

IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH 'SMC,  
JODHPUR

BEFORE: DR. MITHA LAL MEENA, AM & DR. S. SEETHALAKSHMI, JM

ITA No. 63 to 67/JODH/2020  
Assessment Years : 2011-12 to 2015-16.

Kanak Kumar Jain L/H of Partner of M/s. Keshariyaji Filling Station, NH-8, Rishabdev, Uaipur.	Vs.	The DCIT, Circle-1, Udaipur.
<a href="#">PAN/GIR No. AABFK2499L</a>		
Appellant		Respondent

Assessee by : Shri Rakesh Lodha (CA)  
Revenue by : Shri Karni Dan, Addl. CIT

Date of Hearing: 06/02/2025  
Date of Pronouncement: 01/05/2025

ORDER

PER DR. S. SEETHALAKSHMI, J.M.

These are five appeals filed by the assessee against a consolidated order of Id. CIT (Appeals)-1, Udaipur dated 24.01.2020 passed under section 154 read with section 250 of the I.T. Act, 1961, for the assessment years 2011-12 to 15-16. The grounds raised in all these appeals are common except difference in figures. Therefore, for the sake of convenience, we dispose off these appeals by a consolidated order. First, we take up the appeal in ITA No. 63/Jodh/20120 as a lead case and the decision arrived therein will be applicable to all other appeals. The assessee has raised the following grounds of appeal in ITA No. 63/Jodh/2020 :-

1. That the Id. CIT (Appeal) has erred in law and on facts in rejecting the rectification application made by appellant u/s 154, ignoring the apparent mistakes that had

occurred in the appellate order, including incorrect application of law that goes against canons of well established fundamentals of partnership law.

2. That the Id. CIT (Appeal), Udaipur has erred in law and on facts in confirming M/s. Keshariyaji Filling Station, a partnership firm as an existing entity without properly appreciating the fact that all of its partners have expired at the time of issuance of notice u/s 148, and without properly appreciating the law that said firm effectively dissolved w.e.f. 02.10.2017 u/s 42-C of Indian Partnership Act hence, no assessment can be made on it in so far as per catena of various decision of different High Court and Apex Court are concerned. The Id. CIT (A) further failed to appreciate that no valid notice served on appellant as no notice can be issued in name of dead person/non existing entity. Hence, the assessment order passed in consequence to an invalid notice is nullity and resort to provisions of section 292B of Act cannot be made.
3. That the Id. CIT (A) has failed to appreciate that under the law of partnership a firm has no legal existence apart from partner and it is merely a compendious name to describe its partner. If respondent want to assess the income of non existing partnership firm, then the firm must be fully represented by impleading all legal heir/beneficiary of partner by giving them opportunity of being heard. However in present case respondent has adopted his own procedure unknown to law and erroneously foisted whole liability of firm on appellant whereas other legal heir omitted for liability without any reason whatsoever.
4. That the Id. CIT (A) has grossly erred in relying section 189(3) of the Act. It is submitted that sub-section instead of supporting the respondent, supports the stand of the assessee. It is clearly provided that person to be held liable are the person who were partner at the time of dissolution. In present case, the firm against which the assessment was made was dissolved w.e.f. 02.10.2017. The father of appellant who was partner died in year 26.01.2010 was not partner in the firm during the AY 2011-12, hence under circumstance no liability can be cast on appellant.
5. That besides Id. CIT (A) has erred in passing order u/s 154 r.w.s. 250 ignoring various submission made in application filed under section 154 against the impugned order dated 24.12.2018.
6. That the Id. CIT (A) has erred in conforming interest of Rs. 450921/- u/s 234A and Rs. 482019 u/s 234C of the Income Tax Act, 1961.
7. That the appellant may kindly be permitted to raise any additional or alternate grounds at or before the time of appeal.

2. The brief facts of the case are that the assessee is a L/H of Partner of M/s. Keshariyaji Filling Station, a dealer of Bharat Petroleum. The assessee firm filed its last ITR for the AY 2010-11 and after that assessee has not filed its ITRs. As per information received from ADIT (Inv.)-II, Udaipur vide letter no. 721 dated 12,02,2018, survey proceedings u/s 133A of the IT Act was conducted on 03.12.2016 at the business premises of the firm situated at Rishabdeo. During and post survey proceedings the ADIT (Inv.)-II, Udaipur found that assessee firm was not maintaining any books of accounts. As per assessee's submission during survey total sales / receipts during FY 2010-11 relevant to the AY 2011-12 was at Rs. 33,54,56,594/- on which net profit would be considered as 0.5% of the total turnover on realistic estimate basis. Shri Kanak Kumar Jain, one of the legal heirs of the deceased partner late Shri Vimal Chand Jain, had also accepted undisclosed business income of the firm around 0.5% of the gross turnover of Rs. 33,54,56,594/- which comes to Rs. 16,77,283/- in the statement recorded u/s 131 of the IT Act during survey proceedings.

2.1 Further, as per ITS data available on the system, assessee had made cash deposit of Rs. 19,77,80,000/- in its bank account no. 61100346101 at SBBJ, Rishabdeo Branch during the year under consideration. As per ITS data the assessee had also received Rs. 23,401/- under section 194C on which TDS was deducted by Bharat Petroleum Co. Ltd.

2.2 Moreover, it is relevant to mention here that the case of the assessee firm for the AY 2011-12 was also reflecting in NMS/AIIMS module of the system, therefore, the assessee was given ample opportunities for filing its ITR for the relevant AY vide office letter no. 917 dated 30.07.2015 and letter no. 1506 dated 25.01.2018. But assessee had not filed its ITR. Therefore, after receiving information from ADIT (Inv.)-II, Udaipur, proceedings under section 147 of the IT Act was initiated in the current year for examining the escaped income of Rs. 19,94,80,684/-

(Cash deposit of Rs. 19,77,80,000 + Business income of Rs. 16,77,283 + Receipt of Rs. 23,401 u/s 194C). Accordingly, a notice under section 148 dated 08.03.2018 was issued in the name of non-existent firm and not properly served thereon. The said reassessment proceeding was based on ADIT (Inv.)-II, Udaipur report issued after survey u/s 133A on dated 03.12.2016. The assessing officer without rejecting an objection for issuance of notice under section 148 to non-existent assessee and not following the procedure u/s 189(3) of the Act, arbitrarily completed an assessment order on 24.12.2018 without impleading the legal representatives of deceased partners of firm and made estimated addition of Rs. 20,94,152/-. On appeal, the ld. CIT (A)-1, Udaipur vide order under section 250 dated 27.08.2018 and u/s 154 r.w.s. 250 of the IT Act, 1961 dated 24.01.2020 confirm the validity of issuance and service of notice and addition.

3. Aggrieved by the order of ld. CIT (A)-1, Udaipur, the assessee has preferred the present appeal before us.

4. Before us, the ld. A/R of the assessee submitted his written submissions as under :-

“ The ground no. 1 to 3 are inter-related and contains challenge to validity of issuance and service of notice u/s 148 and assumption of lawful jurisdiction for continuation of re-assessment u/s 147 of the Act, so, all are dealt hereunder together :

1.1 The ld. CIT (A) has confirmed the finding of assessing officer about validity of issuance of notice u/s 148 and service thereof upon the assessee. It is solely based on the findings of the assessing officer that Mr. Kanak Kumar Jain L/H of late Shri Vimal Chandra Jain, partner of M/s. Kishriyaji Filling Station was participated in survey proceedings on behalf of the Firm.

1.2 This finding is contrary to the material evidence i.e. impounding order u/s 133A(3)(ia) in the sole name of M/s. Kishriyaji Filling Station, Rishabhdeo, Udaipur and Notice issued u/s 131 of the Act dated 03.12.2016 (PB 01 & 02) in the name of Mr. Kanak Kumar Jain L/H late Shri Vimal Chandra Jain to appear in

the survey proceeding of M/s. Kishriyaji Filling Station, Rishabhdeo. Nowhere, it is stated therein that he being legal representative of M/s. Kishriyaji Filling station is called for appearance. Since, there is general and routine practice of the survey proceeding to call for recording of statement of employee(s) or other persons to verify the facts / transaction of the firm in their knowledge. The appellant, Mr. Kanak Kumar Jain did not provided any authority to represent M/s. Kishriyaji Filling station, Rishabhdeo, Udaipur during survey proceeding by surviving partner Mr. Shyam Sundar Jain. It was not required also, since, the partner Shri Shyam Sundar Jain was alive as on that date.

- 1.3 It is pertinent to mention here that facts got changed between the survey date on 03.12.2016 and ADIT (Inv.)-II, Udaipur report dated 12.02.2018, earlier as on date of survey one of the partner of firm Mr. Shyam Sundar Jain was alive and at later date as on 12.02.,2018 and on issueof foundational notice u/s 148 dated 08.03.2018 he was died. So, as on issuance of date of statutory notice u/s 148 none of the partner was alive and firm got dissolved by operation of law i.e. The Indian Partnership Act, 1932, as all legal heirs of the deceased partners were not agreed upon to constitute the firm. Therefore, the existence of firm as on date of survey proceeding cannot be considered as on date of issuance of notice u/s 148 of the Act, particularly for assumption of lawful jurisdiction of reassessment.
- 1.4 Thus, the notice issued in the name of M/s. Kishriyaji Filling station, Rishabhdeo (PB page 03) is without verifying the facts of existence of firm and its partners, in casual manner on non-existing entity.
- 1.5 Furthermore, that AR of Kanak Kumar Jain has categorically objected at twice for issue of notice on non-existent assessee, Id. Assessing officer has not taken care of that and continued issuance of notices u/s 142(1) of the Act in similar fashion in the name of non-existent firm. Whereas, it is statutory duty of assessing officer to pass a speaking order on the objections raised upon issuance of statutory notice u/s 148 of the Act, before proceed further in the matter.

- 1.6 In the cases of *B.K. Jagan & Co. vs. CIT 2004) 136 Taxman 343 (P&H)* it is held that if assessee objects on issue of notice, AO must first pass a speaking order on the validity of notice.
- 1.7 Notice u/s 148 against dead person is valid, unless legal representative submitted to AO without raising any objection as held in case of *413 ITR 276 (Guj.)*.
- 1.8 Herein the case it is proved that neither the objections were considered nor any speaking order was passed by ld. AO.
- 1.9 Furthermore, the foundational notice u/s 148 of the Act was neither served upon the assessee firm bearing PAN AABFK2499L thereupon nor validly issued upon the legal representatives in terms of section 189(3) of the Act. Thus, there was no service of notice of the firm.
- 1.10 It is also held in the case of *Savita Kapila v. ACIT (2020) 118 TMC 46 (Del HC)* that notice u/s 148 issued after the death of assessee by AO is bad in law and liable to quash, even the L/H is not liable to inform the death of the assessee.
- 1.11 Moreover, the controversy of issuance and service of statutory notices under the Act on the non existent entities is no longer res integra after the Judgment of Hon'ble Apex Court in the case of *CIT v. Spice Infotainment Ltd. (2018) 12 ITR-OL-134 (SC)* and *PCIT v. MARUTI SUZUKI INDIA LTD. (2019)426 itr 613 (SC)*, wherein it is held that issuance of notice to a company which is ceased to exist would be without jurisdiction.
- 1.12 Following the legal jurisprudence the various benches of Hon'ble High Courts and appellate authorities have followed these binding orders of Hon'ble Apex Court and quashed notices. Out of plethora of such judgments we are placing our reliance on some of under mentioned orders :  
*Mehsana Urban Co-op Bank Ltd. v. Asst. CIT (2023) 451 ITR 514 (Guj).*  
*Neo Structo Construction Pvt. Ltd. v. Asst. CIT (2023) 451 ITR 510 (Guj).*
- 1.13 The mandate of section 148(1) is that reassessment shall not be made until there has been service of notice. Mere mentioned name of assessee on the notice cannot be equated with the proper service of notice as contemplated under the provisions of the Act. The burden to establish that notice under section 149(1)(b) read with

section 148(1) of the Act has been issued to the assessee is always on the Revenue.

- 1.14 Though Id. CIT (A) was in agreement with the contention of the appellant that notice was issued in the name of M/s. Kishriyaji Filling station, Rishabhdeo, without impleading legal representatives on it, but, still she tried to establish deemed service of notice by invoking provisions of Section 282BB on incorrect facts that no objection for issuance of notice was made during the assessment proceedings. This is contrary to assessment order itself which contains the letter dated 11.07.2018 at para 12 (page3), letter dt. 10.12.2018 at first para (page 5) of appellant legal representative of deceased partner Vimal Chand Jain and an email of another legal representative Mr. Mohit Vanawat L/H of other deceased partner Shri Shyam Sundar Jain (expired on 02.10.2017) in para 2 at page 8-9 of the assessment order.
- 1.15 A proviso appended to the main provision of section 292BB provides that the provision would not apply where the assessee has raised objection before the completion of such assessment or reassessment and herein the case there was proper objections raised many times before the assessing officer and completion of assessment order.
- 1.16 Evenafter that assessing officer has opted to not to pass any speaking order for determination of legal representatives of the deceased partners of firm and continued reassessment proceeding in gross violation of provisions of section 189(3) of the Act and principle of natural justice.
- 1.17 The enclosed notice u/s 148 of the act dated 08.03.2018 issued on the basis of investigation report dt. 12.02.2018, prior to that a fact about death of last surviving partner Mr. Shyam Sundar Jain on 02.10.2017 was available with the investigation department. Still, the assessing officer has chosen the option of issue of notice in the name of non-existent entity and avoided to follow the prescribed procedure in term of the provisions of section 189(3) of the Act.
- 1.18 The section 189(3) provides that in case of death of a partner of discontinued firm, his legal representative **shall be jointly and severally** liable for tax. So, here

the prime condition is imposed by legislature to bring on record “all legal representatives of deceased partner(s)”. The word used here “**shall be**” connotes mandatory nature and “**Jointly and Severally**” connotes necessity to bring on record all legal representatives for the assessment etc. Contrary to that herein the case, even after having proper information of death of all partners and discountenance of firm, Id assessing officer has without impleading legal representatives of deceased partners of firm and issue of statutory notice on them, he passed an assessment order in the name of appellant and Id. CIT (A) has also confirmed his findings. Thus, CIT (A) is grossly bad in law in upholding the validity of issuance of notice and service thereof on assessee and also against the mandatory procedure of law.

- 1.19 It is settled position of law that the Valid Statutory Notice 148 can assign the valid jurisdiction to the assessing officer to complete legal and lawful assessment proceedings.
- 1.20 In the nutshell the provisions of section 148 of the Act prescribes the service of a valid notice under section 148 on the assessee before making the assessment, reassessment or re-computation under section 147 of the Act, a valid service of a valid notice under section 148 of the Act, is not a mere procedural requirement, but is a condition precedent to the validity of any assessment, reassessment or re-computation to be made under section 147 of the Act and it is so because of the use of words “shall serve on the assessee” and also the requirement to the effect “before making the assessment, reassessment or re-computation under section 147” in the section itself, meaning thereby that if no notice under section 148 is issued or if the notice so issued is shown to be invalid, or the service of notice so issued, is shown to be invalid, the learned Assessing officer cannot proceed with the subsequent proceedings for making assessment, reassessment or re-computation under section 147 of the Act. In other words, if the learned Assessing officer, in such circumstances, proceeds with the subsequent proceedings, the same will be illegal and void.

This proposition of law has been held by the Hon’ble Court in following cases :

Y. Narayana Chetty v. ITO (1959) 35 ITR 388-392 (SC)

CIT v. Thayaballi Mulla Jeevaji Kapasi (1967) 66 ITR 147 (SC)

CIT v. Kurban Hussain Ibrahimji Mithiborwala (1971) 82 ITR 821 (SC)

Madan Lal Agarwal v. CISST (1983) 144 ITR 7451 (All.)

Vijay Kumar Jain v. CIT (1975) 99 ITR 349, 353 (Punj. & Har.)

CIT v. Ishwar Singh & Sons (1981) 131 ITR 480 (All.)

Unless, the notice is served on the proper person in the manner prescribed under section 282, the service is insufficient and the Assessing officer does not have jurisdiction to re-assess the escaped income. This proposition of law is supported by the decisions of :

Thangam Textiles v. First ITO (1973) 90 ITR 412 (Mad.)

Lakshmi bai v. ITO (1972) 86 ITR 804 (Mysore)

C.T. Rajagopal v. State of Mysore (1972) 86 ITR 814.

S.K. Manekia v. CST (1977) 39 STC 426 (Bom.)

CST v. Shrimal Sakhar Chand (1984) 57 STC 224, 235 (Bom.)

- 1.21 The AO failed to prove with any evidence that statutory notice u/s 148 was served upon the assessee or its authorized agent. Since, Mr. Kanak Kumar Jain was an employee of firm and never assigned any sort of authority to represent firm in the capacity of partner or otherwise before the Income Tax department.
- 1.22 Even otherwise, in case of Sky Light Hospitality, it was dealt with a situation where a notice under section 148 was issued in the name of a non-existent private limited company but there was a technical mistake in name of company mentioned on the notice but having correct PAN on the notices and service upon the partners/directors, so, the Hon'ble Apex Court held that defect in recording the name of a non-existent company in a notice under section 148 was a procedural defect or mistake curable under section 292BB, since, no prejudice was caused to the assessee.
- 1.23 Though a judgment of Delhi HC confirmed by SC in case of Sky Light Hospitality LLP v. Asst. CIT (2018) 405 ITR (St.) 12, but subsequently this

overruled and distinguished in case of Maruti Suzuki India Ltd. (supra) by Hon'ble Supreme Court.

- 1.24 After cessation of Firm, it cannot be regarded as a "person" in terms of section 2(31) of the Act, 1961 against whom assessment proceedings can be initiated and an assessment order be passed.
- 1.25 It is also held by the Hon'ble Supreme Court in case of CIT v. Vegetable Products Ltd (1973) 88 ITR 192 (SC) that when two views are possible, one favouring assessee should have been followed.
- 1.26 Thus, in view of the foregoing material facts it is proved that there is gross violation of provision of law and principle of natural justice in issue of statutory notice, service of notice and passing of assessment order in the name of appellant, so, the appellant very humbly prays for quashing the illegal notices on the name of non-existent firm and assessment order passed without assumption of lawful jurisdiction for non-service of statutory Notice to the assessee and oblige us. "

5. On the other hand, the ld. D/R supported the orders of revenue authorities.

6. We have heard the rival submissions, perused the material on record and gone through the orders of the revenue authorities. The firm M/s. M/s. Keshariyaji Filling Station, is a partnership firm comprised off three partners viz. Shri Vimal Chand Jain, Shri Narendra Kumar Parmar and Shri Shyam Sunder Jain. Shri Vimal Chand Jain had expired on 26.01.2010 and Shri Narendra Kumar Parmar had expired on 15.08.2011 and the assessee firm had filed its last ITR for the AY 2010-11. A survey was undertaken by the department on the said firm on 03.12.2016 and in the survey it was observed that the assessee firm had a turnover of Rs. 33,54,56,594/- in the FY 2010-11 relevant to AY 2011-12 on which net profit of 0.5% has been considered on realistic basis. As per information available with the AO the firm had deposited Rs. 19,77,80,000/- in cash in its bank account. Therefore taking into consideration the information

about above stated cash deposit, business income of Rs. 16,77,283/- and contract receipts of Rs. 23,401/- the ld. AO issued notice u/s 148 on 08.03.2018 in the name of Keshariyaji Filling Station as partnership firm. In response thereto an objection was filed that notice has been issued on non existent firm as the third partner Shri Shyam Sunder Jain had also expired on 02.10.2017 i.e. between the date of survey and issuance of notice u/s 148. The AO did not deal with the objections so raised, proceeded to pass the assessment order in the name of Kanak Kumar Jain LH of Partner M/s. Keshariyaji Filing Station. The assessment order was passed on 24.12.2018 u/s 147 of the Income Tax Act, 1961 determining the taxable income of the business at Rs. 16,77,283/- being 0.5% net Profit on turnover of the assessee firm. Against the assessment order an appeal was filed before CIT (A) – 1, Udaipur wherein main challenge was regarding the passing of the assessment order on a non existent entity as at the time of issuance of notice u/s 148 all the partners have died. It was also challenged on the ground that as per Partnership Law the assessment on a partnership firm was required to be made by impleading all legal heirs whereas the assessment order has bene passed only on legal heir of one partner only. Not convinced with the submissions, the ld. CIT (A) dismissed the appeal of the appellant firm. The appellant had filed an application u/s 154 of the income tax Act, 1961 on 23.01.2020 for rectification in the appeal order on many counts. However, the same has also been rejected by the ld. CIT (A) and hence this instant appeal has been filed against order of the ld. CIT (A) u/s 148 of the Income Tax Act, 1961.

6.1 We have found that ld. CIT (A) confirmed the legality of the assessment order passed u/s 148 on the basis that Mr. Kanak Kumar Jain L/H of late Shri Vimal Chandra Jain, partner of M/s. Kishriyaji Filling Station had participated in survey proceedings on behalf of the Firm. However

such finding is contrary to the material evidence i.e. impounding order u/s 133A(3)(ia) had been issued in the sole name of M/s. Keshriyaji Filling Station, Rishabhdeo, Udaipur and Notice issued u/s 131 of the Act dated 03.12.2016 (PB 01 & 02) was issued in the name of Mr. Kanak Kumar Jain L/H late Shri Vimal Chandra Jain to appear. It is not apparent whether Mr. Kanak Kumar Jain was called upon to appear as legal representative of M/s. Kishriyaji Filling station. No notice had been issued to the legal heir of other partners for recording of statements etc. We have also noticed that during the period from date of survey viz. 03.12.2016 to the issuance of notice u/s 148 on 08/03/2018 the only surviving partner Shri Shyam Sunder Jain had also expired and hence it is undisputed fact that on the date of issuance of notice u/s 148 none of the partner of the appellant firm was alive. As per provisions of Partnership Act, 1932 as all the legal heirs did not agree to continue the business in partnership and hence the partnership firm ceased to exist. Hence the appellant firm was non-existent on the date of issuance of notice u/s 148. We have also observed that the ld. AR of Kanak Kumar Jain had categorically objected twice for issue of notice on non-existent assessee, However, the Assessing officer has not taken care of that and continued issuance of notices u/s 142(1) of the Act in similar fashion in the name of non-existent firm. Whereas it is statutory duty of assessing officer to pass a speaking order on the objections raised upon issuance of statutory notice u/s 148 of the Act, before proceeding further in the matter. It has been a law now that objections raised by the assessee against issuance of notice u/s 148 have to be dealt with by AO through speaking order which has not been done in this case. We take note of judgement of the Hon`ble Punjab and Haryan High Court in the case of B.K. Jagan & Co. vs. CIT (2004) 136 Taxman 343 wherein the Hon`ble Court had held that objections to notice u/s 148 are to be addressed through speaking order. We have also perused various judgements of the Hon`ble Courts wherein time and again it has been held that notice u/s

148 on a dead person is nullity and no valid proceedings can be taken up on such invalid notice. The controversy of issuance and service of notice on a non-existent entity is no longer *res integra* after the Judgment of Hon'ble Apex Court in the case of CIT v. Spice Infotainment Ltd. (2018) 12 ITR-OL-134 (SC) and PCIT v. MARUTI SUZUKI INDIA LTD. (2019) 426 ITR 613 (SC), wherein it is held that issuance of notice to a company which is ceased to exist would be without jurisdiction. The Id. AO did not pass any speaking order for determination of legal representatives of the deceased partners of firm and continued reassessment proceedings in gross violation of provisions of section 189(3) of the Act and principle of natural justice. As per section 189(3) of the Income tax Act, 1961 on death of any partner it will be several and joint liability of all the legal heirs of such deceased partner. In this case since all the partners had expired, hence it was duty of the AO to implead all legal heirs of all the deceased partners of the partnership firm in which the AO failed. The provisions of section 189(3) are being reproduced for better understanding of the matter :-

**189. Firm dissolved or business discontinued.**

(1) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the [Assessing Officer] [ *Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).*] shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing sub-section, if the [Assessing Officer] [ *Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).*] or the [\* \* \*] [ *Certain words omitted by Act 21 of 1998, Section 65 (w.e.f. 1.10.1998).*] [Commissioner (Appeals)] [ *Inserted by Act 29 of 1977, Section 29 (w.e.f. 10.7.1978).*] in the course of any proceeding under this Act in respect of any such firm as

is referred to in that sub-section is satisfied that the firm was guilty of any of the acts specified in Chapter XXI, he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum. [\* \* \*] [ *Explanation omitted by Act 18 of 1992, Section 68 (w.e.f. 1.4.1993).*]

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the person referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall affect the provisions of sub-section (6) of section 159.

As per provisions of section 189(3) all the legal heirs of the deceased partner(s) are jointly and severally liable for any tax, penalty or other sum payable under Income tax Act, 1961 but for affixing such liability all the legal heir must be served with notice(s) and all the them must be made party to the proceeding. In this case the AO issued notice u/s 148 on the appellant firm, when the objection was filed about non existence of the firm, he without dealing with the objections filed by the LH of one of the partner finalized the assessment in the name of the instant appellant. No notice(s) seem to had been issued on the legal heir of all the deceased partners and even all of them were not impleaded as legal heirs. Therefore, there have been lapses in issuing notice u/s 148 and in service of such notice. Provisions of section 148 of the

Income tax Act, 1961 prescribe the service of a valid notice under section 148 on the assessee before making the assessment, reassessment or re-computation under section 147 of the Act, a valid service of a valid notice under section 148 of the Act, is not a mere procedural requirement, but is a condition precedent to the validity of any assessment, reassessment or re-computation to be made under section 147 of the Act and it is so because of the use of words “shall serve on the assessee” and also the requirement to the effect “before making the assessment, reassessment or re-computation under section 147” in the section itself, meaning thereby that if no notice under section 148 is issued or if the notice so issued is shown to be invalid, or the service of notice so issued, is shown to be invalid, the learned Assessing officer cannot proceed with the subsequent proceedings for making assessment, reassessment or re-computation under section 147 of the Act. In other words, if the learned Assessing officer, in such circumstances, proceeds with the subsequent proceedings, the same will be illegal and void. Various judicial authorities have also held so. We have gone through the order of the Hon`ble Allahabad High Court in the case of Lala Madan Lal Agarwal v/s CIT (144 ITR 745) wherein the AO had issued a notice in the status of Individual and after filing of the reply by the assessee the AO told him to file ITR of his HUF as the reassessment proceedings were against his HUF. No new notice had been issued by AO in the status of HUF. Under such circumstances the Hon`ble Allahabad High Court quashed all the proceedings by holding as under :-

*15. We are, therefore, of opinion that the notice under section 34 issued to Sri Madan Lal Agarwal on 29-9-1962 was vague and as such invalid. The vagueness of the said notice did not stand cured because the ITO at a later stage informed the assessee that he was to file his return in the status of HUF. The proceedings following such a vague and invalid notice also stand vitiated. In this view of the matter, it is not necessary for us to go*

*into various other grounds raised by learned counsel for the assessee for questioning the validity of the proceedings under section 147(a).*

Therefore issue of valid notice and its valid service are sine qua non for reassessment proceedings which are lacking in this case. Under these facts and circumstances we are of the view that ld. CIT (A) was required to consider the application of the Appellant u/s 154 of the Income tax Act, 1961 in true spirit of law in which she failed. We set aside the order of the ld. CIT (A) and quash the notice u/s 148 and subsequent proceedings.

Hence the appeal of the appellant is allowed in above terms.

7. As the facts and grounds of appeal in other appeals are exactly similar and hence our findings shall be applicable on other appeals of the appellant also.

8. In the result, appeals of the assessee are allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal)

Rules, 1963 by placing the details on the notice board.

Sd/-  
**(Dr. Mitha Lal Meena)**  
**Accountant Member**

Sd/-  
**(DR. S. Seethalakshmi)**  
**Judicial Member**

Dated 01/05/2025

Santosh- Sr. P.S

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)

(5) The DR, I.T.A.T.

True Copy  
By order