

**THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER &  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.2844/Del/2024  
(Assessment Year: 2014-15)**

Ishwar Chand Aggarwal 3D-29, NIT Faridabad Haryana - 121001	Vs.	ITO, Ward 1(3) NH-4, NIT, Faridabad, Haryana
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AALPA5364Q		
Appellant	..	Respondent

Appellant by :	Sh. Jitender Wadhwa, CA
Respondent by :	Sh. Om Prakash, Sr. DR

Date of Hearing	10.07.2025
Date of Pronouncement	10.07.2025

**ORDER**

**PER MADHUMITA ROY, JM:**

The instant appeal filed by the assessee is directed against the order dated 25.10.2023 passed by the Ld. NFAC, Delhi, arising out of the Assessment Order dated 29.03.2022 passed by the AO, under Section

147 r.w.s 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for Assessment Year 2014-15.

2. The assessee has challenged the initiation of the proceeding under Section 147 of the Act as void-ab-initio since notice issued under Section 148 of the Act was issued to a dead person.

3. Brief facts leading to the case are that the assessee was an individual left for his heavenly abode on 28.01.2021 leaving behind Shri Ankit Aggarwal his legal heir. The case of the assessee was reopened on the basis of information received from the Deputy Director of Income Tax (Inv)-1, Faridabad in regard to bogus entries provided by the assessee to various beneficiaries through his proprietorship concern M/s Aggarwal Sales Agency and M/s India Sales Corporation and other bogus proprietorship concern establishes in the name of Shri Vikas Kumar from Financial Year 2010-11 to Financial Year 2014-15. The assessee has made entries to the tune of Rs.2,67,16,250/- to various bogus concern and therefore, upon recording reasons to believe that the said income was chargeable to tax as had escaped assessment for Assessment Year 2014-15, notice under Section 148 of the Act dated 28.03.2021 was issued to the assessee and claimed to have been served upon him. Statutory notice under Section 142(1) dated 23.12.2021 was issued directing the details to be provided in respect to the reasons recorded in reopening of assessment followed by reminders dated 27.01.2010. Since no compliance was made even to the show cause notice issued to the assessee neither any adjournment was sought for the assessment was finalized under Section 144 of the Act upon making addition of

Rs.3,28,56,667/- which was in turn confirmed by the First Appellate Authority. Hence, the instant appeal before us.

Relevant to mention that since none appeared on behalf of the assessee before the First Appellate Authority the instant appeal was dismissed due to non-prosecution.

4. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that admittedly notice under Section 148 of the Act dated 28.03.2021 was issued on the assessee who already expired on 28.01.2021; the said notice is bad in law and not sustainable in the eyes of law and the entire proceeding is thus, void-ab-initio and liable to be quashed. In support of his argument he relied upon the judgment passed by the Hon'ble Supreme Court in the case of Ghanyashyam Anil Dhanani Vs. ITO, Ward 17(1)(1) (2024) 169 taxmann.com 327 (SC) wherein it has been held that when the notice is issued in the name of a dead person being the original assessee, the same is defective. Even the subsequent participation of the legal representatives in the said proceeding before the Ld. AO would not have cured the initial defect of issuing the notice against the dead assessee. Reliance were also placed on the judgment passed by the Hon'ble jurisdictional High Court in the case of Meenu Gupta Vs. ACIT (2024) 167 taxmann.com 132 (Delhi) where it has been held that notice issued to a dead person is void as per established legal precedent. It was further observed that a valid notice to a correct person is a prerequisite for acquiring jurisdiction. The judgment passed by the Hon'ble High Court in the case of Savita Kapital Vs. ACIT, (2020) 118 taxmann.com 46/273 taxman 148/426 ITR 502 (Delhi) and in the case of Sangeeta Goyal Vs.

Commissioner of Customs (Exports) [W.P. (C) 13025 of 2019, dated 06.09.2024] were also relied upon by the Ld. AO while again expressed the same view. He further relied upon a judgment passed by the Co-ordinate Bench in the case of DCIT Vs. Pranav Gupta wherein following observation has been made:

“6. At the very threshold of the matter before the First Appellate Authority the assessee challenged the validity of the notice under Section 148 of the Act issued to the dead person. It is a trite law that in order to undertake proceeding in respect of deceased person the legal heir needs to be identified and notice are required to be served upon such legal heir being deemed assessee. Such notices, however, are also required to be served within the time limit. Notice to assume jurisdiction under Section 148 of the Act issued to a dead person and/or non-existent entity is a case of substantive illegality when it is not the legal obligation on the part of the legal heir to suo moto inform the department on the date of the demise of the original assessee, the father, as in the case in hand; no notice under Section 148 was validly served when he was alive or on the deemed assessee i.e. the appellant before us renders the assumption of jurisdiction invalid as was the ultimate finding of the Ld. CIT(A) particularly relying upon the judgement passed by the Hon'ble Supreme Court in the case of Pr. CIT v. Mahagun Realtors (P.) Ltd. [2022] 137 taxmann.com 91/287 Taxman 566/443 ITR 194 (SC). He therefore, held the assumption of jurisdiction to be invalid and allowed the appeal preferred by the assessee with the following observations:

"6.7 The sum and substance of the above rulings is that a notice issued in the name of a dead person is not a valid notice. Further, in order to undertake proceedings in respect of a deceased person, his Legal Heirs need to be identified and notices are required to be served to such Legal Heirs, being deemed assessee, in their names and in their capacity as Legal Heirs of the deceased. The said notices are required to be served within the time limitation prescribed. Moreover, as held by the Apex Court in the case of (Principal Commissioner of Income- tax v. Maruti Suzuki India Ltd [2019] 107 taxmann.com 375/265 Taxman 515/416 ITR 613 (SC)/416 ITR 613), participation in proceedings by the appellant cannot operate as estoppel against law. It is also held by the Courts that notice to assume jurisdiction, such as notice u/s.148, when issued in respect of a dead person/non-existent entity is a case of substantive illegality and not a procedural violation of the nature adverted to in section 292BB. Here, it would be appropriate to mention that the Apex Court in the case of Mahagun Realtors (P.) Ltd. [2022] 443 ITR 194 (SC) had distinguished its judgement in the case of Maruti Suzuki (supra) in upholding the assessment order in the name of the amalgamating company (non-existent entity) on the basis of peculiar facts of the case

where ITR was filed and also assessment was completed in the name of nonexistent company and the assessee never brought the fact of amalgamation to the notice of AO Further, the assessee had duly objected to the notice being issued in the name of the deceased. Moreover, in various judgments cited above, it has been held that the assessee was under no legal obligation to suo motu inform the Department on the demise of his father. It is accordingly held that no notice u/s.148 was validly served either on Sh. Vijay Gupta when he was alive or on the (deemed) assessee viz. the appellant, which renders the assumption of jurisdiction invalid. Therefore, proceedings carried out in pursuance of such wrongly-assumed jurisdiction are void ab-inito. Ground no.2 is accordingly allowed.”

7. At the time of hearing of the appeal the Ld. DR vehemently argued in support of the order passed by the Ld. AO.

8. On the other hand the Ld. Counsel appearing for the assessee submitted before us that admittedly the notice under Section 148 of the Act was issued in the name of the father of the appellant who was no longer alive as on the date of issuance of the notice by the Department. Having regard to this particular aspect of the matter, the Ld. Counsel Mr. S. Krishnan referred the provision of law envisaged in Sections 159(2), 159(2)(a), 159(2) (b) and 159(3) of the Act.

9. It was further contended by the Ld. Counsel that by virtue of section 159(3) of the Act the legal heir of the deceased shall be deemed to be an assessee and in that view of the matter in the event of death of a person, his legal heirs need to be identified and notice under Section 148 of the Act is required to be served on such legal heirs within the limitation period in the absence of which there would be no proper assumption of jurisdiction and the subsequent proceedings would be bad in law as was his ultimate submission before us. In this regard he has relied upon very many judgments including the judgments passed by the jurisdictional High Court in the case of Braham Prakash v. ITO [2005] 275 ITR 242 (Delhi); Savita Kapila v. ACIT [2020] 118 taxmann.com 46/273 Taxman 148/426 ITR 502 (Delhi); Vipin Walia v. ITO [2016] 67 taxmann.com 56/238 Taxman 1/382 ITR 19 (Delhi); judgment passed by the Hon'ble Madras High Court in the case of Alamelu Veerappan v. Income Tax Officer [2018] 95 taxmann.com 155/257 Taxman 72 (Madras)/2018 (6) TMI 760. He has further relied upon the judgment passed by the Hon'ble Apex Court in the matter of Pr. CIT v. Maruti Suzuki India Ltd [2019] 107 taxmann.com 375/265 Taxman 515/416 ITR 613 (SC)/416 ITR 613 and in the case of Mahagun Realtors Private Limited (supra). In the absence of notice under Section 148 of the Act validly served either on the original assessee Shri Vijay Kumar Gupta when he was alive or on the deemed assessee being the legal heir of the assessee, the appellant before us renders the assumption of jurisdiction as invalid and therefore, liable to be quashed as prayed by the ld AR before us.

10. We have heard the rival submissions made by the respective parties. We have also perused the relevant materials available on record including the orders passed by the authorities below and the judgments relied upon. Under the present facts and circumstances of the matter it is evident that admittedly the original assessee passed away on 02.10.2015, therefore, no notice could have been served upon him in April 2016 and moreso the dead person could not file the return of income as required by notice under Section 148 of the Act. Admittedly the notice was issued in the name of the deceased on 31.03.2016 i.e. at the fag end of the limitation prescribed under the law and it was incapable of being served upon him and in that view of the matter the entire proceedings become nonest in the eyes of law.

11. Having regard to the jurisdictional condition envisaged under Section 148 of the Act not met we have further considered the judgment relied upon by the Ld. AR in the case of Braham Prakash (supra), wherein on the identical facts and circumstances of the matter when the notice was not even found to have been served upon the deemed assessee, the subsequent proceedings were found to be bad in law as there was breach of the principle of natural justice as well as the mandatory provisions contained in Section 148 of the Act.

12. In the case of Savita Kapila (supra), the Hon'ble Delhi High Court has been pleased to observe categorically that the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. Reliance was placed on the judgment passed by the Hon'ble Bombay High Court in the case of Sumit Balkrishna Gupta v. Asstt. CIT[2019] 103 taxmann.com 188/262 Taxman 61/414 ITR 292 (Bombay)/(2019) 2 TMI one 209.

13. We have further considered the judgment passed by the Hon'ble Madras High Court in the case of Alamelu Virappan (supra), wherein it has been further held that in the absence of statutory mandate, no responsibility could be cast upon the survivors of an assessee to intimate fact of his/her demise to the tax Department. It was held "there is no statutory requirement imposing an obligation of all legal heirs to intimate the death of the assessee"

14. The Hon'ble jurisdictional High Court in the case of Vipin Walia (supra) has been pleased to hold that "what was sought to be done by the ITO was to initiate proceedings under Section 147 of the Act against the deceased assessee for Assessment Year 2008-09. The limitation for issuance of the notice under section 147/148 of the Act was 31 March 2015. On 27 March, 2015 when the notice was issued, the assessee was already dead. If the department intended to proceed under Section 147 of the Act, it could have been done so prior to 31 March, 2015 by issuing notice to the legal heirs of the deceased. Beyond that date it could not have proceeded in the matter even by issuing notice to the

legal heirs of the assessee". Needless to mention that the fact of the above matter is identical to the case in hand before us and thus the judgment is found to be applicable here.

15. We find that in the case of Maruti Suzuki India Ltd. (supra), it is held that participation in proceedings by the appellant cannot operate in estoppel against law. It was further held that notice to assume jurisdiction, such as notice under section 148 of the Act, when issued in respect of a dead person/non-existent entity is a case of substantive illegality and not a procedural violation of the nature adverted to in Section 292BB of the Act. In the case in hand the legal heir of the assessee before us duly objected to the notice being issued in the name of the deceased. However, it has been time and again decided as already narrated hereinabove that it is neither the obligation on the part of the legal heir of the assessee to bring it to the notice of the fact of demise of the original assessee to the Department suo moto, the father of the assessee in the case in hand before us.

16. Section 159(2) of the Act makes a specific reference to the reassessment proceeding under Section 147 of the Act. While Section 159(2) (a) of the Act speaks of a proceeding already taken against an assessee 'before his death', Section 159(2)(b) of the Act envisages any proceeding which could have been taken against the deceased if he had survived. It further permits such a proceeding to be taken against the legal heirs of the deceased assessee even if it had not been taken while the assessee was alive. Section 159(2)(b) of the Act is, therefore, applicable to the case in hand. Taking into consideration this particular provision of law it was the duty incumbent upon the AO to initiate proceeding under Section 148 of the Act against the deceased assessee for Assessment Year 2009-10. The limitation for issuance of the notice under Section 148 of the Act was 31 March 2016. However, on that particular day when the notice was issued the assessee was already dead. In that view of the matter if the Ld. AO intended to proceed under Section 147 of the Act he could have done so prior to 31 March 2016 by issuing notice to the legal heir of the deceased. Beyond that date he could not have proceeded in the matter even by issuing notice to the legal heirs of the assessee.

17. We note that the notice issued in the name of a dead person is, thus, not a valid notice. In order to undertake the proceeding in respect of a deceased person the legal heirs need to be identified and notices are required to be served upon such legal heirs being deemed assessee, in the names and in that capacity as legal heirs of the deceased and that particular notices are required to be served within the statutory time limit prescribed, which is absent in the case in hand. As admittedly, no notice under Section 148 of the Act was served upon the original assessee when was alive or on the deemed assessee, the appellant before us having regard to the provision of law as narrated hereinabove, the entire proceeding is vitiated; the same is void ab initio and therefore, liable to be quashed which has been rightly taken care of by the Ld.

CITA in the order impugned in deleting the addition made against the assessee; the same is found to be just and proper so as not to warrant any interference.

18. Since the legal issue argued on behalf of the assessee before us is addressed in favour of the assessee the grounds raised by the Revenue in its appeal have become of academic interest only and need not to be adjudicated upon.

19. The appeal preferred by the revenue is, thus, found to be devoid of any merit and thus, dismissed.”

5. On the contrary, the Ld. DR relied upon the order passed by the Authorities below and further prayed for setting aside the issue to the file of the Ld. AO for fresh adjudication of the matter.

6. We have heard the Ld. Counsels appearing for the parties and perused the relevant materials available on records. It is an admitted fact that the notice under Section 148 of the Act was issued on 28.03.2021 in the name of the assessee and served upon him who already expired on 28.01.2021. Such fact has not been able to be controverted by the Ld. DR.

7. Considering the judgment passed by the Hon'ble Supreme Court and the several judgments relied upon by the Ld. Counsel appearing for the assessee passed by the Hon'ble jurisdictional High Court and the Coordinate Bench in the case of Pranav Gupta (supra) it is found that the order of assessment under Section 148 of the Act in the name of a dead person is void and such proceeding culminating in making addition under Section 147 of the Act is void-ab-initio. We do not find any reason to give a stamp of approval to the impugned notice issued under Section 148 of the Act dated 28.03.2021 which admittedly was in the name of the dead person, already expired on 28.01.2021; the same is found to be

void. The Ld. AO failed to satisfy the prerequisite conditions for acquiring jurisdiction for assessment under Section 148 of the Act in the facts and circumstances of the case and therefore, the entire proceeding is found to be void-ab-initio and thus, quashed.

8. The appeal preferred by the assessee is allowed.

Order pronounced in the open court on 10.07.2025

Sd/-  
(Avdhesh Kumar Mishra)  
ACCOUNTANT MEMBER

Sd/-  
(Madhumita Roy)  
JUDICIAL MEMBER

Dated 31.07.2025  
Rohit, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI