

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 292/Ahd/2024
Assessment Year 2017-18**

The DCIT, Circle 1(1)(1), Vadodara (Appellant)	Vs	Anilkumar Ochhavlal Desai Shroff Nagar Society, Gotri Road, Vadodara, Gujarat-390021 PAN: ABOPD7444A (Respondent)
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**Revenue Represented: Shri Kamlesh Makwana, CIT-DR
Assessee Represented: Shri Manish J. Shah & Shri Rushin
Patel, A.Rs.**

Date of hearing : 23-07-2024
Date of pronouncement : 26-07-2024

आदेश/ORDER

PER : SIDDHARHTA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the Department against the order of National Faceless Appeal Centre (NFAC), Delhi, in proceeding u/s 250 vide order dated 21/12/2023 passed for the Assessment Year 2017-18.

2. The Revenue has raised the following Grounds of Appeal:

"1. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified in quashing the assessment proceedings initiated vide notice u/s 143(2) of the Act dated 17-08-2018:

(i) without appreciating the fact that the Legal Heir of the assessee failed to follow the procedure laid down for linking Legal Heir to the deceased assessee, which require due submission of all the documents including death certificate of the deceased assessee and proof of being Legal Heir, before Jurisdictional Assessing Officer?

(ii) non-issuance of notice u/s 143(2) of the Act in the name of Legal Heir was on account of non-linking of Legal Heir through PAN database, for which onus was on the Legal Heir which he failed to do?

(iii) without appreciating the fact that notice u/s 143(2) of the Act was duly served on the Legal Heir of the deceased assessee and Legal Heir filed the Income-tax Return in the capacity of Legal Heir of the deceased assessee and AO has clearly mentioned in Para 6 of the assessment order that order is being passed upon the Legal Heir Shri Pratikkumar Anilkumar Desai?

2. The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal.

It is prayed that the order of the CIT(A) on the above issues be set-side and that of the Assessing Officer be restored.

3. The brief facts of the case are the return of income declaring total income at Rs.75,65,300/- was E-filed by the assessee on 31.03.2018. The same was processed u/s 143(1) of the Act, accepting the total income as returned by the assessee.

3.1. Subsequently, the case was selected for scrutiny and statutory notice u/s 143(2) of the Act was issued on 17.08.2018 and was duly served on the legal heir of the assessee. Vide reply dated 03.09.2019, Shri Pratik Anil Desai, legal heir of Late Anilkumar Ochhavlal Desai (assessee) contended that his father expired in the year 2016 on

10.09.2016 and the return has been filed by him as legal heir of Late Anilkumar Ochhavlal Desai under his PAN (i.e. PAN of deceased assessee). The legal heir of the assessee submitted that since notice u/s. 143(2) of the Act dated 17.08.2018 is invalid and void ab-initio the assessment proceedings are liable to be dropped. However, the assessing officer was of the view that the assessment proceedings related to the period 01.04.2016 to 10.09.2016 i.e. the period till the death of the assessee and Shri Pratik Anil Desai had filed the return of the deceased assessee in the capacity of legal heir. Since necessary changes were not made in the PAN data base, therefore notice u/s 143(2) of the Act being a system-generated notice, was issued in the name of Late Anilkumar Ochhavlal Desai and the same was valid in eyes of law. As per existing Departmental Instructions, only system-generated notice are to be issued. Accordingly, the assessing officer proceeded to complete assessment in the name of the deceased assessee and added a sum of Rs.3,75,68,307/- as unexplained income in the hands of the of the assessee u/s 68 of the Act.

4. In appeal before Ld. CIT(A), the assessee challenged the initiation of proceedings and Ld. CIT(A) allowed the appeal of the assessee with the following observations:

Based on the above submissions the legal heir submits that the assessment order is to be quashed and set aside."

5.3 Submissions of the appellant are considered carefully. It is undisputed that the notice u/s 143(2) of the Act, was issued on 17.08.2018 while the assessee. Sh Anikumar Oochhavlal Desai had already expired on 10.09.2016. The AO has, in his order, relied on the provisions of section 159 of the Act to hold that the assessment proceedings were valid.

5.4 It is noted that Section 159 addresses the liability of legal representatives of a deceased taxpayer in so far as it empowers legal representatives to act on behalf of the deceased, ensuring the continuity of tax proceedings and compliance. However, the present case is not that of continuity in the assessment proceedings already initiated, but that of initiation of the assessment post the death of the assessee. Under such circumstances, section 159 has no application to the facts of the case.

5.5 However, there are judicial interpretations and legal precedents that serving a notice to a deceased person is null and void as the deceased individual lacks the legal capacity to respond or participate in the proceedings. This interpretation aligns with the principle that issuing a notice to the correct person is a fundamental requirement for its validity, as highlighted in various court judgments:

(i) *Chandreshbhai Jayantibhai Patel v. Income-tax Officer (2019) 101 taxmann.com 362 (Gujarat)*. The High Court of Gujarat ruled that a notice issued under section 148 of the Income-tax Act, 1961, against a deceased person is invalid unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection. The original assessee, 'JHP', had passed away, and the Assessing Officer issued a notice in their name to reopen the assessment. The petitioner, as the heir and legal representative of 'JHP', informed the Assessing Officer about the death and submitted the death certificate. However, the Assessing Officer considered the objections raised by the petitioner as participation in the proceedings, citing the provisions of section 292B, and continued with the reassessment. The court held that the petitioner's communication about the death of the assessee cannot be considered as participation in the proceedings, and thus, the notice issued under section 148 was deemed invalid.

(ii) *Vipin Walia v. Income-tax Officer [2016] 67 taxmanun.com 56 (Delhi)* The High Court of Delhi dealt with a situation where a notice under section 148 of the Income-tax Act, 1961, was issued to the original assessee who had already passed away. The department continued with the proceedings under section 147 in the name of the petitioner, who was the legal heir of the original assessee. The petitioner argued that the proceedings initiated were barred by limitation. The court held that if the Department intended to proceed under section 147, they should have done so within the period of limitation by issuing a notice to the legal representative of the deceased assessee. Beyond that date, the department could not proceed by issuing a notice to the legal representatives of the assessee. Therefore, the

subsequent proceedings under section 147 against the petitioner were deemed to be misconceived and were quashed.

(iii) Aemala Venkateswara Rao v. Income-tax Officer, Ward-2(1) Guntur [2019] 105 taxmann.com 14 (Visakhapatnam Trib.). The Income Tax Appellate Tribunal (ITAT) Visakhapatnam Bench addressed the issue of a notice issued to a deceased assessee. The tribunal ruled that when proceedings are initiated against a deceased assessee, a notice issued in the name of the deceased person cannot bind the legal heirs unless a proper notice is issued to them. Therefore, any notice issued in the name of a deceased person is considered invalid and cannot be enforced in law.
(m)

(iv) Income Tax Officer Ward-1(3)(7), Surat v. Durlabhbai Kanubhai Rajpara [2020] 114 taxmann.com 482 (SC).

Hon'ble Supreme Court dealt with a situation where a notice was issued to a deceased person. The assessee had informed the revenue authorities that his father, in whose name the notice was issued, had already passed away. Despite being aware of this fact, the Assessing Officer issued a notice in the name of the deceased person to reopen the assessment. The assessee filed a petition contending that the notice was without jurisdiction as it was issued against a dead person. The High Court held that no valid notice could be issued against a dead person and ordered the quashing of the impugned notice. The Supreme Court dismissed the Special Leave Petition filed against the High Court's order.

5.6 From the above decisions, it can be inferred that:

(i) Notice issued on a deceased person is null and void: The courts held that a notice issued to a deceased person lacks legal validity. The death of the assessee renders any notice addressed to them void ab initio, as they no longer possess the legal capacity to respond or participate in the proceedings. (ii) Notice must be served to the correct person: The court reiterated that serving a notice to the correct person is not a mere procedural requirement but an essential condition for the validity of a notice. This requirement ensures that the intended recipient has an opportunity to respond and defend their case. (iii) The court concludes that the notice and all consequential proceedings in the name of the deceased assessee are null and void. Consequently, the impugned notice, order, and subsequent actions are quashed and set aside. (iv) The court stresses the importance of adhering to established legal principles and abstaining from issuing notices that are null and void

5.7 In the present case, the legal heir of the assessee, duly informed the AO, up on receiving the notice u/s 143(2) of the Act, that the assessee had passed away in fact, the Return itself was filed by the legal heir of the assessee for the part period of the relevant F.Y.- for the period 01.04.2016

to 10.09.2016 (the date of expiry of the assessee). The legal heir, vide his letter dated 03.09.2019, had objected before the AO to initiation of the assessment proceedings.

5.8 Considering the facts of the case, and available judicial precedents, it is held that the notice dated 17.08.2018 issued u/s 143(2) in the name of the assessee who had passed away on 10.09.2016 was invalid as (1) the Department was already aware that the assessee had passed away (the Return itself being filed by legal heir); and (ii) the legal heir duly objected to the assessment proceedings before the AD on this ground. Consequently, the assessment proceedings initiated vide notice u/s 143(2) issued on 17.08.2018 are void ab-initio, and the same are quashed.

5. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A). Before us, the Ld. D.R. submitted that the initiation of assessment proceedings is per se valid since the legal heir of the assessee had not made any correction in the PAN data base and as per Instructions of the Department, the notice which was issued was a system-generated notice in the name of the deceased assessee and hence the same was valid in the eyes of law. This has to be seen in light of the fact that the assessee had not made appropriate alterations to the PAN data base. The Ld. D.R. placed reliance on the case of **Rudra Gouda vs. ACIT 93 taxmann.com 333** in support of the proposition that for the purpose of Income Tax Act, the legal representative of the deceased person would be deemed to be an assessee under Section 159(3) of the Act and therefore, Tribunal was justified in remanding the matter to the file of Assessing Officer for passing of de-novo assessment order on the legal representative of the deceased assessee.

6. In response, the Counsel for the assessee placed reliance on various judicial precedents and submitted that the notice is per se void ab-initio, since the Department was well aware of the fact that the assessee was deceased and even in the Income Tax Return filed by the assessee, the assessee has specifically mentioned that the return for the impugned period was being filed by the legal heir of the assessee. The Counsel for the assessee submitted that the assessee had expired on 10.09.2016, which was much prior to the initiation of assessment proceedings and, it is well settled law that once the Department has been duly intimated that the assessee had since expired, then no assessment proceedings can be validly initiated and no notice can be issued in the name of the deceased assessee. In the instant case, it is evident from the return of income itself that the assessee had expired and the said return was filed by the legal heir of the assessee. Accordingly, the notice itself is void ab-initio and hence the assessment is liable to be set aside. The Counsel for the assessee drew our attention to Page 17 of the Appeal Paper Book and submitted that from the return of income filed by the assessee, it is evident that the same has been filed by the son of the assessee, Shri Pratik Anil Desai in the capacity of the legal heir of the assessee. Therefore, any notice issued in the name of the deceased assessee was void ab-initio, especially when the Department was made fully aware of the death of the assessee.

7. We have heard the rival contentions and perused the material on record. We shall first deal with the various judicial precedents on the subject which had been cited before us. The Ld. D.R. placed reliance on the case of **Rudra Gouda vs. ACIT 93 taxmann.com 333**, in which the Karnataka High Court held that for the purpose of the Act, the Legal Representative of the deceased assessee would be deemed to be an assessee as per Section 159(3) of the Act and therefore, Tribunal was justified in remanding the matter to the assessing officer for de novo assessment on the Legal Representative of the deceased assessee. However, notably, the Karnataka High Court while considering the above decision rendered by the Karnataka High Court in the case of **Vanitha Gopal Shetty 129 taxmann.com 163 (Karnataka)** held that section 159(2)(b) would require a separate notice to be issued under section 148 within time prescribed under section 149(1)(b) as against legal representatives directly and if such proceedings are initiated beyond time prescribed under section 149(1)(b), such proceedings would not be valid. Further, notice issued against a dead person as regards his affairs which ought to have been issued under section 159(2)(b) to legal representatives cannot be saved by recourse to section 292B of the Act.

8. Further, we observe that in the case of **Sumit Balkrishna Gupta vs. ACIT112 taxmann.com 93 (Bombay)**, the Bombay High Court held that a notice u/s 143(2) which gives

jurisdiction to complete assessment having been issued in the name of dead person, is non est in law and it is not saved even by section 292B. The brief facts of the case are that the assessee was the son and the legal heir of deceased 'B' who died on 9-6-2014. For the relevant assessment year, the assessee being the legal heir of the deceased 'B' filed a return of income declaring certain taxable income. The assessee also uploaded a request to be registered as the legal heir of deceased 'B'. The request of the assessee was accepted by the respondent-revenue. Subsequently, the impugned notice was issued by Assessing Officer in the name of deceased "B" under section 143(2). The assessee by his letter called upon the Assessing Officer to withdraw the impugned notice issued under section 143(3) as it had been issued in the name of the dead person. By the aforesaid communication, Department was informed that the Revenue was aware about the death of 'R' as was evident from the assessment orders passed for the assessment year 2014-15. Thus, the impugned notice was null and void and no further proceeding could be taken on the basis of the said notice. However, the assessing officer rejected the assessee's objection to the impugned notice having been issued in the name of the dead person on the ground that the nature of the defect viz. issue of notice in case of wrong person stood cured by section 292B and that the legal heir of the deceased was not registered with the database of the

Department, thus, there is no fault in having issued the notice in the name of the deceased 'B'.

9. On these facts, the High Court while deciding the issue in favour of the assessee, observed as under:

It is a fact that the assessee had filed return for the relevant assessment year in the name of the deceased and not in his name as a legal heir of the deceased 'B'. This return was filed on 17-10-2016. However, the return was signed by the assessee as a Legal Heir. The name of the deceased 'B' in the title of the return of income was an inadvertent error. In any event, the assessee got himself registered as legal heir/representative of the deceased in the software system maintained by the Authority. Thus, the Department was well aware of the fact on the date that the impugned notice under section 143(2) was issued, the assessee was the legal representative of the deceased 'R'. Moreover, from the record it has been shown that for the earlier assessment year 2014-15, the Revenue has passed an assessment order in the name of the assessee as legal Representative of the deceased 'B'. Therefore, in the above facts, there was no justification for the Assessing Officer to have issued the impugned notice in the name of the dead person. This would mean absence of a notice under section 143(2). It is a settled position that the proceedings for scrutiny assessment under section 143(3) can be done if notice is issued under section 143(2). Thus, a notice in the name of wrong person would be no notice and the Assessing Officer would not acquire jurisdiction to proceed under section 143(3) of the Act. [Para 7]

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The issuing of notice under section 143(2) alone gives jurisdiction to the Assessing Officer to proceed with scrutiny assessment under section 143(3) of the Act. The contention of the revenue that in any view of the matter, section 292B would apply to the facts of this case is not acceptable. A notice issued under section 143(2) which gives jurisdiction to complete the assessment having been issued in the name of the dead person is non est in law and it is not saved by section 292B. The issue of a notice under section 143(2) of the Act so as to take up the assessment for scrutiny is not a procedural but a substantive provision. Therefore, where a notice is issued in the name of a wrong person, there would be no issuing of notice as required under the Act. In such cases, as in the case of section 148 of the Act, the issuing of a notice in the name of the wrong person is not a procedural and/or clerical error. Therefore, being a substantive defect, the notice cannot be saved by section 292B of the Act. [Para 8]

In the above view, the impugned notice is quashed. Petition allowed. [Para 9]

10. In the case of **Savita Kapila vs. ACIT 118 taxmann.com 46 (Delhi)**, the High Court held that in absence of a statutory

provision, a duty cannot be cast upon legal representatives to intimate factum of death of assessee to department and, thus, where Assessing Officer issued a notice to assessee under section 148 after his death and, in such a case, it could not have been validly served upon assessee, said notice being invalid, was to be quashed.

11. In the case of **Abdulvahed A. Sheikh vs. ITO in ITA No. 2948/Ahd/2017**, the ITAT Ahmedabad considered various decisions on this issue rendered by the Jurisdictional Gujarat High Court while deciding this issue in favour of the assessee and made the following notable observations:

“11. The issue thereafter came up before the Hon’ble High Court in the case of Jaydeepkumar Dhirajlal Thakkar vs. ITO reported in 401 ITR 302 (Guj), judgment dated 22.01.2018, wherein relying upon the aforesaid decision of the jurisdictional High Court in the case of Rasid Lala(supra), holding that where the assessee was deceased on the date of issue of notice u/s. 148, Section 159 required notice u/s. 148 to be issued to the legal representatives/ heirs of the assessee and not against the deceased. The Hon’ble High Court further went on to hold that the provisions of Section 292 BB of the Act, providing that where assessee appears in any proceeding and cooperates in any enquiry relating to an assessment or re-assessment, it shall be deemed that any notice which has been duly served upon him and the assessee shall be precluded from raising any objection in any proceedings or enquiry under the Act vis-a-vis the irregularity of the notice ,also did not apply since the assessee had objected to the completion of the re-assessment. The relevant findings of the Hon’ble High Court at para 7 to 12 of the order is as under:

7.This court has considered the submissions advanced on behalf of the respective parties and has perused the decisions cited at the bar.

8. It is an admitted position that Shri Dhirajlal Dayaljibhai Thakkar, father of the petitioner has passed away on 19.08.2012. Against the assessment order passed against the deceased, the petitioner herein had preferred an appeal as a legal heir of late Shri Dhirajlal Dayaljibhai Thakkar and, therefore, the respondent was well aware of this fact. Against the order passed by the Commissioner (Appeals) the department has preferred an appeal before the Tribunal, wherein the name of the petitioner is reflected as the legal heir of Shri Dhirajlal Dayaljibhai Thakkar. While seeking to reopen the assessment, the Assessing

*Officer has issued notice dated 30.03.2017 in relation to the assessment year 2010-11 to Shri Dhirajlal Dayaljibhai Thakkar. Admittedly, the notice has been issued against a dead person. This court in the case of **Rasid Lala (supra)** wherein the re-assessment proceedings had been initiated after the death of the assessee and the notice was issued against a dead person, held that the reassessment proceedings having been initiated against the dead person and that too after a long delay, even if section 159 of the Act is attracted, in that case also, the notice was required to be issued against and in the name of the heir of the deceased assessee. The court held that in the facts and circumstances of the case, section 159 of the Act would not be of any assistance to the revenue and, accordingly, set aside the impugned notice issued under section 148 of the Act.*

9. The facts of the present case are similar to the facts of that case, inasmuch as the original assessee viz. father of the petitioner passed away on 19.08.2012. The petitioner had informed the revenue authorities about the same in the year 2013. The authorities were very well aware that the petitioner is the heir and legal representative of the deceased assessee, despite which, more than four years after the death of the assessee, the impugned notice has been issued in his name, namely against the deceased assessee. The above decision would be therefore squarely applicable to the present case.

10. On behalf of the respondent, reliance was placed upon section 159 and section 292B read with section 292BB of the Act. Insofar as the provisions of section 159 of the Act are concerned, this court in the above decision has held that the same would not be applicable where the assessee had passed away and the notice has not been issued in favour of the heir of the deceased. On a plain reading of section 159 of the Act, it is apparent 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) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative. Therefore, in the light of the provisions of section 159 of the Act the proceedings are required to be initiated against a legal representative and not against the deceased. The impugned notice under section 148 of the Act is therefore, not in consonance with the provisions of section 159 of the Act.

11. Insofar as the provisions of section 292B of the Act are concerned, the same would not be applicable in the facts of the present case. As regards section 292BB of the Act, the same provides that where an assessee appears in any proceeding and cooperates in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of the Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under the Act that the notice was — (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner. The proviso thereto says that nothing contained in the section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment. In the present case, apart from the petitioner is not the assessee, the petitioner has

raised objection before completion of the reassessment and, therefore, the provisions of section 292BB would not be applicable in the facts of the present case. 12. In the light of the above discussion, the impugned notice under section 148 of the Act having been issued against a dead person, is a nullity and cannot be sustained. The petition, therefore, succeeds and is accordingly allowed. The impugned notice dated 30.03.2017 issued against late Shri Dhirajlal Dayaljibhai Thakkar, father of the petitioner, for assessment year 2010-11 is hereby quashed and set aside. RULE is made absolute accordingly.

*12. The matter again came up for consideration before the Hon'ble High Court in the case of **Chandreshbhai Jayantibhai Patel vs. ITO where the aforesaid position of law was reiterated vide judgment dated 10.12.2018 reported in [2019] 413 ITR 276(Guj)**. The Hon'ble High Court passed a detailed judgment taking note of the various provisions of law defining the term assessee u/s. 2(7) of the Act, the term legal representative u/s. 2(29) of the Act, the provisions applicable to legal representatives u/s. 159 of the Act and the provisions of Section 292B/BB of the Act relating to return of income etc. not to be invalid on certain grounds and notice deemed to be valid in certain circumstances. Taking note of the above, the Hon'ble High Court held that the legal representatives of the deceased assessee are to be deemed as assessee's and as per the provisions of Section 159 where the assessee had expired prior to the issue of notice u/s 148 of the Act then the proceedings had to be taken against the legal representative/s as per Section 159(2)(b) of the Act, meaning thereby that in pursuance to notice issued u/s. 148 of the Act to a dead person, proceedings cannot be continued against the legal representative and notice u/s. 148 is to be issued to the legal representatives. The contentions of the revenue that the issuance of notice to a dead person is some technical defect which can be corrected u/s. 292B, The Hon'ble High Court held that the notice issued u/s. 148 against a dead person is invalid, unless the legal representatives submit to the jurisdiction of the Assessing Officer without raising any objection on receipt of the notice. The Hon'ble High Court noted that where the legal representatives filed return of income in response to notice u/s 148 of the Act and thus participated in the proceedings, it could be said that the legal representatives had waived their right to notice u/s. 148 and the notice therefore could not be said to be invalid. The relevant findings of the Hon'ble High Court at para 7 to 20 of the order is as under:*

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 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."

"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. Sub-section (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 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 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 147 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.

20. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned notice dated 28.03.2018 issued by the respondent under section 148 of the Income Tax Act, 1961 as well as all proceedings pursuant thereto, are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

13. In the case of **Nanduben Ratilal Patel vs. DCIT, the Hon'ble High Court** reiterated the proposition laid down in *Chandreshbhai Jayantibhai Patel*, vide judgment dated 25.06.2019 reported in **[2019] 417 ITR 31**. In substance the Hon'ble High Court reiterated the position that where the jurisdictional notice is issued to a dead person and

on receipt of the same the legal representatives participated in the proceedings by filing return and otherwise they can be said to have waived the requirements of notice u/s. 148 of the Act and the validity of notice u/s. 148 then cannot be challenged.

14. This position was again reiterated in the case of Urmilaben Anirudhhasinhji Jadeja vs. ITO vide judgment dated 27.08.2019 reported in [2020] 420 ITR 226 and again in the case of Durlabhai Kanubhai Rajpara vs. ITO vide judgment dated 26.03.2019 reported in [2020] 424 ITR 428.

15. As is evident from the above, the proposition of law laid down by the Jurisdictional High Court vis-à-vis the issue of validity of proceedings where the jurisdictional notice for reopening cases, u/s. 148 of the Act, is issued on a dead person, is that the proceedings are null and void since the statute requires that where the assessee is deceased the proceedings have to be undertaken on their legal representatives as per Section 159(2)(b) of the Act. The Jurisdictional High Court has consistently held that in such cases where the assessee was deceased on the date of the issue of notice u/s. 148, the same is to be issued on their legal representatives. Going further and taking note of various judicial decisions and the provisions of Section 292B/BB, the Hon'ble High Court has held that the notice shall not be held invalid where the legal representatives, on receipt of such notice issued to a dead person, participate in the proceedings and thus waive their right to issuance of notice u/s. 148 of the Act."

12. Considering the above facts, we are of the considered view, the notice issued initiating assessment proceedings in the name of deceased assessee is void ab-initio and the assessment proceedings are accordingly, liable to be set aside. This is in view of the fact that the assessee had filed return for the relevant assessment year by duly intimating the Department that the assessee had expired and the return was being filed in the capacity of legal heir of the assessee. Thus, the Department was well aware of the fact that as on the date when the notice u/s 143(2) of the Act was issued, the assessee had expired and therefore, the notice ought to have been issued on the legal heir of the assessee who had filed the return of income. It is further observed that Shri Pratik Anil Desai had filed application for registration as legal heir of the

deceased assessee on 06.11.2017, and such request for registration as legal heir was also approved by the Department on 07.11.2017. However despite this, notice under Section 143(2) of the Act was issued in the name of the deceased assessee on 17.08.2018. Therefore, in these facts, there seems to be no justification as to why impugned notice was issued in the name of a deceased person. This would effectively mean absence of a notice u/s 143(2) of the Act and therefore, in light of the above facts, notice issued in the name of deceased person would be no notice and the assessing officer would not acquire jurisdiction to proceed u/s 143(3) of the Act.

13. In the result, the appeal of the Department is dismissed.

Order pronounced in the open court on 26-07-2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad: Dated 26/07/2024
Tanmay, Sr. PS

Sd/-
(SIDDHARHTA NAUTIYAL)
JUDICIAL MEMBER
TRUE COPY

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद