IN THE INCOME TAX APPELLATE TRIBUNAL
"A''BENCH: BANGALORE

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No. 2419/Bang/2025
Assessment Year : 2018-19

Mrs. Surekha (Legal Representative of Late Shri Devaraj, since dead) No.112, 1st Main, Ramarao Layout BSK 3rd Phase, 3rd Stage Bengaluru 560 085 **PAN NO :ASVPS2939R**	**Vs.**	ITO Ward 7(2)(5) Bengaluru
APPELLANT		**RESPONDENT**

Appellant by	:	Sri Balachandran, A.R.
Respondent by	:	Sri N. Balusamy, D.R.

Date of Hearing	:	17.02.2026
Date of Pronouncement	:	06.03.2026

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of ld. CIT(A)/NFAC dated 4.9.2025 vide DIN & Order No. ITBA/NFAC/S/250/2025-26/1080362875(1) passed u/s 250 of the Income Tax Act, 1961 (in short "The Act") for the assessment year 2018-19.

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

A. GENERAL GROUNDS:

1. The appellate order passed by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)] is contrary to law, facts and circumstances of the case to the extent it is against the Appellant.

B. LEGAL GROUNDS (Additional Grounds):

2. The appellate order dated 04.09.2025 passed by the CIT(A) upholding the assessment order dated 15.04.2021 passed by the learned Assessing Officer ("Ld AO") under section 143(3) read with section 143(3A) and 143(3B) of the Income-tax Act, 1961 ("Act") is bad in law in as much as the same is passed in the name of a dead person and hence is non est and void.

3. The CIT(A) erred in not appreciating that the assessee had expired on 19.05.2019 which was intimated to the Income Tax Department and the details of the legal representative were updated in the Income Tax portal i.e., before passing of the assessment order.

4. The order of CIT(A) is bad in law as the same is passed in the name and PAN of the legal representative when the same ought to have been passed in the name of the legal representative but in the PAN of the deceased assessee.

5. The CIT(A) erred in not appreciating that the assessment order 15.04.2021 was non-est and void and deserved to be quashed as the provisions of section 143(3A) and 143(3B) were non-existent after 31.03.2021.

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C. GROUNDS IN RELATION TO AGRICULTURAL INCOME:

6. The CIT(A) has erred in confirming the disallowance of the claim of agricultural income amount to Rs.18,50,000/- out of the disallowance of Rs.37,50,000/- made by the Ld AO.

7. The CIT(A) and Ld AO erred in making ad-hoc disallowance of agricultural income on estimate basis without any evidence.

8. The CIT(A) and Ld AO erred in estimating the agricultural expenditure at a certain percentage of revenue without appreciating that the expenditure will not vary in commensurate with the revenue.

9. The CIT(A) and AO erred in estimating the agricultural expenditure at a higher amount than the amount claimed by the Appellant and thereafter erred in treating the excess expenditure as income from other sources without appreciating that the Appellant was not having any income other than the agricultural income.

D. CONSEQUENTIAL GROUNDS:

10. The Ld AO erred in charging interest under section 234B and 234C of the Act.

11. The Ld AO erred in initiating penalty proceedings under section 270A of the Act.

Each of the above grounds is independent and without prejudice to the other grounds of appeal preferred by the Appellant. The Appellant reserves the right to further add, alter or amend each one of the above grounds of appeal

3. The assessee has raised the following additional grounds of appeal:-

PETITION FOR ADMISSION OF ADDITIONAL GROUND

It is humbly prayed that the additional ground of appeal raised by the Petitioner as Ground No.2, 3, 4 and 5 of the appeal may kindly be admitted.

The Petitioner vide additional ground No.2, 3 and 4 is challenging the validity of the assessment order passed by the learned Assessing Officer ("Ld AO") under section 143(3) read with section 143(3A) and 143(3B) of the Income-tax Act, 1961 ("Act") dated 15.04.2021 as being bad in law since the same has been passed in the name of a dead person.

The Petitioner further vide the additional ground of appeal No.5 is challenging the validity of the assessment order dated 15.04.2021 since the same is passed under the provisions of section 143(3A) and 143(3B) of the Act when the provisions were non-existent after 31.03.2021.

The Petitioner therefore submits that the assessment order dated 12.04.2021 passed by the Ld AO under section 143(3) read with section 143(A) and 143(3B) are bad in law and void ab-initio and hence, deserves to be quashed.

REASONS FOR RAISING ADDITIONAL GROUNDS:

(i) In respect of Ground No.2, 3 and 4:
Validity of assessment order passed in the name of a dead person

1. The Petitioner is the wife of the Assessee and is the Legal Representative of her deceased husband, Shri Devaraj who expired on 19.05.2019. Thereafter, the Petitioner informed the Income Tax Department and the PAN of Shri Devaraj was linked to the PAN of the Petitioner on the Income Tax filing portal on 29.10.2021 and 18.02.2022 (copy enclosed as **Annexure 1 and 2**).

2. The Petitioner submits that the Ld AO passed the assessment order in the name of deceased husband of the Petitioner, Shri Devaraj. The law requires the order to be passed in the name of the legal representative but in the PAN of the deceased assessee. The Petitioner submits that the order passed by the Ld AO is bad in law and is void.

3. The Petitioner relies on the recent decision of this Hon'ble Tribunal in the ***Petitioner's case for AY 2015-16 in ITA No.910/Bang/2025 dated 05.08.2025*** wherein, the Hon'ble Tribunal relying on the decisions of the High Courts including the decision of the jurisdictional Hon'ble High Court of Karnataka in the case of ***ITO vs. Smt. Preethi V reported in (2025) 170 taxmann.com 673 (Karnataka)*** has held that orders are made on the deceased assessee and after the profile in the portal has been updated by the legal representative are not sustainable.

4. The Petitioner submits that the order dated 04.09.2025 passed by Commissioner of Income-tax (Appeals) ["CIT(A)"] has been passed in the name of the Petitioner and in her PAN, when it had to be passed in PAN of deceased assessee. The order of the CIT(A) is also bad in law and is non-est and void.

(ii) In respect of Ground No.5:
Validity of assessment order passed under section 143(3A) and 143(3B) after 01.04.2021

5. The Petitioner submits that the Finance Act, 2018 introduced three new sub-sections (3A) to (3C) in section 143 of the Act (governing the assessment process), to notify a new scheme of E-Assessment. The Central Board of Direct Taxes ('CBDT' for short) by exercising powers conferred under section 143(3A) of the IT Act, issued Notification dated 12.09.2019 in S.O. 3264(E) and introduced the 2019 Scheme. Subsequently, the e-Assessment was amended and substituted as 'Faceless Assessment' by Notification No. 61/2020 in S.O. 2746(E), dated 13.08.2020 and Faceless Assessment (First Amendment) Scheme 2021, vide notification no.6/2021 in S.O. 741 (E) dated 17.02.2021.

6. The Petitioner submits that the Faceless Assessment Scheme was incorporated into the Act by insertion of new section 144B which was introduced by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 effective from 01.04.2021. Section 143(3D) was also inserted with effect from 01.04.2021 which specified a sunset date of 31.03.2021 for existing sections 143(3A) and 143(3B) of the IT Act.

7. The Petitioner states that Section 144B lays down the procedure for conducting Faceless Assessments after 01.04.2021. The Ld AO has erred in passing the assessment order under section 143(3A) and 143(3B) of the Act.

8. Reliance is placed on the decision of the Hon'ble Delhi High Court in the case of ***Gurgaon Realtech Limited [W.P.(C) No.5849/2021]*** wherein it has been held that after 01.04.2021, assessment orders could be passed only under section 144B of the Act and accordingly, assessment passed under section 143(3A) and 143(3B) of the Act after 01.04.2021 have been set aside.

9. It is submitted that the subject appeal for the Assessment Year 2018-19 has been filed by the Petitioner as the Legal Representative of Late Shri Devaraj as per the provisions of section 140 read with section 159 of the Act.

The Petitioner relies on the decision of the Hon'ble Supreme Court in ***National Thermal Power Corporation Ltd (1998) 229 ITR 383 (SC)*** wherein it has been held that the assessee can raise points of law before the Tribunal which were not raised earlier.

Therefore, the Petitioner submits that the additional ground of appeal raised as Ground No.2, 3, 4 and 5 of the appeal may kindly be admitted.

Prayer

Under the above circumstances, the Petitioner humbly prays that the additional ground of appeal may kindly be admitted, by exercising the power vested under Rule 11 of the Income-Tax Appellate Tribunal Rules, 1963 ("Rules") and allow the Petitioner, the Appellant, to argue the aforesaid additional ground of appeal No.2, 3, 4 and 5 of the appeal.

3.1 We have heard both the parties on admission of additional grounds. The Lucknow bench of the Hon'ble Allahabad High Court in the case of CIT Vs. Sahara India (2012) 347 ITR 331 held that a legal issue can be raised at any stage but there shall be good reason for admitting the additional ground.In our Opinion all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of the adjudication of above grounds. Further we are also of the opinion that the additional grounds raised in the present case are purely legal in nature & therefore these are critical for a fair adjudication of the matter. The Hon'ble Madras High Court in the case of CIT Vs Indian Bank (2015) 230 Taxman 635 (Madras) held that Rule 11 of the I.T. Rules makes it clear that the assessee has the right to raise additional grounds and if the same is beneficial to the assessee, the same should be considered by the Tribunal.

3.2 Further, the Hon'ble Karnataka High Court in the case of Gundathur Thimmappa & Sons vs. CIT, Mysore, reported in (1968) 70 ITR 70 held that when the point raised by the assessee is a point which went to the root of the matter and affected not merely his liability to pay tax but also jurisdiction of the Tribunals and Authorities themselves to subject the amount concerned to tax, the Appellate Tribunal had the discretion to permit point of law to be raised for the first time in appeal because the question went to the root of the case. The Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs CIT (1998) 229 ITR 383 held that undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings, we fail to see why such a question should not be allowed to be raised when it is necessary to

consider that question in order to correctly assess the tax liability of an assessee. Accordingly, we are inclined to admit the additional legal grounds for the purpose of adjudication as there was no investigation of any fresh facts otherwise on record and these are critical for a fair adjudication of the matter.

4. Now, first we proceed to adjudicate one of the legal grounds raised by the assessee challenging the validity of the assessment Order passed in the name of the dead person. The brief facts of the case are that the assessee e-filed his return of income for the assessment year 2018-19 on 31.07.2018 declaring total income of Rs. 25,31,420/-. The case of the assessee was selected for **Limited scrutiny** on the issue of "Agriculture Income". Accordingly, notice under section 143(2) of the Act was served on **28/09/2019** and the notices 142(1) of the Act were issued & served on **30/12/2019, 12/02/2020 & 13/03/2021**. In response, **the spouse and legal heir of the deceased assessee** had made online submission and furnished the details along with supporting documents. After considering the reply and evidence submitted, it was noticed by the AO that the assessee could file only five bills totaling to Rs.8,08,840/- only out of total agriculture income shown at Rs. 75,00,000/-. The assessee in its reply stated that he/she was not maintaining the books of account with regard to earning of Agriculture income & expressed her inability to produce the copy of the ledger abstracts of the receipts. Further, with regard to expenses incurred for raising the crops, the assessee stated that there is a negligible expenses incurred for the same.

4.1 During the course of assessment proceedings, the legal heir of the deceased in response to SCN dated 06/04/2021 had also submitted reply on 09/04/2021 along with 50 odd bills in addition to 5 bills, but the AO did not accept the same in view of incomplete

details of bills and voucher due to which no justification of agriculture income declared by the assessee in ROI can be done & also in view of the direction from the review unit with respect to covering the leakage with respect to the agriculture income declared. Therefore, Rs. 37,50,000/- being 50% of the income declared amounting to Rs.75,00,000/- covering all the leakage was added back to the returned income of the assessee as income from other sources u/s 56 of the Act. The AO completed the assessment proceedings u/s 143(3) of the Act on a total assessed income of Rs.62,81,420/-

5. Aggrieved by the order of AO passed u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act dated 15.4.2021, the legal heir of the assessee Mrs. Surekha preferred an appeal before the ld. CIT(A)/NFAC.

6. The ld. CIT(A)/NFAC was of the considered opinion that the assessment as well as the claim of the assessee were on the wrong footings. To assess amount of agriculture income the relevant factors are the extent of land holdings, types of crop sown, total sales of the produce and expected expenditure against that sale. As per the fact on record, the assessee had 35 acres of land from which he has earned the agriculture income. If we take an amount of Rs.75 lakhs, the net income comes to more than Rs.2 lakhs per acre, after allowing the expenses which had been incurred. The ld. CIT(A)/NFAC was of the opinion that no doubt the expenditure on sowing and preparing the fields is not there. However, such crops demand extra care throughout the year and there are other expenses like putting manure, preventing the crops from damage from pests and cattle, keeping watch, harvesting, making sales and taking the produce to the point of sale. Therefore, the claim of the assessee that he/she had not incurred any expenditure is not justified. Further, the ld. CIT(A)/NFAC held that in order to earn net income of Rs.75 lakhs,

the turnover/sale has to be at least Rs.100 lakhs as minimum 25% has to be borne as expenditure.

6.1 During the appellate proceedings, the assessee has furnished copies of 52 sale bills and the amount of these comes to Rs.36.87 lakhs. There is talk of copies of 80 bills having been submitted to the AO. There may be some doorstep sale also. Taking all the factors into consideration and being liberal towards the assessee, the ld. CIT(A)/NFAC held that the total sale is not expected to cross Rs.75 lakhs. Accordingly, the total sales are assessed at Rs.75 lakhs. After deducting 25% towards expenses the net income from agriculture is assessed at Rs.56.25 lakhs against Rs.75 lakhs shown by the assessee and Rs.37.50 lakhs assessed by the AO. In this manner the addition to the extent of Rs.18.75 lakhs (75-56.25) stand confirmed and the assessee gets relief or Rs.18.75 lakhs. In view of the above, the ld. CIT(A)/NFAC partly allowed the appeal of the assessee.

6. Again, aggrieved by the order of ld. CIT(A)/NFAC dated 04/09/2025, the legal heir of the assessee filed the present appeal before this Tribunal.

7. Before us, the ld. A.R. of the assessee at the outset vehemently contended that the assessment proceedings initiated u/s 143(2) of the Act on 28/09/2019 and the subsequent order passed u/s 143(3) of the Act dated 15/04/2021 were issued after the death of the assessee on **19/05/2019** 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 143(2) 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 143(2) of the Act as well as subsequent assessment order passed u/s 143(3) 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 heirs 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 appeared before the AO & Cooperated with the proceedings & therefore the legal representatives is not precluded from taking such ground at this stage. 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. On going through the assessment order, we take note of the fact that during the course of the assessment proceedings, the assessing officer was fully aware of the fact that the assessee had expired & accordingly categorically stated in the assessment order that the spouse and legal heir of the deceased assessee had furnished the reply & evidences in response to notices as well as SCN dated 06/04/2021. The assessee expired on **19/05/2019**. The income tax department served a notice u/s 143(2) of the Act on **28/09/2019** for the AY 2018-19 in the name of husband when he was no more. Thus, it is an admitted fact that notice u/s 143(2) of the Act was issued & served in the name of the dead person and the order u/s 143(3) of the Act passed on

15/04/2021 in the name of the dead person. Now, the legal heir & wife of the assessee Smt. Surekha categorically contending that the AO despite knowing the fact of death of the assessee during the course of the assessment proceedings did not issue any notice to any legal representatives of the assessee & therefore the entire assessment proceedings are void-ab-initio.

9.1 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),—

(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.

(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."

9.2 On going through the above provisions, we take note of the fact that section 159(2) of the Act makes a specific reference to assessment/reassessment proceedings under 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.

9.3 Undisputedly, the AO had issued notice u/s 143(2) of the Act on 28/09/2019 way after the demise of the assessee on 19/05/2019. Thus, the notice u/s 143(2) 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 143(2) 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 of the Act. The Section 159(2)(b) of the Act would require a separate notice to be issued u/s 143(2) of the Act within the time prescribed under the Act as against legal representatives directly. Thus, we are of the considered opinion that as the notice u/s 143(2) of the Act could not be served upon the assessee due to his demise and also no notice u/s 143(2) of the Act was ever served upon the legal heirs within the time & thus the entire assessment proceedings is a nullity & void-ab-inito. 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.

9.4 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."*

9.5 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."*

9.6 The Apex court in the case of Income Tax Officer Ward 1(3)(7), Surat Vs. Durlabhbhai 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."*

9.7 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 143(2) of the Act is a jurisdictional notice and existence of valid notice u/s 143(2) of the Act is a condition precedent for exercise of jurisdiction by the AO to assess u/s 143(3) 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, assessment notice issued u/s 143(2) of the Act in the name of deceased assessee on 29/09/2019 is null and void and accordingly subsequent assessment order passed on 15/04/2021 u/s 143(3) 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 March, 2026

Sd/-	**Sd/-**
(Prashant Maharishi)	**(Keshav Dubey)**
Vice President	**Judicial Member**

Bangalore,
Dated 06th March, 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.