

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____/2024
(@SLP (C) No. 28039/2023)

GHANYASHYAM ANIL DHANANI

APPELLANT(S)

VERSUS

THE INCOME TAX OFFICER WARD 17(1)(1),
MUMBAI & ANR.

RESPONDENT(S)

O R D E R

Leave granted.

The legality and correctness of the order of the Bombay High Court in Writ Petition (L) No. 12447/2023 dated 10.07.2023 by which the Writ Petition was disposed of reserving all contentions to be taken by the appellant herein before the Assessing Officer except the contentions that the initial Notice dated 24.05.2022 under Section 148A(b) was issued to a dead person, is assailed in this appeal.

For the purpose of disposal of this appeal, it would not be necessary to go into the merits of the matter except stating that on 24.05.2022 Notice under Section 148A(b) was issued in the name of Anil Pragji Dhanani who had in fact died prior thereto on 02.09.2016. In response to the said notice on 07.06.2022, reply was given by Ghanyashyam Anil Dhanani, son of late Anil Pragji Dhanani

stating that his father, the assessee had passed away, though the Chartered Accountant informing that the assessee had passed away; thereafter another communication was issued on 19.07.2022 by the respondents seeking details of the legal representatives of the original assessee. The same was responded to by the Chartered Accountant and on becoming aware of the legal representatives of the deceased-original assessee order dated 30.07.2022 was passed under Section 148A(d) of the Income Tax Act, 1961 (for short "the Act"). On the very next day of 31.07.2022, another order was passed under Section 148 A(d) in the name of the legal representatives of the deceased-original assessee.

Being aggrieved by the said order, the legal representatives of the deceased-original assessee filed the aforesaid Writ Petition contending that the original assessee had died on 02.09.2016 but the proceedings for reassessment was vitiated as it was commenced against a dead person.

The High Court, on considering the case of the respective parties, noted that since the legal representatives were substituted by the respondents and thereafter the proceeding could be continued, disposed of the Writ Petition by holding that the legal

representatives could take all contentions available to them except the fact that the initial notice was issued in the name of a dead person and consequently disposed of the Writ Petition.

Being aggrieved by the said order, the legal representatives of the deceased-original assessee have preferred this appeal.

We have heard learned counsel for the appellant and learned counsel for the respondent-department and perused the material on record.

At the outset during the course of submissions, learned counsel for the respondent-Department submitted that the matter is now covered by the recent judgment of this Court in the case of Union of India and Ors. vs. Rajeev Bansal [Civil Appeal No.8629/2024 dated 03.10.2024 and connected appeals]; that this Court has allowed the appeals filed by the Revenue and the appeals filed by the assesseees have been accordingly disposed of; it has been directed that the Assessing Officers will now dispose of the objections to the impugned notices in terms of the law laid down by this Court in the said judgment. Therefore, the assesseees who are aggrieved, would be at liberty to pursue all rights and remedies in accordance with law, save and except for the issues that have been concluded by

the said judgment. Therefore, learned counsel for the respondent-Revenue submitted that the appellant herein may be relegated to appear before the Assessing Officer and raise all contentions available to them to the impugned Notices.

In response to this submission, learned counsel for the appellant submitted that no doubt the appellant would appear before the Assessing Officer on the basis of the judgment of this Court in *Rajeev Bansal (Supra)* but the main impediment in the case of the appellant herein is that the High Court has curtailed their right to take a contention that the impugned Notices were initially issued in the name of a dead person; that solely because the appellant as a legal representative subsequently responded to the notices would not imply that the proceeding initiated was valid. It was sought to be contented that the proceedings in fact are vitiated on account of the initial Notices being issued in the name of a dead person and the subsequent participation of the legal representatives in the proceedings before the Assessing Office would not have cured the initial defect. He therefore, submitted that the liberty may be reserved to the appellant herein to raise the said contention also before the Assessing Officer.

We find that the said request made to this Court is reasonable and in accordance with law and therefore, we set aside 'paragraph 4' of the impugned order and we permit the appellant herein to take the contention with regard to the initial Notice being issued in the name of a dead person-original assessee being defective and also take all other contentions available to the appellant before the Assessing Officer. Consequently, the impugned order to that extent is set aside.

It is needless to observe that the Assessing Officer shall consider all contentions to be raised by the appellant herein on their own merits and in accordance with law.

Since we are remanding the matter to the Assessing Officer, we have not expressed any opinion on any contention raised before us.

The appeal is allowed and disposed of in the aforesaid terms.

Pending application(s), if any, shall stand disposed of.

....., J.
(B.V. NAGARATHNA)

....., J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
NOVEMBER 28, 2024



S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 28039/2023
[Arising out of impugned final judgment and order dated 10-07-2023
in WPL No. 12447/2023 passed by the High Court of Judicature at
Bombay]

GHANYASHYAM ANIL DHANANI

Petitioner(s)

VERSUS

THE INCOME TAX OFFICER WARD 17(1)(1), MUMBAI & ANR. Respondent(s)

(IA No. 236955/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT

IA No. 236957/2023 - EXEMPTION FROM FILING O.T.)

Date : 28-11-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Petitioner(s) Mr. Mihir Naniwadekar, Adv.
Mr. Prateek K Chadha, AOR
Mr. Sreekar Aechuri, Adv.
Mr. Aniket Chauhaan, Adv.
Mr. Arjun Nayyar, Adv.

For Respondent(s) Mr. Raghavendra P Shankar, A.S.G.
Mr. Raj Bahadur Yadav, AOR
Mr. Udai Khanna, Adv.
Mr. Sanjay Kumar Yadav, Adv.
Mr. Karan Lahiri, Adv.
Mr. Navanjay Mahapatra, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed and disposed of in terms of the
signed order.

Pending application(s), if any, shall stand disposed
of.

(RADHA SHARMA)
ASTT. REGISTRAR-cum-PS

(DIVYA BABBAR)
COURT MASTER (NSH)

(Signed order is placed on the file)