding was continued against the legal representative who participated in the proceeding and also filed return of income without raising any objection as to the validity of the assessment proceedings. The legal representative had, therefore, submitted to the jurisdiction of the Assessing Officer. The court held that if the legal representative is present before the taxing authority in some capacity or voluntarily appears in the proceeding without service of notice or upon service of notice not addressed to him but to the deceased assessee and does not object to the continuance of the proceeding against the dead person and is heard by the Income Tax Officer in regard to the tax liability of the deceased and invites an assessment on merits, such a legal representative must be taken to have exercised the

option of abandoning the technical plea that the proceeding has not been continued against him, although in substance and reality, it has been so continued.

6.8 The learned counsel submitted that issuance of notice in the name of the deceased being a procedural defect, can be cured under section 292B of the Act and that on account of such technical defect, the notice is not void. Moreover, the petitioner having responded to the notice under section 148 of the Act, the Assessing Officer is justified in continuing the proceedings against him. It was, accordingly, urged that the petition being devoid of merits, deserve to be dismissed.

7. In the backdrop of the rival submissions, the facts as emerging from the record of the case may be adverted to. The impugned notice dated 28-3-2018 is issued to Shri Jayantilal Harilal Patel, father of the petitioner, seeking to reopen the assessment for assessment year 2011-12 under section 148 of the Income-tax Act, 1961. By a letter dated 27-4-2018 addressed to the Income Tax Officer, the petitioner informed him that his father Shri Jayantilal Harilal Patel has passed away on 24-6-2015, enclosing therewith a death certificate and further being his son and in his capacity as legal heir, requested him to drop the proceedings. Thereafter, another notice dated 10-7-2018 came to be issued under sub-section (1) of section 142 of the Act to Shri Jayantilal Harilal Patel calling upon him to furnish the details mentioned therein. In the annexure to the said notice, the assessee was called upon to show cause as to why penalty proceedings under section 217F of the Act should not be initiated in his case as he had not furnished return of income in response to the notice under section 148 and stating that this may be treated as a notice under section 142(1) read with section 129 of the Income-tax Act, 1961.

8. The petitioner addressed a letter dated 2-8-2018 to the Income Tax Officer objecting to the notices issued under section 148 as well as under section 142(1) of the Act and drew his attention to the earlier letter dated 27-4-2018 informing him about the death of his father and requesting him to drop the proceedings. The attention of the Income Tax Officer was further invited to the provisions of section 159 of the Act, to submit that the proceedings are required to be initiated against a legal representative and not against the deceased and, therefore, the notices issued to the dead person are invalid. Reliance was placed upon the decision of this court in *Jaydeep Kumar Dhirajlal Thakkar v. Income Tax Officer*, [2018] 401 ITR 302 (Guj.) and *Vipin Walia v. Income Tax Officer*, [2016] 381 ITR 19 (Delhi).

9. Thereafter, by a notice dated 3-8-2018 issued under section 142(1) of the Act, the respondent called upon the petitioner as legal heir of deceased Shri Jayantilal Harilal Patel to furnish the documents mentioned therein. In the annexure thereto, the petitioner is called upon to show cause as to why penalty proceedings under section 217F of the Act should not be initiated in his case as he had not furnished return of

income in response to the notice under section 148 of the Act and stating that this may be treated as notice under section 142(1) read with section 129 of the Income-tax Act, 1961.

10. By an order dated 14-8-2018, the respondent disposed of the objections raised by the petitioner stating that the notice under section 148 of the Act was issued in the name of the deceased as the department was not aware of the death of the assessee. It is only when the legal heir Shri Chandreshbhai Jayantilal Patel (the petitioner herein) filed a letter dated 27-4-2018 along with a copy of the assessee's death certificate, that this fact came to the notice of that office. It is stated that since the assessee's son - legal heir had received the notice (stated to have been received through the neighbour) and participated in the proceedings; the defect in issue of the notice is automatically cured. Reliance was placed upon the decision of the Madhya Pradesh High Court in the case of *Kausalyabai v. Commissioner of Income Tax*, [238 ITR 1008 \(MP\)](#), wherein after the death of the assessee, the notice was issued in the name of a person who was dead. The court observed that the widow of such person participated in the assessment proceedings and hence, the defect in the notice stood automatically cured. It is further stated in the order disposing of the objections that even if the notice dated 28-3-2018 is issued defectively in the name of the deceased assessee, then also, as per the provisions of section 292B of the Act, the same cannot be held to be invalid.

11. Insofar as the contention raised by the petitioner based on section 159 of the Act is concerned, the Assessing Officer observed that in this case, the assessee (the petitioner) had introduced himself as a son of the deceased assessee and as legal heir and has produced death certificate in response to the notice issued under section 148 of the Act. Therefore, as the legal heir, upon being served with the notice under section 148, has participated in the proceedings, the reassessment proceedings initiated are legal and valid. Reliance has been placed upon the decision of the Madras High Court in the case of *V. Ramanathan v. Commissioner of Income Tax*, [\[1963\] 49 ITR 881 \(Madras\)](#). It is further stated therein that it is not in dispute that Shri Chandreshbhai J. Patel is the legal heir of the deceased assessee; therefore, the proceedings initiated against the legal representative/legal heir are valid and legal.

12. In the backdrop of the aforesaid facts, it is an admitted position that the notice under section 148 of the Act was issued to a dead person. The petitioner being the heir and legal representative of the deceased, upon receipt of the notice, immediately raised objection against the validity of the impugned notice and did not submit to the jurisdiction of the Assessing Officer by filing a return of income, but kept on objecting to the continuation of the assessment proceedings pursuant to the impugned notice. The Assessing Officer, however, instead of taking corrective steps under section 292B of the Act and issuing notice to the heirs and legal representatives, insisted on continuing with the proceedings pursuant to the impugned notice which was issued in the name of a

dead person. Since strong reliance has been placed by the learned counsel for the respondent on the provisions of section 2(7) and 2(29) read with sections 159 and 292B of the Act, reference may be made to the said provisions, which read as under:

"Section 2(7) "assessee" means a person by whom any tax or any other sum of money is payable under this Act, and includes -

(a)	every person in respect of whom any proceeding under the Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person;
(b)	every person who is deemed to be an assessee under any provision of this Act;
(c)	every person who is deemed to be an assessee in default under any provision of this Act;"

"Section 2(29) "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908;"

"159. Legal representatives. - (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or re-computation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1).-

(a)	any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;
(b)	any proceeding which could have been taken against the deceased if he had survived, may be taken against the

		legal representative; and
	(c)	all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undercharged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of, or parted with.

(5) The provisions of sub-section (2) of section 161, section 162 and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability."

"292B. Return of income, etc., not to be invalid on certain grounds. - No return of income, assessment, notice, summons or other proceeding furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

13. Thus, the expression "assessee" includes every person who is deemed to be an assessee under any provision of the Act. Sub-section (3) of section 159 of the Act, postulates that the legal representative of the deceased shall, for the purposes of the Act, be deemed to be an assessee. Sub-section (2) of section 159 of the Act says that for the purpose of making an assessment (including an assessment, reassessment or re-computation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1), -

	(a)	any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the
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		legal representative from the stage at which it stood on the date of the death of the deceased;
	(b)	any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and
	(c)	all the provisions of the Act shall apply accordingly.

14. Thus, clause (a) of sub-section (2) of section 159 of the Act provides for the eventuality where a proceeding has already been initiated against the deceased before his death, in which case such proceeding shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased. In the present case, the proceeding under section 147 of the Act had not been initiated against the deceased before his death, and hence, clause (a) would not be applicable in the facts of this case.

15. Clause (b) of sub-section (2) of section 159 of the Act provides that any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative. The present case would, therefore, fall within the ambit of section 159(2)(b) of the Act and, hence, the proceeding can be taken against the legal representative. Now, it cannot be gainsaid that a proceeding under section 147 of the Act of reopening the assessment is initiated by issuance of notice under section 148 of the Act, and as a necessary corollary, therefore, for taking a proceeding under that section against the legal representative, necessary notice under section 148 of the Act would be required to be issued to him. In the present case, the impugned notice under section 148 of the Act has been issued against the deceased assessee. In the opinion of this court, since this is not a case falling under clause (a) of sub-section (2) of section 159 of the Act, the proceeding pursuant to the notice under section 148 of the Act issued to the dead person, cannot be continued against the legal representative.

16. On behalf of the revenue, it has been contended that issuance of the notice to the dead assessee is merely a technical defect which could be corrected under section 292B of the Act. Reliance has been placed on the above referred decisions of the Supreme Court as well as the High Courts for contending that the proceedings would not be null and void merely because the notice has been issued against a dead person as the legal representative had received the notice and has objected to the validity of the notice and further continuation of the proceedings. In the opinion of this court, here lies the distinction between those cases and the present case. In the relied upon cases, the legal representative, in response to the impugned notice, filed return of income and participated in the proceeding and then raised an objection to the validity of the

proceeding and, therefore, the court held that this was a case of waiver and that a technical defect can be waived; whereas in this case, right from the inception the petitioner has objected to the validity of the notice and thereafter to the continuation of the proceeding and has at no point of time participated in the proceeding by filing the income tax return in response to the notice issued under section 148 of the Act. Had the petitioner responded to the notice by filing return of income, he could have been said to have participated in the proceedings, however, merely because the petitioner has informed the Assessing Officer about the death of the assessee and asked him to drop the proceedings, it cannot, by any stretch of imagination, be construed as the petitioner having participated in the proceedings.

17. Insofar as reliance placed upon section 292B of the Act is concerned, the said section, *inter alia*, provides that no notice issued in pursuance of any of the provisions of the Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice if such notice, summons is in substance and effect in conformity with or according to the intent and purpose of the Act.

18. 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 a 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. Therefore, where the legal representative does not waive his right to a notice under section 148 of the Act, it cannot be said that the notice issued against the dead person is in conformity with or according to the intent and purpose of the Act which requires issuance of notice to the assessee, whereupon the Assessing Officer assumes jurisdiction under section 147 of the Act and consequently, the provisions of section 292B of the Act would not be attracted. In the opinion of this court, the decision of this court in the case of *Rasid Lala v. Income Tax Officer, Ward-1(3)(6) (supra)* would be squarely applicable to the facts of the present case. Therefore, in view of the provisions of section 159(2)(b) of the Act, it is permissible for the Assessing Officer to issue a fresh notice under section 148 of the Act against the legal representative, provided that the same is not barred by limitation; he, however, cannot continue the proceedings on the basis of an invalid notice issued under section 148 of the Act to the dead assessee.

19. In the facts of the present case, as noticed herein above, the notice under section 148 of the Act, which is a jurisdictional notice, has been issued to a dead person. Upon receipt of such notice, the legal representative has raised an objection to the validity of such notice and has not complied with the same. The legal representative not having waived the requirement of notice under section 148 of the Act and not having submitted to the jurisdiction of the Assessing Officer pursuant to the impugned notice, the provisions of section 292B of the Act would not be attracted and hence, the notice under section 148 of the Act has to be treated as invalid. In the absence of a valid notice, the Assessing Officer has no authority to assume the jurisdiction under section 147 of the Act and, hence, continuation of the proceeding under section 147 of the Act pursuant to such invalid notice, is without authority of law. The impugned notice as well as the proceedings taken pursuant thereto, therefore, cannot be sustained.'

**23.** The following principles are discernible from the above referred judgment of this Court :

i.	The issuance of the notice to a dead assessee is not a mere technical defect which can be corrected under section 292B of the Act. The issuance of the notice to a dead assessee and the consequent proceedings pursuant thereto would be without jurisdiction and, therefore, null and void.
ii.	The want of a 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.

**24.** We are of the view that the same principle as referred to above would apply even to a notice issued to a dead assessee under section 153C of the Act. It is not in dispute that the legal heir of late Bhupendrabhai Desai had not participated in the proceedings. All that the legal heir of late Bhupendrabhai Desai did was to inform the Assessing Officer about the death of his father and requested to drop the proceedings. It is true that although the father passed away in the year 2017, yet the legal heir did not inform the department up to October 2019. However, at the same time, we should not overlook the fact that even after coming to know about the demise of late Bhupendrabhai, the department could have issued a valid notice to the legal heir as the period of limitation of 21 months had not expired. We fail to understand what prevented the department from issuing a valid notice to the legal heir within the prescribed time period.

**25.** In the aforesaid context, we may refer to a recent pronouncement of the Supreme Court in the case of *Pr. CIT v. Maruti Suzuki India Ltd.* [\[2019\] 107 taxmann.com 375/265 Taxman 575](#). The ratio of this decision of the Supreme Court is that during the pendency of the assessment proceedings if the assessee company gets amalgamated with another company, it would lose its existence and the assessment order passed subsequently in the name of the said non-existing entity would be without jurisdiction and liable to be set aside.

26. In the facts of the case before the Supreme Court, although the Assessing Officer was informed of the amalgamated company having ceased to exist as a result of the approved scheme of amalgamation, yet the jurisdictional notice was issued only in its name. The Supreme Court took the view that the basis on which the jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. We quote the relevant observations thus :

"32. On behalf of the Revenue, reliance has been placed on the decision of this Court in *Commissioner of Income Tax, Shillong v. Jai Prakash Singh*<sup>38</sup> ("Jai Prakash Singh"). That was a case where the assessee did not file a return for three assessment years and died in the meantime. His son who was one of the legal representatives filed returns upon which the Assessing Officer issued notices under section 142 (1) and section 143(2). These were complied with and no objections were raised to the assessment proceedings. The assessment order mentioned the names of all the legal representatives and the assessment was made in the status of an individual. In appeal, it was contended that the assessment proceedings were void as all the legal representatives were not given notice. In this backdrop, a two judge Bench of this Court held that the assessment proceedings were not null and void, and at the worst, that they were defective. In this context, reliance was placed on the decision of the Federal Court in *Chatturam v. CIT* 39 holding that the jurisdiction to assess and the liability to pay tax are not conditional on the validity of the notice : the liability to pay tax is founded in the charging sections and not in the machinery provisions to determine the amount of tax. Reliance was also placed on the decision in *Maharaja of Patiala v. CIT* [1943] 11 ITR 202 (Bom.) ("Maharaja of Patiala"). That was a case where two notices were issued after the death of the assessee in his name, requiring him to make a return of income. The notices were served upon the successor Maharaja and the assessment order was passed describing the assessee as "His Highness...late Maharaja of Patiala". The successor appealed against the assessment contending that since the notices were sent in the name of the Maharaja of Patiala and not to him as the legal representative of the Maharaja of Patiala, the assessments were illegal. The Bombay High Court held that the successor Maharaja was a legal representative of the deceased and while it would have been better to so describe him in the notice, the notice was not bad merely because it omitted to state that it was served in that capacity. Following these two decisions, this Court in *Jai Prakash Singh* held that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where the liability is created by a distinct substantive provision. The omission or defect may render the order irregular but not void or illegal. *Jai Prakash Singh* and the two decisions that it placed reliance upon were evidently based upon the specific facts. *Jai Prakash Singh* involved a situation where the return of income had been filed by one of the legal representatives to whom notices were issued under sections 142(1) and 143(2). No objection was raised by the legal representative who had filed the return that a notice should also to be served to other legal representatives of the deceased assessee. No objection was raised before the Assessing Officer. Similarly, the decision in *Maharaja of Patiala* was a case where the notice had been served on the legal representative, the successor Maharaja and the Bombay High Court held that it was not void merely because it omitted to state that it was served in that capacity.

33. 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."

27. A lot has been argued by Mr.M.R.Bhatt, the learned senior counsel appearing for the Revenue, by submitting that the department was not intimated about the death of the assessee and the legal heirs failed to take any steps to cancel the PAN registration in the name of the assessee and, therefore, no fault could be found with the department.

28. In the aforesaid context, we may refer to a decision of the Madras High Court in the case of *Alamelu Veerappan v. ITO* [2018] 95 taxmann.com 155/257 Taxman 72, wherein the Madras High Court held as under :

"14. The issue, which falls for consideration, is as to whether the impugned notice under section 148 of the Act issued in the name of the dead person - the said Mr.S.Veerappan is enforceable in law and the subsidiary issue being as to whether the petitioner, being the wife of the said Mr.S.Veerappan, can be compelled to participate in the proceedings and respond to the impugned notice. The fact that the said Mr.S.Veerappan died on 26-1-2010 is not in dispute. If this fact is not disputed, then the notice issued in the name of the dead person is unenforceable in the eye of law.

15. The Department seeks to justify their stand by contending that they were not intimated about the death of the assessee, that the legal heirs did not take any steps to cancel the PAN registration in the name of the assessee and that therefore, the Department was justified in directing the petitioner to cooperate in the proceedings pursuant to the impugned notice.

*16. The settled legal principle being that a notice issued in the name of the dead person is unenforceable in law. If such is the legal position, would the Revenue be justified in contending that they, having no knowledge about the death of the assessee, are entitled to plead that the notice is not defective. In my considered view, the answer to the question should be definitely against the Revenue.*

17. This Court supports such a conclusion with the following reasons : Admittedly, the limitation period for issuance of notice for reopening expired on 31-3-2017. The impugned notice was issued on 30-3-2017 in the name of the dead person. On being intimated about the death, the Department sent the notice to the petitioner - his spouse to participate in the proceedings. This notice was well beyond the period of limitation, as it has been issued after 31-3-2017. If we approach the problem sans complicated facts, a notice issued beyond the period of limitation *i.e.* 31-3-2017 is a

nullity, unenforceable in law and without jurisdiction. *Thus, merely because the Department was not intimated about the death of the assessee, that cannot, by itself, extend the period of limitation prescribed under the Statute. 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.*

18. 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.

19. The Revenue seeks to bring their case under section 292 of the Act to state that the defect is a curable defect and on that ground, the impugned notice cannot be declared as invalid.

20. The language employed in section 292 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.

21. All the above reasons are fully supported by the decision in the case of Vipin Walia. In that case, the notice dated 27-3-2015 was issued under section 148 of the Act to the assessee, who died on 14-3-2015. The validity of the said notice was put to challenge. The Income Tax Officer took a stand that since the intimation of death of the assessee on 14-3-2015 was not received by her, the notice was issued on a dead person. However, the fact regarding the death of the assessee could not be disputed by the Department. The Department continued the proceedings under section 147/148 of the Act and at that stage, the son of the deceased approached the High Court of Delhi. The High Court of Delhi pointed out that what was sought to be done by the Income Tax Officer was to initiate proceedings under section 147 of the Act against the deceased assessee for the assessment year 2008-09, for which, the limitation for issuance of notice under section 147/148 of the Act was 31-3-2015 and on 2-7-2015 when the notice was issued, the assessee was already dead and if the Department intended to proceed under section 147 of the Act, it could have done so prior to 31-3-2015 by issuing the notice to the legal heirs of the deceased and beyond that date, it could not have proceeded in the matter even by issuing notice to the legal representatives of the assessee. The decision in Vipin Walia fully supports the case of the petitioner herein.

22. The decision in the case of Vipin Walia was followed in the decision of the High Court of Gujarat in the case of Rasid Lala, in which, the reassessment proceedings were initiated against the dead person, that too, after a long delay. The Court pointed out that even if the provisions of section 159 of the Act are attracted, in that case also, the notice was required to be issued against and in the name of the heirs of the deceased assessee and under the said circumstances, section 159 of the Act shall not be of any assistance to the Revenue.

23. In the decision of the Delhi High Court in the case of Spice Entertainment Ltd., one of the questions, which fell for consideration, is as to whether such framing of assessment against a non-existing entity or a dead person could be brought within the ambit of section 292B of the Act and after referring to the decisions on the point including the decision of the Allahabad High Court in the case of *Sri Nath Suresh Chand Ram Naresh v. CIT* [2006] 280 ITR 396, it has been held that the provisions of section 292B of the Act are not applicable and that framing of assessment against a non-existing entity/person goes to the root of the matter, which is not a procedural irregularity, but a jurisdictional defect, as there cannot be any assessment against a dead person.

24. The learned Senior Standing Counsel for the Revenue has sought to distinguish the decision in the case of Spice Entertainment Ltd., by referring to Sky Light Hospitality LLP.

25. On a perusal of the factual position therein, the Court came to the conclusion that the defect was curable because it was held that the notice was not addressed to the correct name and that the PAN mentioned was also incorrect. The factual background was taken into consideration and the Court held that errors and mistakes cannot and should not nullify the proceedings, which are otherwise valid and that no prejudice had been caused, as this being the mandate of section 292B of the Act. The decision in the case of Sky Light Hospitality LLP is clearly distinguishable on facts and it does not support the case of the Revenue."

**29.** Ultimately, in view of the aforesaid, the only proposition of law that is applicable in the present litigation is that a notice, be it under section 148 of the Act or section 153C of the Act, issued to a dead person, is unenforceable in law. If such is the legal position, the Revenue cannot contend that as they had no knowledge about the death of the assessee, they are entitled to plead that the notice is not defective.

**30.** We shall now deal with the argument canvassed by Mr. Bhatt as regards section 2(31) of the Act, which defines the term "person". The argument of Mr. Bhatt is that the legal heir of late Bhupendrabhai Desai would fall within the ambit of "person" as defined under section 2(31) of the Act and "person" includes a body of individuals. We may only observe that this definition of the term "person" referred to above does not include the legal representatives of persons who are since deceased.

**31.** In the aforesaid context, we may refer to and rely upon a decision of the Supreme Court in the case of *Shabina Abraham (supra)*. In *Shabina Abraham (supra)*, the question before the Supreme Court was, whether an assessment proceeding under the Central Excises and Salt Act, 1944, can continue against the legal representatives/estate of a sole proprietor/manufacturer after he is dead.

**32.** A similar argument was canvassed by the learned counsel appearing for the Revenue by placing reliance on the definition of the term "person" under the General Clauses Act, 1897. We quote the relevant observations of the Supreme Court thus :

"Learned counsel for the Revenue also relied upon the definition of a "person" under the General Clauses Act, 1897. Section 3(42) of the said Act defines "person as under:-

"(42) "Person" shall include any company or association or body of individuals whether incorporated or not."

It will be noticed that this definition does not take us any further as it does not include legal representatives of persons who are since deceased. Equally, Section 6 of the Central Excises Act, which prescribes a procedure for registration of certain persons who are engaged in the process of production or manufacture of any specified goods mentioned in the schedule to the said Act does not throw any light on the question at hand as it says nothing about how a dead person's assessment is to continue after his death in respect of excise duty that may have escaped assessment. Also, the judgments cited on behalf of revenue, namely, *Yeshwantrao v. The Commissioner of Wealth Tax*, Bangalore, AIR 1967 SC 135 at pages 140, 141 para 18: [1966] Suppl. SCR 419 at 429 A-B, *C.A. Abraham v. The Income Tax Officer*, Kottayam, AIR 1961 SC 609 at 612 para 6: [1961] 2 SCR 765 at page 771, *The State of Tamil Nadu v. M.K. Kandaswami*, AIR 1975 SC 1871 (para 26): [1975] 4 SCC 745 (para 26), *Commissioner of Sales Tax, Delhi v. Shri Krishna Engineering Co.*, [2005] 2 SCC 695, pages 702, 703 paras 19 to 23, all enunciate principles dealing with tax evasion in the context of construing provisions which are designed to prevent tax evasion. The question at hand is very different - it only deals with whether the Central Excises and Salt Act contains the necessary provisions to continue assessment proceedings against a dead man in respect of excise duty payable by him after his death, which is a question which has no relation to the construction of provisions designed to prevent tax evasion."

**33.** We also deem it appropriate to quote the observations made by the Supreme Court in paragraph 18, which reads thus :

"18. It will be seen that the definition of "assessee" contained in section 4(3)(a) of the Central Excises and Salt Act is similar to the definition of assessee contained in the Indian Income-tax Act, 1922. Under that Act, as we have already seen, an assessee means "a person by whom income tax is payable." Under the Central Excises and Salt Act, an assessee means "the person who is liable to pay the duty of excise under this Act". The present tense being used, it is clear that the person referred to can only be a living person as was held in *Ellis C.Reid*, AIR 1931 Bom 333. Further, the only extension of the definition of "assessee" under the Central Excises and Salt Act is that it would also include an assessee's agent, which has nothing to do with the facts of the present case. It is well settled that a "means and includes" definition is exhaustive in nature and that there is no scope to read anything further into the said definition."

**34.** The Supreme Court, in a plethora of judgments, has taken the view that if the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the State, seeking to recover the tax, cannot bring the citizen within the letter of the law, the citizen is free, however, apparently within the spirit of law the case might otherwise appear to be. The Supreme Court, in *CST v. Modi Sugar Mills Ltd.*, AIR 1961 SC 1047, observed thus :

"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must

look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."

**35.** In view of the aforesaid discussion, we are left with no other option but to allow the present writ-application and hold that the impugned notice being invalid, the further proceedings pursuant thereto are not tenable in law.

**36.** In the result, this writ-application succeeds and is hereby allowed. The impugned notice as well as the order (Annexure-C) are hereby quashed and set aside. The connected writ-applications also succeed on the same line and the impugned respective notices and the orders are hereby quashed and set aside.

As it is evident from the fact that the legal heir of late Shri Birdi Chand had participated in the proceedings and inform about the death of the assessee in the assessment proceedings saying that the assessee is no more and expired on 9.1.2018. Thus, all that the legal heir of late Shri Birdi Chand to inform about the death of his father. However, at the same time, we should not overlook the fact that even after coming to know about the demise of late Shri Birdin Chand, the department could have issued a valid notice to the legal heir the subsequent notices were served in the name of the assessee and even the assessment order was passed 22/11/2018 i.e. after 10 months of passage of the assessee. During this period what prevented the ld. AO to bring the legal heirs and pass the order on the legal heirs after following the required procedure and passed the raising the demand on the legal heirs. Thus, respectfully, following the ratio of judicial precedent cited by the ld. AR of the assessee that once the ld. AO

came to his knowledge that the assessee is no more the subsequent issuance of the notice in the name of dead person is not valid and consequently framing the assessment without there being bringing the legal heirs on record and when these information was shared by the legal heirs time and again with the ld AO framing the assessment and raising the demand on the dead person is not legal and thus directed to be quashed.

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

Order pronounced in the open court on 09/04/2024.

Sd/-  
(राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-  
(डॉ.एस.सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 09/04/2024

\*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Late Sh. Birdi Chand through L/h Kukesh Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(2),Jaipur.
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त (अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File ITA No. 502/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar