

Sh. Meenu Gupta (Legal Heir Of Late Sh. ... vs Assistant Commissioner Of Income Tax, ... on 20 September, 2024

Author: Yashwant Varma

Bench: Yashwant Varma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 13 September 2024

Judgment pronounced on: 20 September 2024

+ W.P.(C) 10162/2024 & CM APPL. 41748/2024 (Stay)

SH. MEENU GUPTA (LEGAL HEIR OF LATE SH. VIPIN GUPTA)

..... Petitioner

Through: Mr. Kalrav Mehrotra, Adv.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 67(1),

DELHI & ORS.

..... Respondents

Through: Mr. Ruchir Bhatia, SSC with Mr.

Anant Mann, Mr. Pratyaksh

Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. The present Writ Petition has been filed by the writ petitioner, who is the wife and legal heir of late Sh. Vipin Gupta (deceased) assessee, therein, assailing the notice under Section 148-A(b) of the Income Tax Act, 1961 ["Act"] dated 15.02.2024 for the Assessment Year ["AY"] 2020-21 along with consequential order and notice under Section 148-A of the Act, both even dated 21.03.2024, seeking to assess/reassess the income of the deceased assessee.

2. Briefly stated, the facts are that Sh. Vipin Gupta, husband of the petitioner, passed away on 17.08.2019. His return of income under Section 139(1) of the Act could not be filed by his legal representatives.

3. A notice under Section 148-A(b) dated 15.02.2024 was issued in the name of the deceased assessee Sh. Vipin Gupta, asking him to show cause as to why notice under Section 148 of the Act should not be issued. The impugned notice was served through registered post at the address of the deceased assessee, which was received by the petitioner on 19.02.2024.

4. Petitioner filed her response to the impugned notice on 26.02.2024, therein, intimating the death of her husband. Regarding the averments made in the impugned notice, it was submitted that the

salary income of Rs. 47,43,930/- received by the deceased assessee during the year under consideration had already been subjected to Deduction of Tax at Source ["TDS"] under Section 192 of the Act, and therefore, there was no income chargeable to tax which had escaped assessment insofar as the salary received by the deceased/assessee was concerned.

5. However, in complete non-consideration of the response filed by the petitioner, respondent No.1 proceeded to pass impugned order under Section 148-A(d) of the Act as also issued impugned notice under Section 148 of the Act, both even dated 21.03.2024.

6. Learned counsel appearing on behalf of the petitioner submitted that the initiation of action under Section 148 in case of the assessee is void ab initio as the notices under Section 148-A(b) and under Section 148 of the Act were issued in the name of a dead person. It is argued that despite having been informed that the assessee has expired, Revenue has proceeded to initiate action under Section 148 of the Act.

7. Per contra, the learned counsel appearing for the Revenue has submitted that the impugned notices and order were passed in accordance with legislative mandate of Section 148 of the Act.

8. The question of the validity of a notice issued against a dead person is no longer res-integra. While dealing with an identical question, this Court in the case of Savita Kapila v. Assistant Commissioner of Income Tax in W.P. (C) No. 3258 of 2020 held that the pre-requisite for issuing a notice in the name of the correct person and not in the name of a dead person is sine qua none for acquiring the jurisdiction and initiating action under Section 148 of the Act. The Court while setting aside the notice issued under Section 148 of the Act in the name of a dead person, held as follows:-

"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."

9. Recently, in the case of Sangeeta Goyal v. Commissioner of Customs (Exports), WP (C) 13025/2019, while taking note of the decision rendered in Savita Kapila (supra), we took the view that Show Cause Notice having been issued against a dead person cannot be sustained, and consequently, the recovery proceedings initiated pursuant thereto, were quashed.

10. In the present case, the proceedings were not initiated against the assessee when he was alive and after his death, his legal heirs did not step into the shoes of the deceased assessee. The Gujarat High Court in Chandresh Jayantibhai Patel v ITO 2018 SCC OnLine Guj. 4812, took the view that there is no statutory provision which casts a duty upon the legal representatives to intimate the factum of death of an assessee to the Income Tax Department. The Court also took note that there may be cases where the legal representatives are estranged from the deceased assessee or the deceased assessee may have bequeathed his entire wealth to a charity.

11. Hence, on the touchstone of the principles that emerge from the judicial pronouncements discussed above, it is evident that action under Section 147 of the Act cannot be initiated as the impugned notices were issued in the name of a dead person. Furthermore, the present is a case where the petitioner had already intimated the Revenue about the death of the assessee and yet it proceeded to reopen and issued a notice under Section 147 of the Act.

12. Before concluding, we may also take note that reassessment action was initiated, based upon the following information at Insight Portal, which is as under:-

Details of Information Sl. No. Information Description Source Amount in Rs.

1. TDS Statement - Salary to AIRPORTS 47,34,930/-

	employees (Section 192) (Annexure-II)	AUTHORITY OF INDIA	
2.	TDS Statement - Salary to employees (Section 192)	AIRPORTS AUTHORITY OF INDIA	47,43,930
		TOTAL	94,87,860

13. Learned counsel for the petitioner submits that the husband of the petitioner was an employee of Airports Authority of India and the income alleged to have escaped assessment is the salaried income of the deceased for the AY 2020-21, upon which, employer had deducted TDS, and therefore, there is no income which has escaped assessment.

14. Form-16 issued in the name of the deceased assessee Sh. Vipin Gupta reveals that Airports Authority of India was the employer and Rs. 47,34,930/- represents the salaried income of the deceased assessee for the AY 2020-21, and upon which, tax amount of Rs. 6,06,528/- has been deducted at source and deposited to the credit of Central Government.

15. As per Section 204(i) of the Act, in the case of payments of income chargeable under the head "Salaries", the employer is the person responsible for making payment of tax and Section 205 of the Act provides that where the tax is deductible at the source, assessee shall not be called upon to pay the tax himself to the extent to which the tax has been deducted from that income.

16. Since the tax has already been deducted on the salary income, as is evident from Form-16, the reassessment action leading to demand of tax cannot be initiated against the assessee or even his legal representatives. Even on account of non-deposit of TDS by the employer, we had in the case of Shantanu Awasthi v. Income Tax Officer, Ward 61(1), WP (C) 3518/2023, while relying upon the Office Memorandum of the Central Board of Direct Taxes ["CBDT"] dated 11.03.2016, concluded that there was no justification for the demand being shown as outstanding against the writ petitioner.

17. Taking note of the above position, we are of the view that the impugned notice under Section 148-A(b) dated 15.02.2024, order under Section 148-A(d) and notice under Section 148, both even dated 21.03.2024 cannot be sustained and are set aside.

18. Petition is accordingly allowed in the above terms.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

20 September 2024 RM