

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on : 13 December 2024
Judgment pronounced on: 08 January 2025

+ W.P.(C) 8184/2023 & CM APPL. 31377/2023 (Stay)

LATE SH. LAL CHAND VERMA THROUGH HIS LEGAL
HEIRAppellant

Through: Mr. Rohan Gupta & Mr.
Vaibhav Grover, Advs.

versus

UNION OF INDIA & ANR.Respondents

Through: Mr. Vipul Agrawal, SSC with
Mr. Gibran Naushad & Ms.
Sakashi Shairwal, JSCs for
Respondent/Revenue.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. The petitioner, namely, Puneet Verma being the son and legal heir of the deceased assessee late Lal Chanda Verma (PAN No. ACNPV6482A), invokes the extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, 1950, for issuance of an appropriate writ or direction against the respondents, thereby seeking quashing of the impugned Notice bearing No. ITBA/AST/F/148A(SCN)/2022-23/1051639222(1) dated 30 March

2023 issued under Section 148A(b) of the Income Tax Act, 1961 [‘the Act’] and subsequent proceedings thereto.

FACTUAL MATRIX:

2. Shorn of unnecessary details, the original assessee Lal Chand Verma passed away on 30 July 2021. It appears that the Income Tax Officer acting on the basis of a statement purportedly made by another assessee, namely, Sh. Sanjay Jain during assessment proceedings pertaining to the latter, proceeded to issue a notice under Section 148A(b)¹ of the Act, in relation to the Assessment Year 2019-2020, dated 30 March 2023, calling upon the deceased assessee to furnish an explanation as to why certain financial transactions should not be considered as income chargeable to tax, and *inter-alia* indicating that a notice under Section 148² of the Act might be issued for reassessment on the basis of the alleged escaped income.

¹**148A.** *Conducting inquiry, providing opportunity before issue of notice under Section 148* — The Assessing Officer shall, before issuing any notice under section 148, —

(b) provide an opportunity of being heard to the assessee, [***] by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

²**148.** *Issue of notice where income has escaped assessment*— Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

3. In response to the said notice, the son/legal heir of the deceased assessee submitted a reply on 01 April 2023 wherein he unequivocally apprised the respondent of the demise of his father/assessee, furnishing alongwith a copy of the death certificate as conclusive

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice:

Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section.

Explanation 1.— For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

- (i) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;
- (ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or
- (iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or
- (iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or
- (v) any information which requires action in consequence of the order of a Tribunal or a Court.

Explanation 2.— For the purposes of this section, where,—

- (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or
- (ii) a survey is conducted under section 133A, other than under sub-section (2A) [***] of that section, on or after the 1st day of April, 2021, in the case of the assessee; or
- (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee [where] the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.— For the purposes of this section, specified authority means the specified authority referred to in section 151.

evidence, and asserted that the notice was null and void *ab initio*. However, notwithstanding the factum of the death of the assessee having been brought to the attention of the respondent, the respondent on 13 April 2023 proceeded to pass the impugned notice under Section 148A(d)³ of the Act, as well as an accompanying notice under section 148 of the Act, whereby the respondent directed the deceased assessee to reassess his income and further deemed financial transactions amounting to ₹14,55,000/- as his taxable income for the Assessment Year 2019-2020.

ANALYSIS AND DECISION

4. Upon hearing the learned counsels for the petitioner, at the outset, the impugned notices cannot be sustained in law. The matter in the instant case is squarely covered by the decisions in **Savita Kapila v. Assistant Commissioner of Income Tax**⁴ as well as **Dharamraj v. Income Tax Officer**⁵.

5. Suffice to point out that in the cited case *Savita Kapila*, a Division Bench of this Court dealt with similar circumstances where a notice had been issued under section 148 of the Act to the deceased

³ **148A.** *Conducting inquiry, providing opportunity before issue of notice under Section 148.*— The Assessing Officer shall, before issuing any notice under section 148, —

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

⁴ 2020 SCC OnLine Del 2540

⁵ 2022 SCC OnLine Del 174

assessee i.e., father of the petitioner-assessee, subsequent to the death of the assessee and it was observed as under:-

“23. It is well settled law that an alternative statutory remedy does not operate as a bar to maintainability of a writ petition in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order or notice or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corporation v. Registrar of Trade Marks (1998) 8 SCC 1)

24. Further, the fact that an assessment order has been passed and it is open to challenge by way of an appeal, does not denude the petitioner of its right to challenge the notice for assessment if it is without jurisdiction. If the assumption of jurisdiction is wrong, the assessment order passed subsequently would have no legs to stand. If the notice goes, so does the order of assessment. It is trite law that if the Assessing Officer had no jurisdiction to initiate assessment proceeding, the mere fact that subsequent orders have been passed would not render the challenge to jurisdiction infructuous. In *Calcutta Discount Co. Ltd. v. ITO* [1961] 41 ITR 191 (SC) ; AIR 1961 SC 372 the Supreme Court has held as under (page 207 of 41 ITR):

“It is well settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences.

Mr. Sastri mentioned more than once the fact that the company would have sufficient opportunity to raise this question, viz., whether the Income-tax Officer had reason to believe that under-assessment had resulted from non-disclosure of material facts, before the Income-tax Officer himself in the assessment proceedings and if unsuccessful there

before the appellate officer or the Appellate Tribunal or in the High Court under section 66(2) of the Indian Income- tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.

In the present case the company contends that the conditions precedent for the assumption of jurisdiction under section 34 were not satisfied and came to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons.”

The *sine qua non* for acquiring jurisdiction to reopen an assessment is that notice under section 148 should be issued to a correct person and not to a dead person. Consequently, the jurisdictional requirement under section 148 of the Act, 1961 of service of notice was not fulfilled in the present instance.

25. In the present case the notice dated March 31, 2019 under section 148 of the Act, 1961 was issued to the deceased-assessee after the date of his death (December 21, 2018) and thus inevitably the said notice could never have been served upon him. Consequently, the jurisdictional requirement under section 148 of the Act, 1961 of service of notice was not fulfilled in the present instance.

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-the Bombay High Court).”

{bold portions emphasized}

6. Incidentally, at this juncture, it may also be stated that learned counsel for the respondent invited the attention of this Court to Section 159 of the Act to buttress his plea that the defect in the notice is curable and notice to legal heir is not bad in law, which provision goes as under: -

“159. *Legal representatives.* (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.

7. However, a careful examination of the aforementioned information reveals that no notice was issued to the legal heir of the deceased under Section 159(2)(b) of the Act, despite the respondent being informed of the death. Section 159 of the Act is applicable when proceedings are initiated and pending against an assessee during their lifetime, and the legal representative assumes responsibility after the assessee's death. This was not the factual scenario in the present case; therefore, Section 159 of the Act is not applicable here.

8. We may also refer to decision of this Court in Dharamraj (supra), wherein also the assessee had died much prior to the issuance of the notice under Section 148 of the Act, and the issuance of such a notice was held to be unsustainable in law, inter-alia holding that even section 292B⁶ of the Act does not apply in such a situation.

9. In view of the foregoing discussion, this writ petition is allowed, and resultantly, the impugned notice under Section 148A(b) of the Act, in relation to the Assessment Year 2019-2020, dated 30 March 2023 is quashed and all consequential orders and proceedings arising therefrom, are hereby quashed and set aside.

⁶**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.

10. The pending application also stands disposed of.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

JANUARY 08, 2025

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