

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A”BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1406/Bang/2025
Assessment Year : 2016-17

Jadagadder Pakkerappa Legal Heir: Sarojamma Tagagunda (Post) Shikaripura (Tq) Karnataka 577 428  <b>PAN NO :BAXPP4539H</b>	<b>Vs.</b>	ITO Ward 1 & TPS Shimoga
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri Varun Bhat, A.R.
<b>Respondent by</b>	:	Sri Balusamy N., D.R.

<b>Date of Hearing</b>	:	01.12.2025
<b>Date of Pronouncement</b>	:	26.02.2026

**O R D E R**

**PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of the assessee is directed against the order of Id. CIT(A)/NFAC dated 27.5.2025 vide DIN & Order No.ITBA/NFAC/S/250/2025-26/1076474053(1) passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the assessment year 2016-17.

**2.** The assessee has raised the following grounds of appeal:

	a	Amount disputed in appeal	-NA-
10		Grounds of Appeal	Tax effect relating to each Ground of appeal
1.		That the learned Commissioner of Income Tax ('Appeals') ['CIT(A)] - National Faceless Appeal Centre has erred on facts and circumstances of the case and in law so far as the first appellate order passed by him / her is prejudicial to the interest of the Appellant.	General Ground
2		The learned CIT(A) has erred in confirming the assessment order passed u/s 144 by the AO in the name of the deceased assessee. The reassessment proceedings-initiated u/s 148 and subsequent order u/s 144 were issued after the death of the assessee on 10/10/2021, and <u>without any valid service to the legal heir.</u> Hence, the assessment proceedings are null and void in law.	
3		On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in not adjudicating the ground of assessee on validity of assessment that the learned Assessing Officer has <u>wrongly re-opened the assessment u/s 147 by issuing notice u/s 148 of the Act in the name of deceased person and therefore,</u> the initiation of reassessment	

	proceeding and consequential order passed u/s 147 r.w.s.144 are bad in law and void ab initio.	
4	The learned CIT(A) has erred in disposing of the appeal ex parte without granting adequate opportunity of hearing and despite being aware of the legal heir's limitations in updating status on the portal. Multiple notices were issued, but due to technical limitations and delay in service, no effective representation could be made.	
5	The learned CIT(A) has erred in law and on facts in confirming the treatment of the entire sale proceeds of ₹60,00,000 as Short-Term Capital Gain without allowing deduction towards cost of acquisition and cost of improvement. The property in question was purchased on 04-05-2009 and held for more than 36 months, and therefore, the gain, if any, ought to have been treated as Long Term Capital Gain (LTCG) with benefit of indexation.	Rs. 60,00,000
6	The learned CIT(A) has erred in confirming the initiation of penalty proceedings u/s 271(1)(c), 271F and 271(1)(b) of the Act, especially when the primary order itself is bad in law	

		and no wilful concealment or non-compliance can be attributed to the deceased assessee or the legal heir.			
	7	The appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal			
	Total Tax Effect		Rs. 60,00,000		
Appeal Filing details	11	Whether there is any delay in filing of appeal (if yes, please attach application seeking condonation of delay)	NO		
	12	Details of Appeal Fees Paid			
		BSR Code	Date of payment	Sl. No.	Amount
		0002271	19-06-2025	23054	10,000

**3.** The assessee late Shri Jadagadder Pakkerappa represented by his wife and legal heir Smt. Sarojamma filed this appeal against the order of Id. CIT(A)/NFAC dismissing the appeal on the ground that the assessee neither produced any evidence nor complied with the various notices issued during the entire appellate proceedings. Brief facts of the case are that as per the information available on record, the AO observed that the assessee had sold an immovable property amounting to Rs.60,00,000/- during the year under consideration. However, on verification of e-filing portal, it was noticed that the assessee had not filed any return of income for the year under consideration. Therefore, in the opinion of the AO, this amount of Rs.60 lakhs remained undisclosed. Thereafter, the case had been selected for scrutiny proceedings and accordingly notice u/s 148 of the Act was issued and served on **8.3.2023** through electronic mode. Thereafter, notices u/s 142(1) of the Act along with show cause notices were issued to the assessee from time to time. However, despite offering sufficient opportunities to explain the above transaction, the assessee did not respond to any of the notices. As the assessee made no submission explaining the

aforesaid transaction inspite of giving ample opportunity of being heard, the AO treated the entire amount of Rs.60,00,000/- as short term capital gain and added the same to the income of the assessee. The AO completed the assessment proceedings on a total assessed income of Rs.60,00,000 u/s 147 r.w.s. 144 r.w.s. 144B of the Act.

**4.** Aggrieved by the order of AO passed u/s 147 r.w.s. 144 of the Act dated 12.1.2024, the legal heir of the assessee Smt. Sarojamma preferred an appeal before the Id. CIT(A)/NFAC. However, due to the technical issues on the Income Tax Portal, as she was unable to add her name as legal heir/authorized person, she was compelled to file the appeal using the login credentials of her deceased husband.

**5.** The Id. CIT(A)/NFAC dismissed the appeal of the assessee by observing that during the course of appellate proceedings, various notices were issued from time to time viz. on 7.11.2024, 12.12.2024 and finally on 7.5.2025. However, no submissions were made during the entire appellate proceedings. As the assessee during the entire appellate proceedings did not comply with the statutory notices, the Id. CIT(A)/NFAC held that assessee is not interested to pursue this appeal and in the absence of any reply from the assessee, the Id. CIT(A)/NFAC was left with no option but to decide the matter ex-parte based on material on record. Finally, the Id. CIT(A)/NFAC held that assessment order passed by the AO u/s 144 of the Act resulting in the assessed income amounting to Rs.60 lakhs based on his findings and proper adjudication is quite in order and the same was confirmed.

**6.** Again, aggrieved by the order of Id. CIT(A)/NFAC, the legal heir of the assessee Smt. Sarojamma filed the present appeal before this Tribunal. The legal heir has also filed two numbers of paper

books containing therein the written submission, death certificate of the assessee as well as case laws relied upon by her. The legal heir Smt. Sarojamma has also filed an affidavit stating the reasons for not appearing before the lower authorities.

**7.** Before us, the ld. A.R. of the assessee at the outset vehemently contended that the re-assessment proceedings-initiated u/s 148 of the Act on 08/03/2023 and the subsequent order u/s 144 r.w.s. 147 of the Act dated 12/01/2024 were issued after the death of the assessee on 10.10.2021 and accordingly, the entire assessment proceedings are null and void in law. Further, the ld. A.R. of the assessee vehemently submitted that the notice u/s 148 of the Act was also not issued to any of the legal representatives as per the provision contained in Section 159(2)(b) of the Act. Further, by relying on the decision of Hon'ble Delhi High Court in the case of Savita Kapila Vs. ACIT reported in (2020) 118 taxmann.com 46 as well as judgement of Hon'ble Karnataka High Court in the case of ITO Vs. Smt. Preethi V. reported in (2025) 170 taxmann.com 673, the AR submitted that the notice u/s 148 of the Act as well as subsequent assessment order passed u/s 147 r.w.s. 144 of the Act cannot be cured either u/s 292B or 292BB of the Act.

**8.** The ld. D.R. on the other hand supported the order of the Authorities below and vehemently submitted that it is the obligation on the part of the legal heir of the deceased to intimate the AO about the death of the assessee. Further, the ld. D.R. submitted that unless the AO was not informed about the death of the assessee, then it is impossible for the AO to know such fact of demise of the assessee. The ld. DR submitted that the legal heir of the assessee did not appear before the AO at all & therefore the AO had no option but to pass an exparte order in the name of assessee in the absence of any information. Lastly the ld. DR submitted that

the defect was curable regarding the issuance of notice to the deceased assessee as per the provisions contained in section 29B/292BB of the Act.

9. We have heard the rival submissions and perused the materials available on record. Before proceeding further, it is apposite here to reproduce the affidavit filed by the legal heir of the assessee Smt. Sarojamma for better appreciation of facts, which are reproduced below:-

**INDIA NON JUDICIAL**

**Government of Karnataka**

Rs. 100

**e-Stamp**

Certificate No.	: IN-KA09763572829064X
Certificate Issued Date	: 29-Nov-2025 03:36 PM
Account Reference	: NONACC (FI)/ kaksfcl08/ SAGAR2/ KA-SM
Unique Doc. Reference	: SUBIN-KAKAKSFCL0825415875022303X
Purchased by	: SAROJAMMA
Description of Document	: Article 4 Affidavit
Property Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SAROJAMMA
Second Party	: NA
Stamp Duty Paid By	: SAROJAMMA
Stamp Duty Amount(Rs.)	: 100 - (One Hundred only)

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2. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
3. The onus of checking the legitimacy is on the users of the certificate.
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**AFFIDAVIT**

I, Smt. Sarojamma, wife of Late Shri Jadagadder Pakkerappa, aged about 62 years, residing at Talagunda, Shikaripura do hereby solemnly affirm and state as under:

1. That my husband Late Shri Jadagadder Pakkerappa was an assessee under the Income-tax Act, 1961 and was holding **Permanent Account Number (PAN): BAXPP4539H**.
2. That my husband expired on 10-10-2021. A copy of the death certificate is enclosed herewith.
3. That after the death of my husband, I was not aware of any tax-related proceedings pending or initiated by the Income-tax Department.
4. That subsequently, the Income-tax Department issued a notice under Section 148 of the Income-tax Act dated 08-03-2023 for Assessment Year 2016-17, in the name of my deceased husband.
5. At the time of issuance of the notice under Section 148, my husband was no more. Therefore, the said notice was invalidly issued on a dead person. Due to this reason, the notice and subsequent communications remained unattended, as the family members had no knowledge about such proceedings.
6. Later, only upon receipt of a demand notice from the Jurisdictional Assessing Officer (JAO), I came to know that an assessment had been completed in the name of my deceased husband. Neither I nor any other family member had received any prior communication regarding the assessment proceedings.
7. As a Legal Representative (LR) of the deceased assessee, I attempted to file an appeal before the Hon'ble Commissioner of Income Tax (Appeals) [CIT(A)].
8. However, due to technical issues on the Income-tax Portal, I was unable to add my name as a Legal Heir or Authorized Person in Form No. 35. Hence, I was compelled to file the appeal using the login credentials of my deceased husband, purely due to portal limitations.


9. In the "Statement of Facts" filed along with Form No. 35, I had clearly disclosed the above difficulty, specifically mentioning that I could not register myself as Legal Representative due to technical reasons.
10. Despite these facts, the Hon'ble CIT(A) has passed an ex-parte order, without providing me any effective opportunity of being heard and without considering the fact that all notices under Section 148 and during assessment were issued to a dead person.
11. I state that the assessment order as well as the notice issued under Section 148 are bad in law, as they have been issued in the name of a deceased person, and therefore infructuous and void ab initio.
12. I further submit that all the above facts are true to my knowledge and are being placed before the authorities to ensure that justice is done and that I, as the legal representative of the deceased assessee, am allowed proper opportunity to represent the case on merits.

**I hereby affirm that the statements made above are true and correct to the best of my knowledge, belief, and information.**

Place:Shikaripura

Date:29-11-2025

**Deponent**

  
(Smt.Sarojamma)

W/o Late Shri Jadagadder Pakkerappa

**9.1** On going through the above affidavit, we take a note of the fact that the assessee expired on 10.10.2021. The income tax department issued a notice u/s 148 of the Act on 08/03/2023 for the AY 2016-17 in the name of husband when he was no more. Due to this reason, the notice and subsequent communications remain unattended as the family members had no knowledge about such proceedings. Later, only upon the receipt of demand notice from JAO, she came to know that an assessment had been completed in



**12.1.2024** in the name of the dead person. The legal heir & wife of the assessee by way of an affidavit contended that the notice issued u/s 148 of the Act on 08/03/2023 was invalidly issued on a dead person and due to this reason, the notice and subsequent communication remained unattended as the family members had no knowledge about such proceedings. Further, the legal heir & wife of the deceased assessee Smt. Sarojamma categorically stated that neither she nor any other family member had received any prior communication regarding the assessment proceedings.

**9.3** At this juncture, it is apposite here to mention the relevant provisions of section 159 of the Act, which reads as follows:-

***“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),—*

<i>(a)</i>	<i>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;</i>
<i>(b)</i>	<i>any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and</i>
<i>(c)</i>	<i>all the provisions of this Act shall apply accordingly.</i>

*(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.*

*(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.*

*(5) The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.*

*(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability.”*

**9.4** On going through the above provisions, we take note of the fact that section 159(2) of the Act makes a specific reference to reassessment proceedings u/s 147 of the Act. While section 159(2)(a) of the Act talks of any proceeding already taken against the assessee “before his death”, Section 159(2)(b) of the Act specifically talks about any proceeding, which could have been taken against the deceased, if he had survived. Thus, it permits such a proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative of the deceased. In our considered opinion the Section 159(2)(b) of the Act is relevant as far as present case is concerned.

**9.5** Undisputedly, the AO had issued notice u/s 148 of the Act on 8.3.2023 way after the demise of the assessee on 10.10.2021. Thus, the notice u/s 148 of the Act issued in the name of dead person was never served upon the assessee. It is also an undisputed fact that no notice u/s 148 of the Act was also issued & served upon any of the legal heirs of the assessee. Thus, we are of the considered opinion that the notice issued against a dead person as regards his affairs which ought to have been issued u/s 159(2)(b) of the Act to legal representatives also cannot be saved by recourse to Section 292B/292BB. The Section 159(2)(b) of the Act would require a separate notice to be issued u/s 148 of the Act within the time prescribed u/s 149(1) of the Act as against legal representatives directly. Thus, we are of the considered opinion that as the notice u/s 148 of the Act could not be served upon him due

to his demise and also no notice u/s 148 of the Act was ever served upon the legal heirs within the time & thus the entire proceedings is a nullity & void-ab-initio. In the present fact of the case, the assessee was deceased when the notice was first issued in the name of deceased assessee & therefore the argument of the ld. D.R. that the defect was curable regarding the issuance of notice to the deceased assessee is therefore untenable. Further, we are of the considered opinion that there is no such statutory requirement imposing obligation on the legal heirs to intimate regarding the death of the assessee as contended by the ld. DR.

**9.6** On identical facts, the jurisdictional High Court of Karnataka in the case of Mrs. Vanitha Gopal Shetty Vs. ACIT, Circle 26(1), Mumbai reported in [2021] 129 taxmann.com 163 (Karnataka) which held as under:

*9. The admitted facts relevant for the present purpose are that the assessee - Kurkal Gopal Shetty has died on 11-11-2014 in United Kingdom and the notice under section 148 for the first time was issued on 28-3-2018 in the name of Kurkal Gopal Shetty. It must also be noted that the last date for initiation of assessment proceedings for the assessment year 2011-12 was 31-3-2018.*

*10. The relevant extract of section 159 of the Act reads as follows:-*

*"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.*

*(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.*

*(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with."*

**11.** *The question that is required to be answered in light of the contentions advanced is as follows:*

*Whether notice issued to the deceased assessee on 28-3-2018 within the time prescribed could save the reassessment order passed in the name of the legal representatives who are the petitioners herein?*

**12.** *It is to be noted that section 159 which falls under Chapter XV, envisages two situations, namely (a) where assessment proceedings having been initiated when the assessee is alive, is subsequently continued as against his legal representatives (b) when proceedings are taken against the legal representatives which are proceedings that could have been taken against the deceased if he had survived.*

**13.** *It becomes clear that insofar as the proceedings against an assessee who is alive at the time of initiation of proceedings, the same proceedings could be continued as against his legal representatives from the stage at which it stood on the date of death of the deceased. Insofar as the right of the revenue to initiate proceedings as regards to the deceased assessee, section 159(2)(b) permits proceedings to be initiated against the legal representatives as regards all proceedings which could have been taken against the deceased if he had survived.*

**14.** *In the present facts, admittedly, the proceedings are initiated under section 148 for reassessment relating to escapement of income of late Kurkal Gopal Shetty and such proceedings as has been initiated in the year 2018 by when Kurkal Gopal Shetty had already died (on 11-11-2014). The proceedings in terms of section 159(2)(b) ought to have been taken against the legal representatives of late Kurkal Gopal Shetty at the first instance. It ought to be noted that the period allowable for initiating the proceedings under section 148 is the period prescribed under section 149(1)(b) which position is not in dispute and accordingly, proceedings ought to have been initiated as on 31-3-2018.*

**15.** *The question as to whether proceedings initiated against the deceased Kurkal Gopal Shetty was sufficient to continue proceedings of reassessment as regards the legal representatives is a matter that requires to be answered. The learned counsel for the revenue would contend that the concept of abatement cannot be extended to assessment proceedings and where the original assessee has died, the proceedings against his legal representatives would be good in law as made out under section 159(2) of the Act as well as in light of the definition of assessee under section 2(7)(b) read with section 159 is a matter that also requires consideration.*

**16.** *There is no dispute as regards to the general proposition that proceedings against an assessee would continue even after his death as against his legal representatives and there would be no abatement of such proceedings. However, in the present case, the question is as regards to the initiation of proceedings under section 148 vis-à-vis the legal representatives of the deceased Kurkal Gopal*

*Shetty. As noticed earlier, notice issued at the first instance on 28-3-2018 is as regards Kurkal Gopal Shetty and at that relevant point of time, the said assessee was dead. It comes out from the subsequent proceedings that the revenue, upon being informed by the 2nd petitioner through an e-mail on 30-5-2018 that Kurkal Gopal Shetty had died, has issued notice to the legal representatives on 19-11-2018 and on 21-12-2018 under section 142 and hence, in effect, there was no notice to the petitioners with respect to the initiation of proceedings for reassessment under section 148. The proceedings under section 142 being a part of the re-assessment proceedings, the starting point for initiation of proceedings under section 148 is the issuance of notice, which notice to be valid is required to be initiated within the time prescribed under section 149(1)(b). Notice issued against Kurkal Gopal Shetty on 28-3-2018 being against a dead person, at the very inception would not be a tenable notice for initiation of proceedings under section 148 as regards the legal representatives insofar as any proceedings against the legal representatives are to be governed by Section 159. While section 159(2)(a) provides for continuation of proceedings against the legal representatives when initiated against the assessee when he was alive. Clearly section 159(2)(b) would require a separate notice to be issued under section 148 within the time prescribed under section 149(1)(b) as against the legal representatives directly. If such proceedings are initiated beyond the time prescribed under section 149(1)(b) such proceedings would not be valid.*

*17. In the present case while the notice at its inception to Kurkal Gopal Shetty who is dead is invalid insofar as any claim by the department as against the dead assessee should be only by issuance of notice to the legal representatives in terms of section 159(2)(b) and except this procedure, there can be no other procedure envisaged. This would flow from the premise that any act which is required to be done in a particular manner must be done in that manner or not at all which is a settled legal proposition. In the present case, it also ought to be noted that though notice was issued to the dead assessee, the contention that as there is no abatement, and proceedings must be permitted to be continued against the legal representatives, is an argument that is liable to be rejected as the question of continuation of proceedings of an assessment against the legal representatives is only in the scenario as contemplated under section 159(2)(a) i.e., where the assessee is alive at the initiation of proceedings and has subsequently died. In the case on hand, the assessee having died on 11-11-2014, claims or proceedings, if any against the deceased assessee ought to be under section 159(2)(b). As section 159 does not permit of any ambiguity, any elasticity to the time period fixed under section 149 and the manner of initiation of proceedings against the deceased assessee as provided under section 159(2)(b) is impermissible.*

*18. It also ought to be noted that the assessment proceedings initiated against Kurkal Gopal Shetty under section 148 is sought to be continued and concluded as against the legal representatives not by way of any fresh notice to the legal representatives under section 148 but by way of notice to furnish return under section 142 which again relates to a subsequent stage of reassessment proceedings. The judgment in the case of Alamelu Veerappan (supra) provides that notice issued to the legal representatives beyond the period of limitation prescribed is without jurisdiction and unenforceable in law. The judgment in the case of Rajender Kumar Sehgal v. ITO [\[2019\] 101 taxmann.com 233/260 Taxman](#)*

[412/414 ITR 286 \(Delhi\)](#) is also on the same lines. In addition, the contention of Sri. E.I.Sanmati, learned counsel for the revenue that the notice issued to the dead assessee ought to be saved by virtue of Section 292B, has also been considered in the case of Rajender Kumar (*supra*), where the Court has rejected such contention.

**19.** Section 292B reads as follows:

*"292B. Return of income, etc., not to be invalid on certain grounds: No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."*

**20.** Section 292B provides for saving of the proceedings if such proceedings are in substance and effect in conformity with or according to the intent and purpose of this Act. As noticed earlier, the procedure prescribed as regards to proceedings to be initiated against the deceased assessee is as contained under section 159(2)(b). Accordingly, notice issued against a dead person as regards his affairs which ought to have been issued under section 159(2)(b) to the legal representatives cannot be saved by recourse to section 292B.

**21.** As regards the contention of learned counsel Sri. E.I.Sanmathi, seeking for remanding of the matter back for fresh consideration by the Assessing Authority by permitting *de novo* proceedings with respect to the same assessment year by rectifying the formal defect in notices issued, by placing reliance on the judgments referred in paragraph No. 5 above, it ought to be noticed that no doubt in all the 3 orders relied upon by Sri. Sanmathi, learned counsel (Judgment Rudra Gouda v. Asstt. CIT [\[2018\] 93 taxmann.com 333 \(Kar.\)](#) Judgment passed in Appanna Seetharamu v. ITO [IT Appeal No. 877 of 2018, dated 3-9-2019] and the judgment in the case of Smt. Sudha Prasad v. Chief CIT [\[2003\] 133 Taxman 864/\[2005\] 275 ITR 135 \(Jharkhand\)](#), the Court had permitted *de novo* proceedings to be initiated for the same assessment year against the legal representatives. However, what does not come out from the facts in the aforesaid cases is the consideration of the point of limitation vis-à-vis the proposed proceedings against the legal representatives. If the case was that proceedings were initiated against the deceased assessee and subsequently on coming to know the details regarding the legal representatives, fresh notice is issued and such notice is challenged by the legal representatives as being invalid as against them, consideration would have been different. If the notice to the said legal representatives at the second instance were issued within the time prescribed under section 149, such fact would be of relevance wherein a contention is raised regarding the absence of jurisdiction to initiate proceedings vis-à-vis legal representatives as has been considered above. The Court in none of the above judgments has recorded a finding as to whether issuance of notice to the deceased in contravention of section 159(2)(b) could be saved which point was not raised nor considered in the said judgments and accordingly, the Court not having expressed a view as regards to the power to

*initiate proceeding against the legal representatives, such judgments are of no avail.*

*22. The other circumstance that is required to be noticed is that the legal representatives in the present case were not issued with any notice regarding proceedings under section 148 and it is only under section 142 notice was issued to the legal representatives which fact is also taken note of while refusing to reserve liberty to the authority by remanding the matter to the Assessing Authority to initiate proceedings. It must also be noted that exercise of power under article 226 is not made out in the present case as granting of any relief would be contrary to the statutory period available to initiate proceedings against the legal representatives in terms of section 159(2)(b) read with section 149(1)(b) as discussed above.*

*23. The position of law regarding invalidity of the notice vitiating the proceedings pursuant thereto being settled as noticed from the judgment in the case of Kurban Hussain Ibrahimji Mithiborwala (supra) and in light of the discussions made above and in the absence of any notice under section 148 in terms of section 149(1)(b) of the Act, the assessment order passed in the names of the petitioners enclosed at Annexure-E for the assessment year 2011-12 passed under section 144 read with section 147 of the Act is set aside. Consequent to setting aside of assessment order, demand notice, recovery notice and show cause notice issued pursuant thereto vide Annexures - F1, F2 and G respectively are also set aside.*

**9.7** Further, under the similar facts and circumstances, Hon'ble High Court of Bombay in the case of Dhirendra Bhupendra Sanghvi Vs. ACIT reported in [2023] 151 taxmann.com 541 (Bombay) has also held as under:

*9. We have heard both counsel and perused the papers and proceedings.*

*10. The facts are not in dispute. The impugned notice for reopening the assessment was issued on a dead person. There are several judgments of different High Courts holding that the notice issued on a dead person or reopening of assessment of a dead person is null and void in law and the requirement of issuing a notice to a correct person is not merely a procedural requirement but a condition precedent for a notice to be valid in law. A reference in this respect can be made to a decision of this court in Sumit Balkrishna Gupta v. Asstt. CIT [2019] 103 taxmann.com 188/262 Taxman 61/414 ITR 292 (Bom.). In the case of Pr. CIT v. Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375/265 Taxman 515416 ITR 613 (SC) the Apex Court has held that the notice issued and the order passed in the name of an old entity is bad in law and that such error was not curable u/s 292B of the Act as the same constitutes a substantive illegality and not a mere procedural violation.*

*11. This Court in the case of CLSA India (P.) Ltd. v. Dy. CIT [2023] 149 taxmann.com 380 (Bom.) in Writ Petition No. 2462 of 2022 whilst allowing the Petition has held that the stand of the revenue that the reassessment was justified*

*in view of the fact that the PAN in the name of the non-existent entity had remained active does not create an exception in favour of the revenue to dilute in any manner the principles enunciated by the Apex Court in Saraswati Industrial Syndicate Ltd. v. CIT [1990] 53 Taxman 92/186 ITR 278 (SC) and in the case of Maruti Suzuki India Ltd. (supra).*

*12. Keeping in mind, the averments in paragraph 20 of the reply, extracted hereinabove, this Court is of the view that the respondent no. 1 would not have been wrong, keeping the settled law in mind, in abstaining from issuing a notice on the deceased assessee. The respondent no. 2 would also not have been wrong in not granting the sanction to the respondent no. 1 for issuance of a notice on the deceased assessee, since the department was aware of the demise of the assessee and since the ITBA system is undergoing a change and being updated with new functionalities and modalities. In our view, if the concerned officers follow the settled law and abstain from issuing notices which are null and void, would not only help the citizenry but also the courts in the country who are already overburdened. In fact, it would be in tune with the Finance Act 2021 which aims to achieve the ultimate object of simplifying the tax administration, ease compliance and reduce litigation.*

*13. For the reasons stated above, this Court holds that the notice and all consequential proceedings in the name of a deceased assessee are null and void and consequently, the impugned notice dated 31st March 2022 u/s 148 of the Act, the Order dated 31st March 2022 u/s 148A(d) of the Act and Notice dated 19th March 2022 u/s 148A(b) of the Act are quashed and set aside and all actions in furtherance thereto are prohibited.*

**9.8** The Apex court in the case of Income Tax Officer Ward 1(3)(7), Surat Vs. Durlabhbai Kannubhai Rajpara reported in (2020) 114 taxmann.com 482 (SC) has held as under:

*7. In the present case, the assessee-petitioner has at first point of time objected to the issuance of notice under section 148 of the Act and has not participated or filed any return pursuant to notice. Therefore, legal representatives not having waived requirement of notice under section 148 of the Act and not having submitted to the jurisdiction of the Assessing Officer pursuant to impugned notice, provisions of section 292A of the Act also would not be attracted and hence notice under section 148 of the Act has to be treated as invalid.*

*8. The facts in the present case are identical to the case of Chandreshbhai Jayantibhai Patel (supra), as in the facts of the present case also father of the petitioner expired on 12.6.2016 and impugned notice was issued on 28.3.2018. In facts of the present case, even prior to issuance of notice, department was aware about the death of the petitioner's father since on 13.3.2018 in response to the summons issued under section 131(1A) of the Act, the petitioner had intimated to the department about the death of his father. Therefore, it cannot be said that the respondent was not aware about the death of the father of the petitioner and he could have belatedly issued notice under section 159 of the Act upon the legal representatives of late Shri Kanubhai Nagjibhai Rajpara.*

*9. The contention advanced by the learned senior standing counsel for the respondent that since Permanent Account Number of late Shri Kanubhai Nagjibhai Rajpara was active, it can be presumed that tax payer was alive, cannot be sustained in view of the fact that only because Permanent Account Number is active, petitioner or any assessee is not liable to file the return of income and on that basis it cannot be presumed that the assessee is alive, more particularly, when the department is made to know about the death of the assessee prior to issuance of the impugned notice.*

*10. In view of the aforesaid settled legal proposition that no valid notice can be issued against a dead person, the impugned notice is required to be quashed and set aside.*

**9.9** From the above discussion and respectfully following the above decisions of the jurisdictional High Court as well as High Court of Bombay and Apex court, we hold that notice u/s 148 of the Act is a jurisdictional notice and existence of valid notice u/s 148 of the Act is a condition precedent for exercise of jurisdiction by the AO to assess or reassess u/s 147 of the Act, for want of valid notice, the jurisdiction of the AO to proceed with the assessment effected and thus effects the validity of the entire assessment proceedings. In view of the above, reopening notice issued u/s 148 of the Act in the name of deceased assessee on 8.3.2023 is null and void and accordingly subsequent reassessment order passed on 12.8.2024 u/s 147 r.w.s. 144 r.w.s. 144B of the Act is non-est and accordingly quashed.

**10.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 26<sup>th</sup> Feb, 2026

**Sd/-**  
**(Waseem Ahmed)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 26<sup>th</sup> Feb, 2026.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,  
ITAT, Bangalore.**