

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH: CHENNAI**

सुश्री पद्मावती एस, लेखा सदस्य एवं  
श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष

**BEFORE MS. PADMAVATHY S. , ACCOUNTANT MEMBER AND  
SHRI MANU KUMAR GIRI, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.3367/Chny/2025  
निर्धारण वर्ष/Assessment Year: 2016-17

|   |    |  |
|---|----|--|
| MARAPPAN BALASUBRAMANIAM,<br>(Deceased),<br>Rep by Legal Heir Kavitha<br>Balasubramanian (Wife)<br>No. 5, Cormo Garden, Karuvallur<br>Road, Coimbatore,<br>Tamil Nadu-641107<br>[PAN: CQGPG 6518 M] | v. | The ITO, Ward 1(2),<br>Tiruppur,<br>Tamil Nadu |
| (अपीलार्थी/Appellant)   |    | (प्रत्यर्थी/Respondent)                        |
| अपीलार्थी की ओर से/ Appellant by  | :  | Mr. T Vasudevan, Adv                           |
| प्रत्यर्थी की ओर से /Respondent by  | :  | Ms. Gouthami Manivasagm,<br>Addl. CIT          |
| सुनवाईकीतारीख/Date of Hearing   | :  | 21.01.2026                                     |
| घोषणाकीतारीख /Date of Pronouncement   | :  | 27.01.2026                                     |

**आदेश / ORDER**

**PER MANU KUMAR GIRI, JM:**

The captioned appeal by the assessee is arising out of the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 09.10.2025 for AY 2016-17.



2. At the beginning of the proceedings, the learned Authorized Representative (AR) for the assessee submitted that the Jurisdictional Assessing Officer (JAO) had issued a notice under section 148 of the Act dated 31.03.2023 in the name of a deceased assessee, who had passed away on 26.07.2018. Consequently, it was contended that the assessment order, along with all subsequent notices and proceedings, is void ab initio and legally non est. In support of this contention, reliance was placed on the decisions of the Hon'ble jurisdictional High Court in the cases of *Rajakumari v. Income Tax Officer* [2023 (11) TMI 541 – Madras High Court, dated 18.10.2023]/102 CCH 118 and *Alamelu Veerappan v. Income Tax Officer, Non-corporate Ward-2(2), Chennai* [2018] 95 taxmann.com 155 / 257 Taxman 72 (Madras), dated 07.06.2018.

3. Per contra, the learned Departmental Representative (DR) supported the order passed by the Id.CIT(A). She submitted that the legal representatives of the assessee had participated in the assessment proceedings, with representation made by Ms. B. Kavitha, the legal heir of the deceased assessee. It was further argued that the alleged defect is a procedural irregularity that is curable under section 292B of the Act.



4. We have considered the rival submissions, examined the records, and reviewed the judicial precedents relied upon by the learned AR for the assessee. It is an undisputed fact that the assessee passed away on 26.07.2018, and the Assessing Officer was duly informed of the death. However, no notice under section 159 of the Act was issued to the legal representatives of the assessee, and at no stage were the assessment proceedings initiated against them. Although Ms. B. Kavitha, participated in the assessment proceedings, the proceedings were not formally conducted against the legal heirs. The assessment order as well as the impugned order have been passed in the name of a deceased person.

5. The Hon'ble jurisdictional High Court in the case of Alamelu Veerappan vs. Income Tax Officer, Non-corporate Ward-2(2), Chennai [2018] 95 taxmann.com 155 (Madras)/[2018] 257 Taxman 72 (Madras)[ 07.06.2018] held as under:

*13. This Court has carefully considered the submissions made by the learned counsel on either side and perused the records.*

*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 co-operate 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. (supra). 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 02.7.2015 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 (supra) fully supports the case of the petitioner herein.*

*22. The decision in the case of Vipin Walia (supra) was followed in the decision of the High Court of Gujarat in the case of Rasid Lala, (supra) 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. (supra) 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 396/145 Taxman 186 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. (supra) by referring to Sky Light Hospitality LLP. Case (supra)*

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 case (supra) is clearly distinguishable on facts and it does not support the case of the Revenue.*

26. *For all the above reasons, this court holds that the impugned notice is wholly without jurisdiction and cannot be enforced against the petitioner.*

27. *Accordingly, the writ petition is allowed as prayed for. No costs. Consequently, the connected WMP is closed.*

6. The Hon'ble jurisdictional High Court in the case of Rajakumari Vs The Income Tax Act Officer [2023 (11) TMI 541- Madras High Court dated 18.10.2023] held as under:

9. *In the present case, the 1st respondent issued notice under Section 148 of the Income Tax Act on 31.03.2022 against the dead person, who is the husband of the petitioner. Upon the receipt of the notice, the petitioner in the capacity as the legal representative participated in the proceeding. Since she participated in the proceeding, the respondents continued the proceedings and passed assessment order in the name of dead person, accordingly initiated penalty proceedings. It is the settled principle of law that no order can be passed against the dead person and the same is non-est in law.*

10. *The Hon'ble Division Bench of this Court in the case of Commissioner of Income-Tax-VII, Chennai vs.M.Hemanathan reported in [2016] 67 taxmann.com 22 (Madras) has held as follows:*

*"29..... A notice sent to a dead person is actually a nullity. There is only one exception in so far as civil proceedings are concerned, which could be traced to Order XXII Rule 4. Section 159 of the Income Tax Act also carves out an exception. Since service of notice on the legal heir of a dead person falls under the category of an exception to the general rule, the same cannot overtake the rule in the absence of a specific provision."*



11. In the present case, it is admitted that the impugned order was passed in the name of a dead person since the proceedings were initiated subsequent to the death of the original assessee. In terms of the provisions of Section 159(2)(b) of the Income Tax Act, any proceedings of the deceased person, subsequent to death, can be initiated against his legal representative. Though the present case was initiated subsequent to the death of the assessee, it was initiated in the name of the dead person and the assessment order was also passed in the name of a dead person, though his legal representative had participated in the proceedings.

12. Therefore, the department is supposed to have substituted the legal representative in the place of a dead person. However, they had not done the same and no order can be sustainable if it is passed in the name of a dead person. Further, as discussed above, in the case of Commissioner of Income-Tax-VII, Chennai vs.M.Hemanathan, the Hon'ble Division Bench of this Court had held that no proceedings can be initiated against a dead person.

13. For all these reasons, this Court is of the considered view that the impugned orders are not sustainable and the same are liable to be set aside. Accordingly, the impugned assessment order dated 21.03.2023 and the penalty proceedings dated 23.09.2023 are set aside. However, the liberty is granted to the respondent to initiate the proceedings against the legal representative of the deceased assessee in accordance with law.

14. With the above observations, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

7. In view of the undisputed facts that the assessee had expired on 26.07.2018 and that the Assessing Officer was duly informed of the said fact, we find that the notice issued under section 148 of the Act and the consequent assessment proceedings were initiated and completed in the name of a deceased person. No notice under section 159 of the Act was issued to the legal representatives, nor were the proceedings ever validly initiated against them. Mere participation of one of the legal heirs in the assessment proceedings cannot cure this fundamental jurisdictional defect. Such a defect is not curable under section 292B of the Act.



ITA No.3367/Chny/2025 (AY 2016-17)  
*Marappan Balasubramanian Vs ITO W 1(2), Tiruppur*  
:: 8 ::

8. Respectfully following the binding decisions of the Hon'ble jurisdictional High Court relied upon by the Id.AR, we hold that the assessment order as well as the impugned order are void ab initio and a nullity in the eyes of law. Accordingly, the impugned assessment is hereby quashed. The appeal of the assessee is allowed.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 27<sup>th</sup> day of January, 2026 at Chennai.

**Sd/-**  
**पद्मावती एस)**  
**(PADMAVATHY S)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**  
**(मनु कुमार गिरि)**  
**(MANU KUMAR GIRI)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 27 January, 2026.

**SNDP, Sr.PS**

**आदेश की प्रतिलिपि अग्रेषित/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF