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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 12215/2021

VIKRAM BHATNAGAR AS LEGAL REPRESENTATIVE
ACTING FOR AND ON BEHALF OF LEGAL HEIRS OF LATE
SH VIRENDRA KUMAR BHATNAGAR (DECEASED)

..... Petitioner

Through: Mr Rohit Jain, Mr Aniket D.
Agrawal, Ms Mansha Sharma,
Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX..... Respondent

Through: Mr Ajit Sharma, Sr. Standing Counsel
with Mr A. Renganath, Advocate.

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Date of Decision: 09th November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present petition has been filed by the petitioner assailing the assessment order dated 30th September, 2021 framed under Section 143(3) of the Income Tax Act, 1961 ('the Act'), the consequential notice of demand under Section 156 of the Act, the notice initiating proceeding for levy of penalty under Section 270 A of the Act and lastly, the impugned notice dated 22nd September, 2019 issued under Section 143(2) of the Act for initiating scrutiny assessment proceedings in the case of Late Sh. Virendra Kumar Bhatnagar for Assessment Year ('AY') 2018-19.

2. The petitioner is the son of Late Sh. Virendra Kumar Bhatnagar (hereinafter referred to as the 'deceased Assessee') who died on 10th March, 2018.

3. Learned counsel for the Petitioner states that upon demise of the Assessee, his son Sh. Vikram Bhatnagar, the Petitioner herein filed an e-application dated 06th October, 2018 seeking registration as a legal representative of the deceased Assessee in the records of the Income Tax Department ('ITD'). The said application was accepted and the Petitioner herein was allowed to use the deceased Assessee's account on the E-portal to make necessary filings, on behalf of the deceased Assessee as the registered legal representative. He states that on 25th October, 2018 the Petitioner herein filed an Income Tax Return ('ITR') of the deceased Assessee for AY 2018-19 in his capacity as a legal representative. In the said ITR it was duly verified and declared that the ITR was being filed by the Petitioner in his capacity as a representative of the deceased Assessee.

4. He states that the impugned statutory notice dated 22nd September, 2019 under Section 143(2) of the Act was issued by the Assessing Officer ('AO') for the assessment year under consideration for limited scrutiny. The said notice was issued in the name of the deceased Assessee. The said notice suffered from a fundamental jurisdictional error as it was issued in the name of a dead person and the scrutiny proceedings were proposed in the case of a dead person. The said notice neither mentioned the name of the legal heirs nor the PAN number of the said legal heirs. The AO did not take any step to bring all the legal heirs of the deceased Assessee on record at the time of issuance of said notice.

5. He states that in the subsequent notices dated 16th September, 2021

and 22nd September, 2021 issued by the AO even though the name of the deceased Assessee was mentioned, the AO added a suffix '*Through Legal Heir Vikram Bhatnagar*'. He states that such an amendment to the subsequent notices was impermissible. He further states the said suffix could not cure the fundamental defect that the notice was not issued to all the legal heirs of the deceased Assessee.

6. He states that the AO concluded the aforesaid assessment proceedings and passed the consequential impugned assessment order dated 30th September, 2021 in the name of the deceased Assessee and bearing his PAN AEFPB8513E, thereby assessing the total income at Rs. 13,49,43,945/-. He states that the impugned assessment has been completed for the complete Financial Year ('FY') 2017-18, despite the fact that since the deceased Assessee expired on 10th March, 2018 the relevant period of previous year for assessment was from 01st April, 2017 to 10th March, 2018 and not the complete year.

7. He states that, since the impugned notice dated 22nd September, 2018 issued under Section 143(2), was in the name of the deceased Assessee and bearing his PAN, without bringing on record or substituting, the legal heirs of the deceased Assessee, the consequential assessment order dated 30th September, 2021 passed under Section 143(3) for the complete FY 2017-18 and the accompanying notices of demand and penalty issued under Section 156 and Section 270(A) of the Act respectively, are illegal and without jurisdiction.

8. The learned senior standing counsel for the respondent states that there is no dispute on the facts. He agrees that the legal issue raised in this petition is covered by judgment of this Court in *Savita Kapila vs. Assistant*

Commissioner of Income Tax as the initial notice dated 22nd September, 2019 (which is the jurisdictional notice) and the assessment order dated 30th September, 2021 has been issued in the name of the deceased Assessee and for the PAN of the said Assessee.

9. We have considered the submissions made by the learned counsel for the parties. The issue of the validity of a notice issued against a dead person and the validity of the proceedings held subsequent thereto is no longer *res integra*. This Court in *Savita Kapila vs. Assistant Commissioner of Income Tax in W.P.(C) No. 3258 of 2020* has held as under.

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26. In the opinion of this court the issuance of a notice under section 148 of the Act is the foundation for reopening of an assessment. Consequently, the *sine qua non* for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. (See *Sumit Balkrishna Gupta v. Asst. CIT* [2019] 414 ITR 292 (Bom) ; [2019] 2 TMI 1209- Bombay High Court).

27. In *Chandresh Jayantibhai Patel v ITO* [2019] 413 ITR 276 (Guj), [2019] (1) TMI 353-the Gujarat High Court has also held (page 290 of 413 ITR) : “the question that therefore arises for consideration is whether the notice under section 148 of the Act issued against the deceased-assessee can be said to be in conformity with or according to the intent and purposes of the Act. In this regard, it may be noted that a notice under section 148 of the Act is a jurisdictional notice, and existence of a valid notice under section 148 is a condition precedent for exercise of jurisdiction by the Assessing Officer to assess or reassess under section 147 of the Act. The want of valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects the the validity of the proceedings for assessment or reassessment. A notice issued under section 148 of the Act against a dead person is invalid, unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection.” Consequently, in view of the above, a reopening notice under Section 148 of the Act, 1961 issued in the name of a deceased-assessee is null and void.

Also, no notice under Section 148 of the Act, 1961 was ever issued upon the petitioner during the period of limitation. Consequently the proceedings against the petitioner are barred by limitation as per section 149(1)(b) of the Act,

1961.

As in the present case proceedings were not initiated/pending against the assessee when he was alive and after his death the legal representative did not step into the shoes of the deceased assessee, section 159 of the act, 1961 does not apply to the present case.

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30. *Section 159 of the Act, 1961 applies to a situation where proceedings are initiated/pending against the assessee when he is alive and after his death the legal representative steps into the shoes of the deceased assessee. Since that is not the present factual scenario, Section 159 of the Act, 1961 does not apply to the present case.*

31. *In Alamelu Veerapan v. ITO [2018] 12 ITR-OL 95 (Mad); [2018] (6) TMI 760- the Madras High Court, it has been held by the Madras High Court, “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”. In **Rajender Kumar Sehgal** (supra), a Co-ordinate Bench of this court has held, (page 291 of 414 ITR) “This court is of the opinion that the absence of any provision in the Act, to fasten revenue liability upon a deceased individual, in the absence of pending or previously instituted proceedings which is really what the present case is all about, renders fatal the effort of the Revenue to impose the tax burden upon a legal representative”.*

There is no statutory requirement imposing an obligation upon legal heirs to intimate the death of the assessee.

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10. The above judgment was followed by this Court in W.P.(C) No. 2678/2020 titled **Mrs. Sripathi Subbaraya Manohara vs. Principal Commissioner of Income Tax and another.**

11. In the present case as admitted by the Respondent the facts are admitted. The death of the Assessee was duly communicated by his legal heirs (the Petitioner herein). The ITR also duly disclosed that the same has been filed by the legal representative. However, in ignorance of the said

facts available on the record the scrutiny proceedings have been wrongly conducted in the name of the deceased Assessee without bringing on record all his legal heirs as per the requirement of law.

12. In the present case, the jurisdictional notice under Section 143(2) of the Act was issued against the dead person and the assessment order has also been passed against the dead person on his PAN without bringing on record all his legal representatives, therefore, the said assessment order and the subsequent notices are null and void and are liable to be set aside.

13. Consequently, the impugned notice dated 22nd September, 2019 issued under Section 143(2) of the Act and the impugned assessment order dated 30th September, 2021 is set aside along with all consequential proceedings and notices. The petition is allowed; however, Revenue will have the liberty to take steps in the matter, *albeit* as per law. In case any such-steps are taken, the Petitioner will have liberty to assail the same, in accordance with law.

14. The above captioned writ petition is disposed of in the aforesaid terms along with pending applications.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

NOVEMBER 09, 2022

hp/tb