

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.3651 OF 2022

Shailesh Shah, Legal Heir of
Late Shri Ramniklal Harilal Shah,
Vistavan, 502, The Address Wadhwa,
LBS Marg, Ghatkopar (West),
Mumbai-400 086

(Assessment Year 2014-15)

... Petitioner

Versus

1. The Income Tax Officer-Ward 27(3)(1),
Room No.422, 4th Floor, Tower No.6,
Vashi Railway Station, Vashi,
Navi Mumbai-400 706.

2. The National Faceless Assessment
Centre, Delhi Government of India,
North Block, New Delhi-110 001.

3. Union of India,
Through the Secretary, Department
of Revenue, Ministry of Finance,
Government of India,
North Block, New Delhi-110 001.

... Respondents

Mr. Ratan Samal i/b Mr. Manohar Samal for the Petitioner.
Mr. Suresh Kumar for the Respondent.

**CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, JJ.**

DATE : 23 SEPTEMBER 2022

: ORDER :

(PER DHIRAJ SINGH THAKUR, J.)

. The notice under Section 148 of the Income Tax Act, 1961
("the Act), dated 30 March 2021 for the relevant assessment year

2014-15, came to be issued against the Petitioner's father Shri Ramniklal Harilal Shah. Reply to the notice was submitted by the Petitioner informing the assessing officer that the assessee has since passed away on 3 February 2016. A copy of the death certificate was also submitted to said officer. The stand of the Petitioner before the assessing officer was that no proceeding could be initiated or permitted to be continued against a dead person.

2 The objection was considered by the assessing officer, but rejected in the following terms :

“The assessee has objected to the re-opening proceedings stating that Mr. Ramniklal H. Shah has passed on 03.02.2016 and that the proceeding against the assessee is invalid. In this regard, it is stated that notice u/s 148 of the I.T. Act was issued on 30.03.2021 and at the time of issue of notice, there was no information available in the office to establish that Ramniklal H. Shah was alive, unless the same was informed by the LH/AR to the Department in view of the above, the notice u/s 148 is valid and the proceedings is being continued through the Legal Heir Shailesh R. Shah.”

3 The assessing officer finally proceeded to pass the order of assessment dated 31 March 2022 against the deceased assessee. The said Order is unsustainable as the entire reassessment proceedings were initiated and the Order impugned passed against a dead person, which makes the Order invalid and *non est* in the eyes of law.

4 This Court in the case of **Dipak Tanna Vs. Income Tax Officer**¹,

¹ WPL 8653-22, dated 28.06.2022

has held that the notice issued to a dead person is not valid. Reliance in this regard can also be placed in the case of **Income Tax Officer Ward 1(3)(7), Surat Vs. Durlabhbhai Kanubhai Rajpara.**² In this case, it was held that a notice issued under Section 148 of the Act against a dead person would be invalid, unless the legal representatives submit to the jurisdiction of the Assessing Officer without raising any objection. Consequently, where the legal representatives do not waive their right to a notice under Section 148 of the Act, it cannot be said that the notice issued against the dead person is in conformity with and with intent and purpose of the Act.

5 Be that as it may, the Order of assessment impugned in the present Petitions dated 31 March 2022 and the notice of demand dated 30 March 2021 are quashed and Writ Petition are allowed accordingly.

(VALMIKI SA MENEZES, J.) (DHIRAJ SINGH THAKUR, J.)
