



।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1057/PUN/2023
निर्धारण वर्ष / Assessment Year : 2017-18

The Income Tax Officer, Ward-1, Ratnagiri.	V s	Late Shri Subhash Shankar Waingankar, through Legar heir Shri Rushikesh Subhash Waingankar, 730, Atmabandhu Arced, Maruti Mandir, Ratnagiri-415612. PAN: AACPW7343J
Appellant / Revenue		Respondent / Assessee

Cross Objection No.11/PUN/2024
(arising out of ITA No.1057/PUN/2023)

निर्धारण वर्ष / Assessment Year : 2017-18

Late Shri Subhash Shankar Waingankar, through Legar heir Shri Rushikesh Subhash Waingankar, 730, Atmabandhu Arced, Maruti Mandir, Ratnagiri-415612. PAN: AACPW7343J	V s	The Income Tax Officer, Ward-1, Ratnagiri.
Assessee		Revenue

Assessee by	Shri Pramod Shingte – AR
Revenue by	Shri Sourabh Nayak – Addl.CIT-DR
Date of hearing	31/05/2024
Date of pronouncement	06/06/2024



आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

These are two appeals ITA No.1057/PUN/2023 filed by the Revenue and cross objection C.O. No.11/PUN/2024 filed by the legal heir of Assessee; are directed against the order of Id.Commissioner of Income Tax(Appeal)[NFAC] u/sec.250 of the Act, dated 07.08.2023 emanating from the assessment order u/s.147 r.w.s 144B of the Income Tax Act, 1961 dated 03.03.2022.

The Revenue has raised the following grounds of appeal :

“i. The Ld.CIT(Appeals) erred In accepting the self-serving documents not corroborated by evidence and which had not stood the test of enquiries in assessment proceedings.

ii. The Ld.CIT(Appeals) erred in not allowing the AO to examine the additional evidence admitted by him as per the provisions u/s 46A(3) of the IT Rules 1962.

iii. The Ld.CIT(Appeals) erred in admitting the evidence filed before him in to consideration without any opportunity in rebuttal to the assessing officer which the respondent did not furnish during the assessment proceeding

iv. The appellant craves leave to add, alter, amend, modify any of the grounds or raise any other grounds at the time of proceedings before the ITAT, which may be granted.”



Submission of Ld.AR :

2. Ld.AR filed a paper book. The Ld.AR demonstrated that the notice u/s 148 was issued in the name of the dead individual as assessee had already died. The Ld.AR relied on decision of Hon'ble Bombay High Court, Gujarat High Court and Delhi High Court.

Submission of Ld.DR :

3. Ld.Departmental Representative(ld.DR) for the Revenue submitted that assessee participated in the assessment proceedings hence as per Section 292BB assessee is precluded from challenging the validity of notice and order. Ld.DR also submitted that Legal Heirs of the assessee never informed the Assessing Officer about death of the assessee.

Findings and Analysis:

4. We have heard representatives of both the parties and perused the records.

4.1 In this case, Legal representative of the Assessee filed cross objection Cross Objection No.11/PUN/2024. Legal ground has been raised in the Cross Objection that since Mr.Subhash Shankar



Waingankar had died on 07/10/2020 and notice u/s 148 was issued in the name of deceased the entire proceeding and the assessment order is void.

We take up the Legal Ground first.

4.2 We will first reproduce the basic facts of the case relevant for the legal issue.

Date of Death of Mr. Subhash S Waingankar	07/10/2020
Date of issue of Notice u/s 148 in the name of Subhash Shankar Waingankar	31/03/2021
Date of Order u/s 148 in the name of Subhash Shankar Waingankar	03/03/2022

4.2.1 Thus, it is an admitted fact that Mr.Subhash Shankar Waingankar died on 07/10/2020. The Ld.AR has filed copy of the death certificate. The copy of the death certificate was also filed before the Ld.CIT(A).

4.2.2 It is also a fact that the Notice u/sec.148 was issued in the name of Mr. Subhash Shankar Waingankar on 31/03/2021. We have perused the copy of the notice which is filed in the paper book. Thus, the notice u/s 148 was issued in the name of a dead person. It was claimed by the revenue that notice was served by



electronic mode. The notice u/sec.148 is a Jurisdictional Notice as the Assessing Officer assumes jurisdiction through the notice for reassessment. Therefore, the notice u/sec.148 should be issued and served on a living person. Since in this case the assessee had already died, there is no question of service of notice on the deceased assessee. Thus, in this case there was no valid notice and no valid service.

4.3 Section 159 of the Income tax Act gives the procedure for issuing notice where the assessee is dead. The Section 159 of the Income tax Act is reproduced here as under :

Legal representatives.

159. (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 recomputation 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.”***



4.3.1 Thus, as per Section 159(2) (b) any proceedings which could have been taken against the deceased if he would have been surviving, may be taken against the Legal representative. In this case since the assessee was already dead at the time of issue of notice u/s 148, as per Section 159 of the Act it was mandatory for the Income tax Authorities to issue the notice u/s 148 in the name of the Legal representative. However, in this case the notice u/s 148 has been issued in the name of the deceased assessee. Income Tax Act has adopted the definition of Legal Representative as defined in Section 2(11) of Code of Civil Procedure 1908.

4.4 The Hon'ble Bombay High Court in the case Devendra Vs. Addl.CIT 461 ITR 463 (Bombay)[13-07-2023] has held as under :

Quote “ 17. The issue which falls for consideration is as to whether the impugned notice under section 148 of the I.T. Act, 1961 is issued in the name of dead person said Shri Vasudeo Jambhulkar is enforceable in law. The fact that Shri Vasudeo Jambhulkar died on 8-7-2020 is not disputed. The notice issued in the name of the dead person is unenforceable in the eye of law. 1

8. The respondents seek to justify their stand by contending that they were not intimated about the death of the assessee. The legal heirs did not take any steps to cancel the PAN registration in the name of assessee.



19. It has observed by the Delhi High Court in *Savita Kapila v. Asstt. CIT* [2020] 118 taxmann.com 46/273 Taxman 148/426 ITR 502/108 CCH 0049 Del HC] as under: "In the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the income tax department" "Consequently, the legal heirs are under no statutory obligation to intimate the death of the assessee to the revenue."

20. While informing on mail, the petitioner has mentioned that the legal heirs of the assessee submits the documents which proves that it was sufficient for the respondents to know that the assessee is no more and the legal heirs are submitting the documents. Legal heirs are under no statutory obligation to intimate the death of the assessee to the department.

It is also observed by the Delhi High Court in *Savita Kapila (supra)* as under: "32. This Court is of the view that in the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the income tax department. After all, there may be cases where the legal representatives are estranged from the deceased assessee or the deceased assessee may have bequeathed his entire wealth to a charity. Consequently, whether PAN record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant."

21. The Madras High Court in *Alamelu Veerappan v. ITO* [2018] 95 taxmann.com 155/257 Taxman 72/102 CCH 0118 Chen HC] has observed as under : "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."



22. *The High Court of Mumbai in Sumit Balkrishna Gupta v. Asstt. CIT [2019] 103 taxmann.com 188/262 Taxman 61/414 ITR 292/104 CCH 0379 MumHC] has observed as under :*

"7. The issue of a notice under section 148 of the Act is a foundation for reopening of assessment. 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 a merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. Thus, a notice which has been issued in the name of the dead person is also not protected either by provisions of section 292B or 292BB of the Act. This is so as the requirement of issuing a notice in the name of correct person is the foundational requirement to acquire jurisdiction to reopen the assessment. This is evident from section 148 of the Act, which requires that before a proceeding can be taken up for reassessment, a notice must be served upon the assessee. The assessee on whom the notice must be sent must be a living person i.e. legal heir of the deceased assessee, for the same to be responded. This in fact is the intent and purpose of the Act. Therefore, section 292B of the Act cannot be invoked to correct a foundational/substantial error as it is meant so as to meet the jurisdictional requirement."

23. *The learned Counsel for the petitioner has also relied on the judgment in the case of Dharamraj v. ITO [2022] 113 CCH 0096 DelHC].*



24. *The Principal Seat of this Court has recently passed the order in Dhirendra Bhupendra Sanghvi v. Asstt. CIT [2023] 151 taxmann.com 541/[Writ Petition No. 10163 of 2022, dated 27-6-2023] and has observed that the notice issued on dead persons is null and void.*

25. *For the reasons stated above and several High Courts have observed that the notice issued on dead person or re-opening of assessment of a dead person is null and void, this Court holds that the notice and all consequential proceedings in the name of the deceased assessee are null and void and consequentially the impugned notice dated 31-3-2021 under section 148 of the Income-tax Act is quashed and set aside and all actions in furtherance thereto are prohibited. Hence, the petition is allowed.” Unquote.*

4.4.1 Thus, the Hon’ble Bombay High Court held that a Notice u/sec.148 issued in the name of Dead individual is null & void. The reassessment order passed in the name of dead individual is null & void. The Hon’ble Bombay High Court also held that Section 292B or 292BB will not be able to cure this defect.

4.5 Therefore, respectfully following the Hon’ble Jurisdictional High Court (supra), we hold that the impugned Notice under section 148 dated 31/03/2021 and the Order u/s 148 dated 03/03/2022 is void ab initio.

5. The Ld.DR for the Revenue argued that someone had participated in the assessment proceedings as seen from the reply



dated 17/09/2021, in which it is mentioned that the return filed on 04/02/2018 may be treated as return in response to notice u/s 148. Copy of the screen shot taken from Income Tax portal has been filed by the Ld.DR. We have perused the said document. However, it is not clear who has filed the reply on the Income tax Portal. The Revenue could not prove that the impugned reply has been filed by the Legal Representative of the deceased Assessee. The onus is on revenue to prove that the impugned reply was filed by the legal Representative. Be it as it may be once we hold that the impugned notice u/sec.148 was void ab-initio, this discussion becomes academic in nature.

6. Hence, for all the reason discussed above, the Legal ground raised by the legal Representative of the deceased assessee in Cross Objection No.11/PUN/2024 is allowed.

6.1 Since, we have held that the notice u/sec.148 and the order u/sec.148 was void ab-initio, the grounds raised by the Revenue becomes academic in nature. Accordingly, the grounds raised by the revenue are dismissed as unadjudicated being academic in nature.



ITA No.1057/PUN/2023 & C.O. No.11/PUN/2024

7. In the result, Cross Objection appeal of the legal Representative of assessee in C.O. No.11/PUN/2024 is allowed and Revenue's appeal in ITA No.1057/PUN/2023 is dismissed.

Order pronounced in the open Court on 6th June, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 6th June, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.