



**IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA  
BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**AND**

**SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER**

**ITA No. 034/PAN/2024**

**Assessment Year : 2012-13**

Maria Estibeiro

L/H of Jacintodas Estibeiro

781, St. Marys Colony, Miramar, Goa.

PAN:AABPE2798N

**. . . . . Appellant**

**V/s**

Dy. Commissioner of Income Tax,

Panaji, Goa.

**. . . . . Respondent**

**Appearances**

Assessee by : Mr D E Robinson ['Ld. AR']

Revenue by : Mr Vimalraj Periyagounden ['Ld. DR']

Date of conclusive Hearing : 25/03/2025

Date of Pronouncement : 24/04/2025

**ORDER**

**PER G. D. PADMAHSHALI, AM;**

By this appeal captioned appellant impugns DIN & Order No. 1060336601(1) dt. 31/01/2024 passed u/s 250 of the Income-tax Act, 1961 ['the Act'] by the National Faceless Appeal Centre, Delhi ['NFAC'] which in turn arisen out of order of assessment passed u/s 147 r.w.s. 144 of the Act for assessment year 2012-13 ['AY'].



2. **Succinctly stated facts of the case are that;** the assessee Mr Jacintodas Estibeiro was identified as non-filer. From ITS system/Form No. 26AS it revealed to the Ld. Dy. Commissioner of Income Tax, Circle-1(1), Panaji, Goa [‘AO’] that, for the year under consideration certain financial transactions amounting to ₹19,69,321/- were reported against assessee’s PAN whereas no return was filed. Recording the above facts, the case of the assessee vide digital notice dt. 29/03/2019 was reopened u/s 148 of the Act. In response thereto the appellant [surviving spouse of the deceased assessee] filed a physical return declaring NIL income endorsing it as **‘filed under protest’**. In assessment proceedings from ITS/26AS the Ld. AO noted that, the assessee’s Bank accounts were credited with (a) salary/pension of ₹5,94,074/- [Bank of India ‘BOI’] (b) interest of ₹2,02,500/- & ₹2,62,200/- [Central Bank & Post



Office] respectively and (c) maturity proceeds of deposits of ₹9,10,547/- [BOI]. To verify nature & source of all such credits, various notices u/s 142(1) of the Act were issued. There was no compliance to any of such notices nor was there any submission by the appellant. In absence of evidences and in the event no response forthcoming from the appellant; the Ld. AO after serving a show cause notice [‘SCN’] vide order dt. 23/12/2019 treated the physical return filed by the appellant as invalid and framed assessment in the name of appellant *ex-parte* u/s 144 r.w.s. 147 of the Act by bringing to tax an amount of ₹19,69,321/- being the sum of all financial transactions reflected/reported against assessee’s PAN as unexplained income under the head income from other sources u/s 56(2) of the Act and assessed the same to tax in the hands of appellant as the legal heir of the deceased assessee.



3. The aforestated additions and the assessment was unsuccessfully agitated by the appellant in an appeal before Ld. NFAC. Aggrieved by the impugned order and the action of tax authorities below, the appellant came in present appeal with following grounds;

**1. The learned Commissioner of Income Tax (Appeals) failed to appreciate that under Article 1969 of Portuguese Civil Code spouse ceases to be the legal heir of deceased spouse if children of the deceased survive the deceased.**

**2. The learned Commissioner of Income Tax (Appeals) erred in confirming the impugned order passed by Assessing Officer treating the appellant as legal heir.**

**3. The learned Commissioner of Income Tax (Appeals) erred in holding that appellant who lawfully had no access to half share of assets of her spouse is bound to explain credits in the bank account of her deceased spouse.**

**4. The re-assessment order is not valid in law since all the requirements of provisions of section 147 and 148 have not been complied with.**



4. In the course of physical hearing, the Ld. Senior Counsel Mr Robinson appearing on behalf of the appellant at the very outset submitted that, beside agitating the impugned order/proceedings on merits, the appellant raised a legal ground (Ground No 4 of appeal memo) which challenges the very assumption of 147/148 jurisdiction by the Ld. AO on threefold contentions viz; (i) the notice issued on deceased assessee is *ab-initio* void, as legal proceedings cannot be initiated against person who is no more alive (ii) no valid notices on the legal heirs were issued and (iii) the Ld. AO had no jurisdiction to initiate re-opening proceedings in view of CBDT Instruction No. 01/2011 dt. 31/01/2011. *Per contra*, the Ld. DR relying on the order of the tax authorities below averred that, assumption of jurisdiction was based on the CBDT instruction therefore cannot be subject matter of challenge.



5. While praying for adjudication of legal issue/ground first it was commonly submitted by the rival parties that, they are in complete agreement that, if the appeal turns out to be successful on either of former contentions raised in support of legal ground number 4, then remaining grounds of merits & corresponding arguments advanced (if any) by the them in the course of physical hearing would for the purpose of adjudication render academic in nature, hence need not be dealt with separately. Recording the same we advanced to adjudicate legal issue first.

6. We have heard rival party's submission and subject to rules 18 of ITAT-Rules, 1963 perused the material placed on records and considered the facts of the case in the light of settled position of law which in the course of physical hearing forewarned to the respective parties for respective rival negation.



7. Before we advance to adjudicate legal issue on threefold contentions, we deem it apt to recapitulate undisputed factual matrix as; (i) the first notice u/s 148 of the Act was issued in the name of deceased assessee, (ii) the copy of such notice reissued with handwritten correction subsisting the appellant's name as legal heir of deceased assessee (iii) prior to issuance of former notice, the assessment jurisdiction was not vested with Ld. AO.

8. We note that, the assessee Mr Jacintodas Estibeiro and the appellant Mrs Maria Estibeiro spouse of the assessee at relevant time of assessment were governed by system of community of property [known under the Portuguese Civil Code of 1860 as 'COMMUNIAO DOS BENS'] in force in the State of Goa. Therefore, for the purpose of assessment the provision of section 5A of the Act were applicable.



9. The assessee Mr Jacintodas Estibeiro died on 29/04/2011. In view thereof no return of his income was filed since AY 2011-12. The latest return filed by the deceased assessee (if any) unknown to any of surviving family members of the deceased assessee including the appellant, nor the Revenue could assist the bench with material on record unto when the deceased assessee was assessed to tax.

10. We note that, upon receipt of financial information the Ld. AO re-opened deceased assessee's case by a digitally signed notice vide DIN ITBA/AST/S/148/2018-19/1015507504(1) dt.29/03/2019 and assumed the very jurisdiction u/s 148 of the Act. The said digitally signed notice was drawn in the name deceased assessee was actually issued/served to surviving spouse of deceased assessee who is the 'appellant' here. When fact of assessee's death



brought to notice/knowledge of the Revenue, the Ld. AO as a piece of cake reissued copy of same notice substituting therein appellant's name manually with physical signature. From this factual matrix there emerged a twofold question as to; (a) whether any proceedings u/s 148 of the Act can be initiated on a dead person? and (b) whether otherwise than by valid digital notice any proceedings u/s 148 of the Act can be initiated?

11. Upon a death, an individual does not exist in the eyes of law, therefore any assessment proceedings initiated in the name of such deceased individual will be invalid. Initiation of any assessment or reassessment proceedings on a non-existing individual person is a jurisdictional defect and is fatal, which therefore vitiates all proceedings and consequential order (if any) passed.



12. The issue of fresh initiation of proceedings against dead individual is no more *res-integra* in view decision in ‘*Devendra Vs AdlCIT*’ [2023, 294 Taxman 550 (Bom)] and ‘*Gourang Anil Wakade Vs ITO*’ [2024, 169 Taxmann.com 731 (Bom)], wherein their Hon’ble Lordships have categorically held that, no proceedings against a dead person under the law can be initiated. Therefore an action of initiation of proceedings by issuance of notice u/s 148 of the Act in the name of deceased person is void *ab-initio*. Resultantly consequential order if any passed under the Act renders *non-est* in the eyes of law and even legal heirs could not be bound by such order. Similarly in ‘*Savita Kapila Vs ACIT*’ [2020, 108 CCH 049 (Del)] it was had held that a re-opening notice issued u/s 148 of the Act against a dead person is null and void and, therefore, all consequential proceedings and orders are invalid in law.



13. An equivalent principle has also been found reiterated recently by the Hon'ble Jurisdictional High Court in '*Mery Gene Gracious Vs ITO*' [2025, 170 Taxmann.com 82 (Bom)] whereby impugned notice and consequential assessment was quashed with a grant of appropriate liberty to proceed a fresh against legal representative who in all represents estate of deceased assessee. The revenue could hardly place any material to dismantle aforestated position of law and applicability thereof to the present case. For the reasons, without multiplying law on the subject, we respectfully applying former judicial precedents (supra) set-aside the impugned order and quash the assessment as the very foundation for initiation of re-assessment proceedings suffered from jurisdiction in law hence the consequential assessment. The first contention originating sprung out of legal ground is thus stands allowed.



14. Now coming to issuance of copy of same notice substituting manually therein the name of the appellant as a legal heir in place of deceased assessee. It remain undisputed fact that, in assessing the escaped income of deceased assessee in reopened proceedings, the Revenue neither brought all legal representative [‘LR’] on record nor any fresh notice were issued in the name of such LRs. The system generated & digitally signed notice drawn in the name of deceased assessee which was forwarded after it was manually corrected to replace with appellant’s name and physically signed. In contesting the validity of such overwritten notice and resultant assessment, the appellant has taken a refuge to section 148 r.w.s 159 r.w.s. 292B r.w.s. 292BB of the Act. These provisions collectively protects aggrieved if defects issuance of notice or in its service is established on record with documentary evidences.



15. Without reproducing stock barrel & lock of section 148 of the Act, it shall be purposive to state that, the section 148 of the Act provides that before making assessment, reassessment or re-computation of income u/s 147 of the Act, the Assessing Officer shall issue on the assessee a notice requiring him to furnish within such period, as may be specified therein a return of his income or the income of any other person in respect of which he is assessable under Act for the relevant assessment year/years and the provisions of Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished u/s 139 of the Act. Thus, issuance of valid notice u/s 148 of the Act is a foundation for any valid assessment or re-assessment proceedings. The prescription of section 148 is not a mere procedural requirement, but statutory & mandatory condition precedent for assessment to be valid in the eye of law.



16. Conversely, if no valid notice is issued or if notice issued is shown to be invalid, the proceedings initiated would turn invalid and void. That is to say the colour & character of assessment framed u/s 147 of the Act is solitarily contingent on colour & character of notice issued u/s 148 of the Act. It is trite law that, where any proceedings under the Act if initiated on any individual when he was alive, by virtue of provisions clause (a) of s/s (2) of section 159 of the Act such proceedings upon the death of such individual is allowed to be continued upon surviving legal representatives. But where an individual against whom any proceedings to be initiated is no longer exists or dies, then such proceedings in terms of clause (b) of s/s (2) of section 159 of the Act may be initiated against LR of such deceased assessee and such LR for all the purpose thereafter shall by virtue of s/s (3) of section 159 of the Act is treated as



assessee. Now comes who is the LR against whom any proceedings in terms of clause (b) of s/s (2) of section 159 of the Act can be initiated when assessee dies. The legal representative in terms of section 2(29) of the Act r.w.s. 2(11) of Code of Civil Procedure, 1908 means a person or persons who in law represents the estate of a deceased assessee, and includes any person who intermeddles with the estate of the deceased assessee and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The combine consideration of aforesaid provision suggest that, initiation of reopening assessment proceedings against deceased individual is permissible under a law only if are initiated against the LR of such deceased individual in accordance with law. That means for a valid reassessment of escaped income of such deceased individual, the assessing



officer is duty bound to bring all legal representatives on record and treating them as the '**assessee**' must issue **valid notices** u/s 148 to each legal representatives of such deceased individual for framing consequential assessment.

17. In the instant case *au contraire* we note that, the respondent Revenue prior to initiation of re-opening proceedings not only failed to bring on record all the legal heirs/representatives of the deceased assessee but also failed to issue fresh valid notices u/s 148(1) r.w.s. 159(2)(b) of the Act to all such legal heir who have not waived the requirement of notice u/s 148 and not having submitted to the jurisdiction of the Ld. AO. in relation invocation of reopening proceedings.

18. Insofar as validity of issuance of copy of notice drawn deceased assessee's name to the appellant after altering manually *vis-à-vis* signing for



substituting with that of appellant's name is concerned, we see strong force in the averments of the appellant that, two wrongs doings don't make one right. Issuance of such notice in first place in the name of deceased assessee was inconsonance with the provision of section 159(2) r.w.s. 282A of the Act. Secondly, the digitally signed notice dt. 29/03/2019 was originally drawn in the name of the deceased assessee was subsequently altered/overwritten manually to substitute appellant's name, such substitution of notice with appellant's name as the legal heir *per se* cannot legitimise the unlawful notice issued in the name of the deceased assessee, as no notice can be initiated against dead person. As such there was no valid notice u/s 148 of the Act was issued to the appellant so as to assume the jurisdiction to assess the income of the deceased assessee in terms of section 159(2)(b) of the Act, the



precondition of for making assessment u/s 147 of the Act failed, such failure since fatal, the consequential assessment framed therefore renders non-est in the eyes of law. Since altered/overwritten notice issued in the name of appellant does not exist in the eye of law, in consequences proceedings conducted thereon and order passed pursuant thereto could hardly be termed as legal & valid. As the reassessment of income of deceased assessee in the hands of legal heir/appellant sans compliance of section 159 of the Act is incurable u/s 292B/292BB of the Act, the assessment therefore deserves to be quashed. This proposition finds strength in the decision of 'Maharaja Patiala Vs CIT' [1943, 11 ITR 201 (Bom)]

19. We also note that, an identical issue with verbatim fact & circumstance came for consideration before Hon'ble Karnataka High Court in '*Vanitha*



*Gopal Shetty Vs ACIT*' [TS-646-HC-2021(KAR)] where their Hon'ble Lordships have allowed writ filed by legal representatives challenging initiation of reassessment against legal heirs where notice u/s 148 was issued in the name of deceased assessee; in that case, assessee passed away in 2014 whereas a notice dt. 23/03/2018 u/s 148 for AY 2011-12 drawn of such deceased was issued to him; During the course of assessment proceedings, by legal heir Revenue was informed of the Assessee's demise whereafter Revenue issued notices u/s 148/142(1) to the legal heirs and passed an *ex-parte* reassessment order; Legal heirs challenged validity of reassessment notice, reassessment order; High Court observes that legal heirs received the notice under section 142(1) but no **fresh valid notice** u/s 148 was issued to them; High Court further observes that the notice to the deceased Assessee is invalid from its inception as



the only remedy available to the Revenue against a dead person was to issue notice to all legal representatives u/s 159, and except this procedure no other procedure has been envisaged in law.

20. The Hon'ble Delhi High Court ruling in '*Rajender Kumar Sehgal v. ITO*' [2019, 414 ITR 286 (Del)] is also on the similar lines held that, the notice issued against a dead person ought to have been issued a fresh u/s 159(2)(b) to the legal representatives and such notice drawn in the name of deceased cannot be saved by recourse to Section 292B. Relying on the Supreme Court ruling in '*CIT Vs Kurban Hussain Ibrahimji Mithiborwala*' [1971, 82 ITR 821 (SC)], the Hon'ble High Court remarked that the position of law on validity of notice and pursuant proceedings is well-settled that the Income-tax Officer's jurisdiction to reopen proceedings for assessment u/s 147 of the Act



depends upon the issuance of a valid notice u/s 148 of the Act. If the notice issued u/s 148 of the Act is for any reason turn out invalid then entire proceedings taken thereon would become void for want of jurisdiction.

21. Going further we also mindful to note that, in the case of '*Chandreshbhai Jayantibhai Patel Vs ITO*' [2019, 101 Taxmann.com 363 (Guj)] their Hon'ble Lordships have observed that notice u/s 148 of the Act was issued to a dead person. Upon receipt of such notice, the legal representative raised objection to the validity of such notice. The legal representative not having waived the requirement of notice and not having submitted to the jurisdiction pursuant to the impugned notice, the provisions of section 292B would not be attracted and hence, the notice under section 148 has to be treated as invalid.



22. In the instant case, the digital notice drawn in the name of the deceased assessee was re-issued to the appellant alone after substituting therein name of appellant in place of deceased assessee. Such notice is not only inconsonance with the provision of section 159(2)(b) of the Act but could hardly be considered as valid notice u/s 148 r.w.s. 292B r.w.s. 292BB of the Act, as such the appellant did neither waive off requirement of issuance of notice nor pursuant such notice submitted to the jurisdiction of Ld. AO. In view of aforestated discussion and judicial precedents we have no hesitation to set-aside the impugned order and quash the proceedings *vis-à-vis* order of assessment as no valid notice upon the appellant in relation to assessment was issued prior to assuming reopening jurisdiction u/s 148 r.w.s. 159(2)(b) of the Act by the Ld. AO. Thus the appellant's second contention also succeeds in very terms.



23. Now coming to later contention relating to territorial jurisdiction; without prejudice to first two contentions the Ld. AR capitulated that, the CBDT in the year 2011 vide its instruction 01/2011 enhanced the limits for assigning the cases amongst 'Income Tax Officers & Asstt/Dy Commissioner' ['ITO & AC/DC']. The cases of a non-corporate assessee in mofussil areas with income upto ₹15.00Lakhs are assigned to ITO and above ₹15.00Lakhs are assigned to AC/DC. Going by deceased assessee's jurisdiction history as placed on record by the respondent Revenue, the latest jurisdiction over the deceased assessee was with the Ld. Income Tax Officer, Ward-1(3) Panaji, Goa ['JAO']. Since in present case, there was no return of income for the deceased assessee was filed since AY 2011-12 and in the absence of return, income 'deemed' to be below threshold limit of exemption of ₹2.5Lakhs, therefore Ld. JAO had the



jurisdiction to issue notice u/s 148 of the Act and not the Ld. AO. The Ld. AO since had no jurisdiction to assess the income of the deceased assessee going by the aforestated circular, the assumption of jurisdiction is bad in law. This overstepping action of the Ld. AO in assuming jurisdiction since without authority of law, hence ab-initio void, consequently the order of assessment. Per contra, the Ld. DR Mr Periyagounden strongly contended that, the CBDT instructions (supra) are administrative guidelines and cannot override the provisions of the Act. It was also countered that by the Ld. DR that, the provisions of s/s (3) of section 124 of the Act disentitles the appellant from disputing jurisdiction any-time after the expiry of period specified in notice issued u/s 148 & 144 of the Act. The challenge to jurisdiction first time in second appellate proceedings is not maintainable, therefore deserves to be pulled out.



24. We note that, the Revenue vide its written reply dt.11/02/2025 submitted the jurisdiction history of deceased assessee. There are three entries in all to be read in distending order. From entry 3 it reveals that, the jurisdiction over the deceased assessee was lying with ITO Ward-2, Margao(Old) until it was transferred to ITO Ward-2 Margao on 29/10/2002 vide transfer order no 10400001115 [11 digit]. From entry 2 the said jurisdiction vide transfer order no 10400004607 [11 digit] was subsequently on 07/05/2004 transferred to ITO Ward-1(3), Panaji. From the first/latest entry it is further noted that, vide transfer order no 104001890075 [12 digit] on 03/10/2011 the assessment jurisdiction over deceased assessee was transferred from ITO Ward-1(3) [‘Ld. JAO’], Panaji to Circle-1(1), Panaji [‘Ld. AO’]. From the former admitted rock-solid facts we note that, until assessment year 2011-12 the Ld. JAO had



jurisdiction over the assessee. The assessee died on 29/04/2011. In view thereof no return of his income was filed since AY 2011-12. The Jurisdiction over the assessee however was transferred from Ld. JAO to Ld. AO on 03/10/2011, that is in six months from the death of the assessee. On our specific query, the Revenue could neither produce the copy of above transfer orders nor could explain reasons with cogent evidence as to how and why the jurisdiction from ITO Ward-1(3) to Circle-1(1) got transferred in given circumstances where assessee is dead and no return of income was filed. The inability of the Revenue to explain the circumstances, reasons and procedure followed in transferring the jurisdiction from **‘Ward-1(3), Panaji to Circle-1(1), Panaji’** [‘Ld. JAO’] created much doubt over the procedure followed by the Revenue in assuming the very jurisdiction to issue notice u/s 148 of the Act for assessing income of



deceased assessee in the hands of appellant 147 of the Act. On the contrary there is much less deprecate material on record to justify the transfer of jurisdiction from Ld. JAO to assume jurisdiction over the deceased assessee. Former unclear smoke ultimately persuaded us to concur with the appellant's averments that, going by the CBDT Circular (supra) right from issuance of notice u/s 148 the Ld. AO had no valid jurisdiction over the deceased assessee, therefore over the appellant u/s 159(2)(b) of the Act. The entire proceedings thus suffered from jurisdictional defects which is fatal; therefore deserves to be vitiated in its entirety.

25. Our aforesaid view is found fortified by the judgment of the Hon'ble High Court of Bombay in 'Ashok Deckhand Jain Vs UOI' [2022, WP. No.3489/2019]. In the said case the Hon'ble High



Court by referring to the CBDT Instruction (supra) has quashed the proceedings for issuance of notice by the ITO who had no pecuniary jurisdiction over the assessee. Respectfully applying the ration laid therein, we quash the impugned notice issued u/s 148 of the Act by the Ld. AO who had no jurisdiction vested with over the deceased assessee, thus over the appellant LR. The contention and the legal ground thus stands allowed. Since the legal ground is adjudicated in favour of the appellant, devolving deeper into other grounds unnecessitated.

**26. In result, the appeal stands ALLOWED.**

u/r 34 of ITAT Rules, the order pronounced in open court the date mentioned hereinbefore.

**-S/d-**  
**PAVAN KUMAR GADALE**  
**JUDICIAL MEMBER**

Panaji, 24<sup>th</sup> April, 2025.

**Copy of the Order forwarded to :**

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|-------------------|-----------------------------------|---------------------|
| 1. The Appellant. | 2. The Respondent.                | 3. The AO Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Panaji | 6. Guard File       |

**-S/d-**  
**G. D. PADMAHSHALI**  
**ACCOUNTANT MEMBER**

By Order,  
Sr. Private Secretary / AR ITAT, Panaji.