

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “F”, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.5500/Mum/2024
Assessment Year: 2017-18**

ACIT- 16(2), Mumbai	vs.	Fakhruddin Taiyebali Padaria 5 th Floor, Shabbir Place, 80 Dr. A.L. Nair Road, Mumbai- 400008. PAN: ABDPP 7103 P
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Dinesh A Chourasia, Sr. DR

Date of Hearing : 03.12.2024

Date of Pronouncement : 07.01.2025

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

The Revenue has filed the present appeal against the impugned order dated 05.09.2024 of the Id. CIT(A) passed under section 250 of the Income Tax Act, 1961 (“the Act”) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [“learned CIT(A)”], for the assessment year 2017–18.

2. In its appeal, the Revenue has raised the following grounds: -

“Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in not upholding the impugned notice and the proceedings u/s 147 while assessee’s legal heir was well aware of the proceeding u/s 147 of the Act and did not file any reply to the notice.?”

3. Fact in brief is that return of income declaring total income of Rs. 1,12,82,060/- was filed on 04.11.2017. The case was subject to scrutiny assessment and assessment u/s 144 of the Act was

finalized on 22.12.2019. The assessing officer stated that assessee was a doctor by profession and followed cash system of accounting. The assessee has declared income under the head salary, business or profession and income from other sources. The AO stated that assessee had deposited cash of Rs. 1,51,73,150/- in account no. 03880200000056 maintained with Byculla Branch of Bank of Baroda. The AO has also mentioned the month-wise amount deposited in the aforesaid bank account totaling to Rs. 1,51,73,150/-. The AO further stated that assessee had also deposited cash in another bank account no. 502000006669870 of HDFC Bank to the amount of Rs. 15,00,000/-. The AO further noticed that there was nil deposit in the month of November, February and March whereas in the month of May, July, September & October large amount was deposited in the bank account. He further stated that daily cash register in Form 3C reflecting daily cash receipts was also not filed. Therefore, the assessing officer has treated the cash deposit of Rs. 1,66,73,150/- as unexplained cash u/s 69A of the Act and added to the total income of the assessee.

4. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee holding that notice issued u/s 148 of the Act was invalid, since the same had been issued upon the assessee who had expired prior to the issue of such notice. The relevant part of the decision of ld. CIT(A) is reproduced as under:

“6. The only ground raised by the appellant is regarding addition of Rs.1,66,73,150/- on account of ‘cash deposits’.

6.1 The ground filed by appellant is to be seen in the backdrop of submission filed by the representative of the appellant dated 10/03/2008 filed physically in the office of DCIT 16(2) Mumbai on 04/06/2024 as per which appellant expired on 01.07.2017. The fact that the letter of the Representative was dated 10/03/2008, made this office issue a letter to the Jurisdictional AO to submit a legible copy of the Death Certificate. The AO resubmitted the Death Certificate through his portal once again on 23.08.2024. The return of AY under consideration and the appeal in Form 35 has been filed by the Legal heir i.e the wife of the appellant Ms. SARA PADARIA, who also expired on 04/09/2022 as per the submission filed by representative.

6.2 As a dead individual is not a person in the eyes of law, assessment or reassessment proceedings or subsequent proceedings taken in his name will be invalid. The AO must bring all the legal representative(s) on record and continue proceedings against them as required under and in accordance with section 159 of the Act. No assessment or reassessment proceedings or subsequent proceedings can be undertaken against a dead person. Framing assessment or reassessment proceedings on a non-existent person is a jurisdictional defect and cannot be cured under section 292B or under section 292BB. Once the assessee is dead, no valid assessment or reassessment can be made in the name of the deceased. It is because on the death of a person his legal personality ceases to exist and thereafter no order can be passed against such dead person. Thus, the assessment or reassessment in the hands of dead person is void. Therefore, for a valid reassessment of escaped income of the deceased, the Assessing Officer has to bring all the legal representatives on record. However, in the instant case no such exercise has been done by the AO. From the assessment order, it is not clear that the notice under section 142(1) and further show-cause notices have been served to whom and the mode of service of notices is also not mentioned in the order.

6.3 The issue is no longer *res integra* in view of the binding decision of the Hon'ble Supreme Court in the case of *Kanubhai Dhirubhai Patel Lr Of ... vs Income Tax Officer Ward 6(1)(1) vide order in C/SCA/1523/2022 dated 14th February, 2022, [2020] 114 taxmann.com 482 (SC) wherein SLP filed against the decision of the Hon'ble High Court of Gujarat holding that no valid notice can be issued on a dead persons was dismissed. The detailed judgment of the Hon'ble High Court is extracted as under:*

“2. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

"This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order and be pleased to:

(a) quash and set aside the impugned notice dated 31.03.2021 at Annexure -'A' to this petition;

(b) quash and set aside the subsequent notice dated 17.12.2021 at Annexure - 'B' to this petition;

(c) pending the admission, hearing and final disposal of this petition, to stay implementation and operation of the notice at Annexure - 'A' and 'B' to this petition and stay further recovery and proceedings for assessment for A.Y. 2015-16;

(d) any other and further relief deemed just and proper be granted in the interest of justice.

(e) to provide for the cost of this petition."

3. The case of the writ applicant in her own words as pleaded in the writ application is as under:

3.1 The writ applicant is an individual assessee and is also son of one Dhirubhai Shambhubhai Malviya, having PAN No.CLP139A (hereinafter referred to "the deceased"). The said Dhirubhai Shambhubhai Malviya expired on 22.11.2020. The writ applicant has placed on record the death certificate of the deceased.

3.2 The Assessing Officer, Ward 6(1)(1), Ahmedabad, issued notice dated 31.03.2021 under Section 148 of the Income Tax Act (for short "the Act") calling upon the deceased assessee to file return of the income for the A.Y. 2015-16.

3.3 The writ applicant being son of deceased assessee through his Chartered Accountant responded to the said notice under Section 148 of the Act by submitting reply dated 10.04.2021. In the said reply, the writ applicant had specifically drawn attention of the Assessing Officer about the death of the original assessee and had further requested to drop the proceedings as such notice will have no legal sanctity in the eye of law.

3.4 The writ applicant once again submitted reply dated 15.12.2021 thereby reiterated that the notice has been issued in the name of the deceased assessee and requested to drop the proceedings.

3.5 In spite of the aforesaid fact being drawn to the attention of the respondent authority, the Assessing Officer further issued notice under Section 142(1) of the Act dated 17.12.2021 again addressed to the deceased assessee.

3.6 In such circumstances, the writ applicant has approached this Court praying for quashment of the impugned notice dated 31.03.2021 issued under Section

148 of the Act and further proceedings initiated vide notice dated 17.12.2021 issued under Section 142 (1) of the Act as being bad in the eye of law.

4. We have heard Ms. Shrunjal T. Shah, the learned counsel appearing for the writ applicant as well as Mr. M.R. Bhatt, the learned senior counsel appearing for the Department.

5. Ms. Shah has specifically contended in the para 3.6 of the memo of the writ application as well as argued that the writ applicant upon receiving the impugned notices in the name of deceased has from first instance objected to the same and had requested the respondent to drop proceedings. The writ applicant has therefore, never participated in the proceedings in the present case. It is submitted that the writ applicant has not submitted to the jurisdiction of the respondent but has rather questioned the same vide reply submitted on 10.04.2021 and 15.12.2021. On the other hand no material has come on record to contradict the same. Thus, issue which falls for our consideration is that whether the impugned notice and the consequential proceedings initiated by the Assessing Officer against the deceased assessee is maintainable in the eye of law.

6. The aforesaid issue is no more res integra. Undisputedly, the original assessee had expired on 22.11.2020, the impugned notice under Section 148 of the Act came to be issued on 31.03.2021, which was addressed to the deceased assessee calling upon to file return of income for annual A.Y. 2015-16. Even thereafter, the notice under Section 142(1) of the Act seeking further proceedings came to be issued on 17.12.2021, once again upon the deceased assessee. At this stage, it would be appropriate to reproduce the decision of this Court in the case of Chandreshbhai Jayantibhai Patel Vs. Income Tax Officer reported in (2019) 101 taxmann.com 362 (Gujarat), we quote relevant observations made as under:

"6.1 Reference was made to the decision of the Supreme Court in the case of Girijanandini Devi v. Bijendra Narain Choudhary, AIR 1967 SC 1124, for the proposition that death of the person liable to render an account for property received by him does not affect the liability of his estate. It was submitted that therefore, even after his death, deceased Jayantibhai does not cease to be an assessee and consequently, the legal representative is responsible for filing the return of income and answering to the notice. It was submitted that the Madras High Court in the case of Alamelu Veerappan v. Income Tax Officer, Non-corporate Ward- 2(2), Chennai (supra), on which reliance has been placed on behalf of the petitioner, does not refer to section 292B of the Act and, therefore, the said decision would be not applicable to the facts of the present case. It was submitted that in this case, the petitioner had knowledge of the proceedings and has responded to the same as legal representative of the deceased and, therefore, the procedural defect which is otherwise curable may be permitted to be cured.

6.2 Reference was made to section 2(29) of the Act, which says that "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908.

6.3 The learned counsel further invited the attention of the court to the provisions of section 292B of the Act, which inter alia provide that no notice, summons or other proceeding, issued or taken in pursuance of any of the provisions of the Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons or other proceeding if such notice, summons or other proceeding is, in substance and effect, in conformity with or according to the intent and purpose of the Act. It was submitted that in the light of the provisions of section 292B of the Act, the defect in the notice by issuing the same to a dead person would not render the notice invalid, inasmuch as it is a purely procedural lapse.

6.4 Reliance was placed upon the decision of the Delhi High Court in the case of *Sky Light Hospitality LLP v. Assistant Commissioner of Income Tax*, (2018) 405 ITR 296 (Delhi), wherein the court has held thus:

"17. In the context of the present writ petition, the aforesaid ratio is a complete answer to the contention raised on validity of the notice under section 147/148 of the Act as it was addressed to the erstwhile company and not to the limited liability partnership. There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated April 11, 2017. They had objected to the notice being issued in the name of the company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s Sky Light Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused."

6.5 It was pointed out that the above decision of the Delhi High Court came to be challenged before the Supreme Court in *Sky Light Hospitality LLP v. Assistant Commissioner of Income Tax*, [2018] 92 Taxman.com 93 (SC), which dismissed the special leave petition holding that the wrong name given in the notice was merely a clerical error which could be corrected under section 292B of the Act.

6.6 Reliance was also placed upon the decision of the Supreme Court in the case of *Commissioner of Income Tax, Shillong v. Jai Prakash Singh*, [1996] 219 ITR 737, wherein the assessee did not file returns for three assessment years and died in April 1967, leaving behind him, in all, ten legal heirs. The eldest son Jai Prakash Singh filed the returns for the three assessment years. Such returns were signed by him alone and not by the other legal representatives. Scrutiny assessment came to be carried out by the Income Tax Officer, during the course

of which, notices under section 142(1) of the Act came to be issued to Jai Prakash to appear and produce documents, accounts and other material, who complied with the same and did not raise any objection that notices must be issued to the other legal representatives of the deceased. Assessment orders were made in the name of all the ten legal representatives who were described as legal representatives of the deceased. Appeals were filed by Jai Prakash contending that the assessments were illegal and invalid as no notice had been issued to all the legal representatives of deceased. The court placed reliance upon a decision of the Bombay High Court in *Maharaja of Patiala v. Commissioner of Income Tax (Central), Bombay*, (1943) 11 ITR 201, for the proposition that an assessment made without strictly complying with section 24-B (section 159 in the present Act) is not void or illegal and that any infractions in that behalf can be waived by the assessee. The court also placed reliance upon its earlier decision in *Estate of Late Rangalal Jajodia v. Commissioner of Income Tax, Madras*, (1971) 79 ITR 505, for the proposition that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where such liability is created by distinct substantive provisions (charging sections). Any such omission or defect may render the order made irregular - depending upon the nature of the provision not complied with, but certainly not void or illegal. Following the said decisions, the court held that in the facts and circumstances of the case, the orders of assessment made by the Income Tax Officer without notice to all the legal representatives are not null and void in law, but are merely irregular/defective proceedings which can be set right by remitting the matters to the Income Tax Officer for making fresh assessments with notice to all legal representatives. *Chandreshbhai Jayantibhai Patel vs The Income Tax Officer on 10 December, 2018.*

6.7 Reliance was placed upon the decision of this court in the case of *Commissioner of Income Tax v. Sumantbhai C. Munshaw*, (1981) 128 ITR 142, wherein though the notice was issued to the deceased person, the proceeding was continued against the legal representative who participated in the proceeding and also filed return of income without raising any objection as to the validity of the assessment proceedings. The legal representative had, therefore, submitted to the jurisdiction of the Assessing Officer. The court held that if the legal representative is present before the taxing authority in some capacity or voluntarily appears in the proceeding without service of notice or upon service of notice not addressed to him but to the deceased assessee and does not object to the continuance of the proceeding against the dead person and is heard by the Income Tax Officer in regard to the tax liability of the deceased and invites an assessment on merits, such a legal representative must be taken to have exercised the option of abandoning the technical plea that the proceeding has not been continued against him, although in substance and reality, it has been so continued.

6.8 The learned counsel submitted that issuance of notice in the name of the deceased being a procedural defect, can be cured under section 292B of the Act and that on account of such technical defect, the notice is not void. Moreover, the petitioner having responded to the notice under section 148 of the Act, the Assessing Officer is justified in continuing the proceedings against him. It was, accordingly, urged that the petition being devoid of merits, deserve to be dismissed.

7. In the backdrop of the rival submissions, the facts as emerging from the record of the case may be adverted to. The impugned notice dated 28.03.2018 is issued to Shri Jayantilal Harilal Patel, father of the petitioner, seeking to reopen the assessment for assessment year 2011-12 under section 148 of the Income Tax Act, 1961. By a letter dated 27.04.2018 addressed to the Income Tax Officer, the petitioner informed him that his father Shri Jayantilal Harilal Patel has passed away on 24.06.2015, enclosing therewith a death certificate and further being his son and in his capacity as legal heir, requested him to drop the proceedings. Thereafter, another notice dated 10.07.2018 came to be issued under sub-section (1) of section 142 of the Act to Shri Jayantilal Harilal Patel calling upon him to furnish the details mentioned therein. In the annexure to the said notice, the assessee was called upon to show cause as to why penalty proceedings under section 217F of the Act should not be initiated in his case as he had not furnished return of income in response to the notice under section 148 and stating that this may be treated as a notice under section 142(1) read with section 129 of the Income Tax Act, 1961.

8. The petitioner addressed a letter dated 02.08.2018 to the Income Tax Officer objecting to the notices issued under section 148 as well as under section 142(1) of the Act and drew his attention to the earlier letter dated 27.04.2018 informing him about the death of his father and requesting him to drop the proceedings. The attention of the Income Tax Officer was further invited to the provisions of section 159 of the Act, to submit that the proceedings are required to be initiated against a legal representative and not against the deceased and, therefore, the notices issued to the dead person are invalid. Reliance was placed upon the decision of this court in *Jaydeep Kumar Dhirajlal Thakkar v. Income Tax Officer*, (2018) 401 ITR 302 (Guj.) and *Vipin Walia v. Income Tax Officer*, (2016) 381 ITR 19 (Delhi).

9. Thereafter, by a notice dated 03.08.2018 issued under section 142(1) of the Act, the respondent called upon the petitioner as legal heir of deceased Shri Jayantilal Harilal Patel to furnish the documents mentioned therein. In the annexure thereto, the petitioner is called upon to show cause as to why penalty proceedings under section 217F of the Act should not be initiated in his case as he had not furnished return of income in response to the notice under section 148 of the Act and stating that this may be treated as notice under section 142(1) read with section 129 of the Income Tax Act, 1961.

10. By an order dated 14.08.2018, the respondent disposed of the objections raised by the petitioner stating that the notice under section 148 of the Act was issued in the name of the deceased as the department was not aware of the death of the assessee. It is only when the legal heir Shri Chandreshbhai Jayantilal Patel (the petitioner herein) filed a letter dated 27.04.2018 along with a copy of the assessee's death certificate, that this fact came to the notice of that office. It is stated that since the assessee's son - legal heir had received the notice (stated to have been received through the neighbour) and participated in the proceedings; the defect in issue of the notice is automatically cured. Reliance was placed upon the decision of the Madhya Pradesh High Court in the case of *Kausalyabai v. Commissioner of Income Tax, 238 ITR 1008 (MP)*, wherein after the death of the assessee, the notice was issued in the name of a person who was dead. The court observed that the widow of such person participated in the assessment proceedings and hence, the defect in the notice stood automatically cured. It is further stated in the order disposing of the objections that even if the notice dated 28.03.2018 is issued defectively in the name of the deceased assessee, then also, as per the provisions of section 292B of the Act, the same cannot be held to be invalid.

11. Insofar as the contention raised by the petitioner based on section 159 of the Act is concerned, the Assessing Officer observed that in this case, the assessee (the petitioner) had introduced himself as a son of the deceased assessee and as legal heir and has produced death certificate in response to the notice issued under section 148 of the Act. Therefore, as the legal heir, upon being served with the notice under section 148, has participated in the proceedings, the reassessment proceedings initiated are legal and valid. Reliance has been placed upon the decision of the Madras High Court in the case of *V. Ramanathan v. Commissioner of Income Tax, (1963) 49 ITR 881 (Madras)*. It is further stated therein that it is not in dispute that Shri Chandreshbhai J. Patel is the legal heir of the deceased assessee; therefore, the proceedings initiated against the legal representative/legal heir are valid and legal.

12. In the backdrop of the aforesaid facts, it is an admitted position that the notice under section 148 of the Act was issued to a dead person. The petitioner being the heir and legal representative of the deceased, upon receipt of the notice, immediately raised objection against the validity of the impugned notice and did not submit to the jurisdiction of the Assessing Officer by filing a return of income, but kept on objecting to the continuation of the assessment proceedings pursuant to the impugned notice. The Assessing Officer, however, instead of taking corrective steps under section 292B of the Act and issuing notice to the heirs and legal representatives, insisted on continuing with the proceedings pursuant to the impugned notice which was issued in the name of a dead person. Since strong reliance has been placed by the learned counsel for the respondent on the provisions of section 2(7) and 2(29) read with sections 159 and 292B of the Act, reference may be made to the said provisions, which read as under:

"Section 2(7) "assessee" means a person by whom any tax or any other sum of money is payable under this Act, and includes –

(a) every person in respect of whom any proceeding under the Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person;

(b) every person who is deemed to be an assessee under any provision of this Act;

(c) every person who is deemed to be an assessee in default under any provision of this Act;

"Section 2(29) "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908;

"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 subsection (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 undercharged, 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 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.

"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."

13. Thus, the expression "assessee" includes every person who is deemed to be an assessee under any provision of the Act. Sub-section (3) of section 159 of the Act, postulates that the legal representative of the deceased shall, for the purposes of the Act, be deemed to be an assessee. Subsection (2) of section 159 of the Act says that 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 the Act shall apply accordingly.

14. Thus, clause (a) of sub-section (2) of section 159 of the Act provides for the eventuality where a proceeding has already been initiated against the deceased before his death, in which case such proceeding 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. In the present case, the proceeding under section 147 of the Act had not been initiated against the deceased before his death, and hence, clause (a) would not be applicable in the facts of this case.

15. Clause (b) of sub-section (2) of section 159 of the Act provides that any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative. The present case would, therefore, fall within the ambit of section 159(2)(b) of the Act and, hence, the proceeding can be taken against the legal representative. Now, it cannot be gainsaid that a proceeding under section 147 of the Act of reopening the assessment is initiated by issuance of notice under section 148 of the Act, and as a necessary corollary, therefore, for taking a proceeding under that section against the legal representative, necessary notice under section 148 of the Act would be required to be issued to him. In the present case, the impugned notice under section 148 of the Act has been issued against the deceased assessee. In the opinion of this court, since this is not a case falling under clause (a) of sub-section (2) of section 159 of the Act, the proceeding pursuant to the notice under section 148 of the Act issued to the dead person, cannot be continued against the legal representative.

16. On behalf of the revenue, it has been contended that issuance of the notice to the dead assessee is merely a technical defect which could be corrected under section 292B of the Act. Reliance has been placed on the above referred decisions of the Supreme Court as well as the High Courts for contending that the proceedings would not be null and void merely because the notice has been issued against a dead person as the legal representative had received the notice and has objected to the validity of the notice and further continuation of the proceedings. In the opinion of this court, here lies the distinction between those cases and the present case. In the relied upon cases, the legal representative, in response to the impugned notice, filed return of income and participated in the proceeding and then raised an objection to the validity of the proceeding and, therefore, the court held that this was a case of waiver and that a technical defect can be waived; whereas in this case, right from the inception the petitioner has objected to the validity of the notice and thereafter to the continuation of the proceeding and has at no point of time participated in the proceeding by filing the income tax return in response to the notice issued under section 148 of the Act. Had the petitioner responded to the notice by filing return of income, he could have been said to have participated in the proceedings, however, merely because the petitioner has informed the Assessing Officer about the death of the assessee and asked him to drop the proceedings, it cannot, by any stretch of imagination, be construed as the petitioner having participated in the proceedings.

17. Insofar as reliance placed upon section 292B of the Act is concerned, the said section, inter alia, provides that no notice issued in pursuance of any of the provisions of the Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice if such notice, summons is in substance and effect in conformity with or according to the intent and purpose of the Act.

18. 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 a valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects 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. Therefore, where the legal representative does not waive his 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 or according to the intent and purpose of the Act which requires issuance of notice to the assessee, whereupon the Assessing Officer assumes jurisdiction under section 147 of the Act and consequently, the provisions of section 292B of the Act would not be attracted. In the opinion of this court, the decision of this court in the case of *Rasid Lala v. Income Tax Officer, Ward-1(3)(6)* (supra) would be squarely applicable to the facts of the present case. Therefore, in view of the provisions of section 159(2)(b) of the Act, it is permissible for the Assessing Officer to issue a fresh notice under section 148 of the Act against the legal representative, provided that the same is not barred by limitation; he, however, cannot continue the proceedings on the basis of an invalid notice issued under section 148 of the Act to the dead assessee. 19. In the facts of the present case, as noticed hereinabove, the notice under section 148 of the Act, which is a jurisdictional notice, has been issued to a dead person. Upon receipt of such notice, the legal representative has raised an objection to the validity of such notice and has not complied with the same. The legal representative not having waived the requirement of notice under section 148 of the Act and not having submitted to the jurisdiction of the Assessing Officer pursuant to the impugned notice, the provisions of section 292B of the Act would not be attracted and hence, the notice under section 148 of the Act has to be treated as invalid. In the absence of a valid notice, the Assessing Officer has no authority to assume the jurisdiction under section 147 of the Act and, hence, continuation of the proceeding under section of the Act pursuant to such invalid notice, is without authority of law. The impugned notice as well as the proceedings taken pursuant thereto, therefore, cannot be sustained."

7. In light of the aforesaid decision of this Court, the legal position as settled by this Court in the case of *Chandreshbhai Jayantibhai Patel* (Supra) is that this Court has drawn distinction between as to clause (a) of sub-section 2 of Section 159 and clause (b) of sub-section 2 of Section 159 of the Act. Clause (b) of sub-section 2 of Section 159 permits initiation of any proceedings, which could have been taken against the deceased through legal representative. However, in the

case on hand, the impugned notice dated 31.03.2021 under Section 148 of the Act has been issued upon the deceased assessee, who had expired prior to the issuance of such notice. The case on hand does not fall under Clause (a) of subsection 2 of Section 159 of the Act and in such circumstances, even the proceedings pursuant to such notices as sought to be initiated by the Assessing Officer cannot be continued upon the deceased assessee, more particularly, in light of legal dictum laid down in the case of Chandrashbhai Jayantibhai Patel (Supra) is followed in the case of Bipinbhai Bachuji Vs. Income Tax Officer reported in 2020 (117) Taxmann.com 404 (Gujarat).

8. Considering the record of the case, we further find the argument as may be available to the Revenue as regards the irregularity in issuance of the notice against the deceased assessee is also taken care of by this Court in the case of Chandreshbhai Patel (Supra), more particularly, the relevant observations made by this Court in paras 17 and 18 as well as Section 292B of the Act.

9. In the peculiar facts and circumstance as emerged from the records, more particularly upon perusal of the contents of the objections cum reply filed by the writ applicant dated 10.04.2021 (page no.13) and 15.12.2021 (page no. 14), it transpires that the writ applicant has not surrendered to the jurisdiction of the Assessing Officer by submitting return in response to the impugned notices neither the jurisdictional Assessing Officer has issued notice upon writ applicant as legal representative representing estate of deceased assessee. Thus, we are of the view that the proceedings initiated by the Assessing Officer against the deceased assessee are not tenable in the eye of law and are required to be quashed and set aside. In the result, the impugned notices are invalid and does not confer jurisdiction upon the Assessing Officer to proceed against the writ applicant.

10. In the result, the writ application succeeds and is hereby allowed. The impugned notices are hereby quashed and set aside and the consequential proceedings taken up pursuant to such notices also stands terminated. Rule is made absolute.”

6.4 Since the notice under Section 148 of the Act has been issued upon the deceased assessee, who had expired prior to the issuance of such notice, the case on hand does not fall under Clause (a) of sub-section 2 of Section 159 of the Act and in such circumstances, even the proceedings pursuant to such notices as sought to be initiated by the Assessing Officer cannot be continued upon the deceased assessee.

6.5 Though clause (b) of sub-section (2) of section 159 of the Act provides that any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative, in the absence of a valid issuance of notice u/s.148 in the name of the legal heirs, the proceedings

initiated by the AO in the name of the deceased person without there being a fresh notice u/s.148 in the name of the legal heirs cannot be continued.

6.6 As far as the applicability of Section 292B of the Act is concerned, the said section, inter alia, provides that no notice issued in pursuance of any of the provisions of the Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice if such notice, summons is in substance and effect in conformity with or according to the intent and purpose of the Act.

6.7 As held by the Hon'ble Courts in the decision cited supra, 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 a valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects the validity of the proceedings for assessment or reassessment.

6.8 Since a notice issued under section 148 of the Act against the deceased assessee is invalid, therefore, it cannot be said that the notice issued against the deceased assessee by the AO in the present case is in conformity with or according to the intent and purpose of the Act and hence, the provisions of section 292B of the Act would not be attracted. Hence, the notice under section 148 of the Act issued in the name of the deceased assessee has to be treated as invalid.

6.9 Since no fresh notice u/s.147 has been issued in the name of the legal heirs, the Assessing Officer has no authority to assume the jurisdiction under section 147 of the Act over the legal heirs and, hence, continuation of the proceeding under section of the Act pursuant to such invalid notice issued in the name of the deceased assessee, is without authority of law and hence the impugned notice as well as the proceedings taken pursuant thereto cannot be sustained.

7. The only Ground taken is on the merits of the case and does not warrant discussion in view of the findings as given above.

8. In the result, appeal is allowed.”

6. Heard the ld. DR and perused the material on record. The assessee had expired on 10.07.2017 and the return was filed after the death of the assessee by the legal heir Sara Padaria wife of the assessee. The notice u/s 148 of the Act has been issued upon the deceased assessee who had expired prior to the issuance of such

notice therefore, the notice issued against the deceased assessee is invalid. Once the assessee is dead no valid assessment or reassessment can be made in the name of the deceased. The ld. CIT(A) has referred the decision of Hon'ble Supreme Court in the case of Kanubhai Dhirubhai Patel Lr vs ITO, Ward 6(1)(1) dated 14.02.2022 (2020) 114 taxmann.com 482 (SC) wherein SLP filed against the decision of Hon'ble High Court of Gujarat holding that no valid notice can be issued on a dead person was dismissed. Further, the ld. CIT(A) also referred the decision of Hon'ble Gujarat High Court in the case of Chandreshbhai Jayantibhai Patel vs Income Tax Officer reported in (2019) 101 taxmann.com 362 (Guj) and various other decision as elaborated in the finding of ld. CIT(A) on the proposition that proceeding initiated by the assessing officer against the deceased assessee are not tenable in the eyes of law and are required to be quashed and set aside. After considering the above facts and findings of various courts as elaborately discussed in the decision of ld. CIT(A) as reproduced (supra) in this order, we do not find any reason to interfere in the findings of the ld. CIT(A), therefore, the appeal filed by the Revenue is dismissed.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 07.01.2025.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 07.01.2025
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai