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HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW

WRIT TAX No. - 571 of 2026

Smt. Asha Dubey

.....Petitioner(s)

Versus

Union of India Thru. Secy. Ministry of Finance Deptt. Revenue Sectt. New Delhi and 2 others

.....Respondent(s)

Counsel for Petitioner(s)	:	Kartikey Dubey, Ramesh Chandra Mishra
Counsel for Respondent(s)	:	A.S.G.I., Kushagra Dikshit, Paavan Awasthi

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.

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SHEKHAR B. SARAF, J.: This is a writ petition under Article 226 of the Constitution of India seeking issuance of a writ of certiorari quashing the notice dated March 28, 2025 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') for the Assessment Year 2021-22, the subsequent notice dated January 7, 2026 issued under Section 142(1) of the Act, the order dated February 20, 2026 rejecting the preliminary objections and consequential assessment as well as demand order dated March 24, 2026 respectively under Section 156 of the Act, *inter alia*, on the ground that the entire proceedings have been initiated and continued in the name of the deceased husband of the petitioner, as without jurisdiction rendering the same as null, void *ab initio*, and accordingly, all consequential orders being unsustainable in law.

FACTS

2. The factual matrix of the present *lis* has been delineated below:-

a. The husband of the petitioner, Shri Sanjay Dubey, was employed as Chief Management Officer in the U.P. Secretariat and was a taxpayer.

b. On October 15, 2020, the husband of the petitioner, along with his son Shri Prakhar Narayan, purchased a residential flat for a total sale consideration of Rs.82,83,353/- in Grand Omaxe, Lucknow. Out of the total consideration, a sum of Rs. 55,52,954/- was paid by the husband of the petitioner to M/s Omaxe Limited entirely through accounted banking channels, pursuant thereto an allotment letter dated October 15, 2020 was issued in his favour.

c. The Income Tax department conducted a search in accordance with Section 132 of the Act on April 1, 2021 on the Omaxe group wherein it was alleged that a cash transaction of Rs.25,97,000/- was made by the husband of the petitioner.

d. On January 7, 2024, the husband of the petitioner, passed away and after completing the last rites and necessary formalities, the petitioner left India on May 31, 2024 to stay with her daughter in the United States of America and returned to India on September 6, 2024.

e. Upon returning to India, petitioner instructed her Chartered Accountant to file the Income Tax Return for Assessment Year 2024-2025 on behalf of her husband, which was electronically transmitted on July 30, 2024 and ultimately filed on November 5, 2024 wherein the disclosed total income was Rs. 39,79,990/- and paid total tax of Rs. 9,29,754/-, comprising: (a) Rs. 4,45,540/- voluntarily paid as self-assessment tax; and (b) Rs. 4,84,214/- being TDS already adjusted. The said return was filed in the name of deceased assessee and verified through Aadhaar OTP.

f. After obtaining approval from the Principal Commissioner of Income Tax on March 20, 2025, for initiation of proceedings under Section 148 of the Act against the husband of the petitioner, the respondent authority proposed to reassess the income and issued the impugned notice dated March 28, 2025 under Section 148 of the Act in the name of the husband of the petitioner and directed for filing of Income Tax Return within 90 days. Such approval emanates from discrepancy amounting to Rs. 27,44,000/- found in the documents seized during a search conducted in the case of the Omaxe Group on April 1, 2021.

g. Thereafter, on January 7, 2026, another impugned notice under Section 142(1) of the Act was issued in the name of the husband of the petitioner, calling upon him to produce certain documents in respect of the Assessment Year 2021-22.

h. Upon receipt of the aforesaid notices, the petitioner submitted a reply dated February 2, 2026 informing the department of the death of her husband and, *inter alia*, raised preliminary objection with regard to proceedings being initiated against a deceased person as void *ab initio.*

i. Thereafter, another notice dated February 18, 2026 was issued under Section 142(1) of the Act in the name of the husband of petitioner for furnishing requisite documents.

j. Upon receipt of the said notice, the petitioner, vide representation dated February 19, 2026, again reiterated the preliminary objection, and further requested that the preliminary objection be decided prior to proceeding further in the matter. Respondent department passed the impugned order dated February 20, 2026 rejecting all the objections of the petitioner mainly on two grounds, firstly, the department was not intimated regarding death of assessee and secondly, active misrepresentation regarding factum of death by way of filing ITR. In the said order, the name of the petitioner was substituted in place of the deceased assessee being the legal representative and directed compliance with the earlier notices, for furnishing requisite documents by February 25, 2026.

k. The petitioner submitted another reply dated February 20, 2026 reiterating the preliminary objection as was raised by the petitioner on earlier occasions.

l. Another show cause notice dated March 6, 2026 was issued by the respondent in furtherance of the earlier notice under Section 142(1) dated January 7, 2026, extending the date of reply.

m. The petitioner submitted another reply dated March 11, 2026 reiterating her preliminary jurisdictional objection and also disputed the allegations on merits, by denying the alleged cash transaction of Rs. 27,44,000/-.

n. The respondent department thereafter passed the impugned assessment order under Section 147 of the Act in the name of petitioner being the legal heir and the consequential demand order dated March 24, 2026 under Section 156 of the Act, by assessing the additional income at Rs. 69,06,520/- and determining the tax liability at Rs. 39,67,330/- on account of the unaccounted cash transaction.

CONTENTIONS ON BEHALF OF PETITIONER

3. Mr. Kartikey Dubey and Mr. Ramesh Chandra Mishra, appearing on behalf of petitioner have made the following submissions:-

a. A notice issued under Section 148 of the Act in the name of the assessee subsequent to his death is null and void from its inception and cannot confer any jurisdiction upon the Assessing Officer to proceed further in the matter.

b. The respondent department cannot derive jurisdiction to proceed on the basis of a notice which is otherwise void *ab initio* merely because the respondent department was not informed regarding the death of the assessee as there exists no provision under the Act mandating intimation of death by legal heirs.

c. Section 159(2)(a) comes into operation only in a situation where proceedings had already been validly initiated against the assessee during his lifetime and thereafter, during the pendency of such proceedings, the assessee dies. Section 159(2)(b) requires that the proceedings are to be initiated directly against the legal representative and not against the deceased person. Therefore, Section 159 of the Act has no application in the facts of the present case as it applies only in situations where proceedings were validly initiated against an assessee during his lifetime and during the pendency of such proceedings the assessee expires. It is only in such circumstances that proceedings may continue against the legal representatives.

d. Neither clause 2(a) nor 2(b) of Section 159 contemplates or validates a situation akin to the present case where notice itself is issued in the name of a dead person.

e. The mere filing of an Income Tax Return by the petitioner after the death of assessee cannot cure the inherent jurisdictional defect in the notice issued under Section 148 of the Act.

f. The issuance of a valid notice under Section 148 is not a mere procedural formality but is a foundational and jurisdictional requirement for initiation of reassessment proceedings under the Act which needs to be fulfilled as the entire edifice of reassessment proceedings rests upon the existence of a valid notice under Section 148. In absence whereby, the Assessing Officer lacks inherent jurisdiction to proceed with the reassessment as in the present case.

g. The notice under Section 148 constitutes the very first step for assumption of jurisdiction and initiation of reassessment proceedings. In absence of a valid notice, no reassessment proceedings can lawfully continue or culminate into an assessment order. Since, the notice itself is legally non-existent in the present case, it must be deemed that no notice under Section 148 was ever issued in the eyes of law. Consequently, the entire proceedings initiated pursuant thereto are wholly without jurisdiction and unsustainable.

h. Once the statute itself mandates that proceedings, if initiated after the death of the assessee, are required to be initiated directly against the legal representatives, then mere participation by the legal representative in the proceedings cannot confer jurisdiction upon the respondent authorities and validate the proceedings which are otherwise void *ab initio* and without jurisdiction.

i. The fact that petitioner had filed the Income Tax Return in name of the deceased cannot confer any jurisdiction upon the authorities by acquiescence, waiver, participation or conduct of parties to issue notice to a dead person.

j. Furthermore, the principles of estoppel, waiver, acquiescence, approbate and reprobate are all equitable doctrines that have no place in taxation statutes. Hence, jurisdiction which is otherwise absent under the statute cannot be conferred by consent, waiver, participation or estoppel.

k. Once the statute does not contemplate issuance of notice under Section 148 in the name of a dead person, the same cannot be validated on the basis of participation by the legal representatives or on equitable doctrines such as acquiescence, waiver, estoppel, or approbate and reprobate. Jurisdiction under a taxing statute must exist strictly in terms of the statute itself and cannot be conferred by conduct of parties.

l. The defect in the notice cannot be cured by resort to Section 292B of the Act as it merely protects notices, proceedings or returns from invalidation on account of technical mistakes, defects or omissions, provided that such notice or proceeding is otherwise in substance and in effect is in conformity with or according to the intent and purpose of the Act. The said provision does not cure a foundational or jurisdictional defect which goes to the very root of the matter. In the present case, issuance of notice against a dead person is itself contrary to the scheme, object and intent of the Act, particularly Sections 159 and 148 thereof. Therefore, the preconditions for applicability of Section 292B are themselves absent in the present case.

m. The applicability of Section 150(1) of the Act for extending the period of limitation for issuance of notice under Section 148 is expressly barred by Section 150(2) in the facts of the present case as Section 150(2) of the Act specifically carves out an exception to Section 150(1) and categorically provides that the benefit of Section 150(1) shall not be available in a case where reassessment for the relevant assessment year had already become barred by limitation at the time when the ‘order’ which was the subject matter of appeal, reference or revision was made.

n. The legislature has consciously and deliberately employed the expression ‘order’ in Section 150(2) of the Act and not the expression ‘notice’. Therefore, the statutory requirement is that the ‘order’ (not notice) forming the subject matter of appeal, revision or reference must itself be within the prescribed period of limitation. The provision cannot be interpreted to mean that mere issuance of a notice within limitation would suffice.

o. If the benefit of Section 150(1) is extended in the present case, the same would amount to enlarging and rewriting the scope consciously provided by the legislature under the Act and would effectively amount to conferring jurisdiction upon the Assessing Officer which otherwise does not exist in view of the bar created under Section 149 of the Act. Moreover, the conferment of jurisdiction is purely a legislative function and jurisdiction cannot be created either by consent of parties, acquiescence, waiver or even by orders of a superior court contrary to the statutory provisions.

p. In the present case, the assessment order dated March 24, 2026 itself is *ex facie* beyond limitation as the limitation for completing reassessment proceedings in the present case expired on March 31, 2025. Prior to expiry of limitation, only a notice under Section 148 dated March 28, 2025 had been issued. However, no assessment order came to be passed within the prescribed limitation period. Section 150(1) cannot be invoked to revive or validate proceedings which had already become time barred.

q. The present reassessment proceedings emanate from the search and seizure proceedings. However, despite possession of the alleged incriminating material, the respondent department admittedly took no action whatsoever for a period of more than three years and it was only on March 28, 2025, that is, merely three days prior to expiry of limitation, the notice under Section 148 of the Act was issued. Therefore, merely because the respondent department remained inactive and slept over the alleged documents for more than three years, the same cannot furnish any ground for extending limitation contrary to the statutory mandate.

r. To buttress his aforesaid arguments, counsel has placed reliance on the following precedents of the Supreme Court and various High Courts for respective propositions:-

I. Notice issued to a dead person is null and void as the sine qua non for issuing notice under Section 148 of the Act is that it is issued in the name of correct person and such defect cannot be cured under Section 292B of the Act. Moreover, the legal heirs are under no statutory obligation to inform the department regarding death of the assessee.

i. **Alamelu Veerappan vs. Income Tax Officer[1];**

ii. **Savita Kapila vs. Assistant Commissioner of Income Tax[2];**

iii. **Satendra Kumar vs. State of U.P.[3];**

iv. **Shri Devendra vs. Addl./Joint Commissioner of Income Tax[4];**

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1 **2018 SCC Online Mad 13593; (2018) 304 CTR 512; (2018) 12 ITR-OL 95**

2 **2020 SCC OnLine Del 2540; (2020) 426 ITR 502; (2020) 316 CTR 465**

3 **Allahabad High Court in Writ Tax No. 1728 of 2025 (Neutral Citation No.2025:AHC:62525-DB)**

4 **2023 SCC OnLine Bom 1409; (2024) 461 ITR 463; (2023) 5 Bom CR 529**

v. **Sumit Balkrishna Gupta vs. Assistant Commissioner of Income Tax**[5]**;**

vi. **Bhupendra Bhikhalal Desai vs. ITO**[6]**;**

vii. **ITO vs. Bhupendra Bhikhalal Desai**[7]

II. Section 159(2)(b) is attracted where a valid notice is issued to the legal representative of the deceased assessee:

viii. **Mrs. Vanitha Gopal Shetty vs. ACIT**[8] **;**

ix. **Rajendra Kumar Sehgal vs. Income Tax Officer**[9]**;**

III. Participation in the proceedings (Section 292BB) shall not make the notice issued to a dead person valid:

x. **Principal Commissioner of Income Tax New Delhi vs. Maruti Suzuki India Limited** [10] **;**

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5 **2019 SCC OnLine Bom 13178; (2019) 414 ITR 292; (2019) 309 CTR 182**

6 **2021 SCC OnLine Guj 3074; (2021) 17 ITR-OL 604; (2021) 320 CTR 289; (2021) 130 taxmann.com 196 (Gujarat High Court)**

7 **SLP(C) No. 13061 of 2021**

8 **Karnataka High Court in WP No. 19840/2019 vide order dated July 5, 2021 (Neutral Citation 2021:KHC:22635)**

9 **2018 SCC OnLine Del 12890; (2019) 306 CTR 264; (2019) 414 ITR 286**

10 **(2020) 18 SCC 331; (2019) 416 ITR 613; 2019 SCC OnlLine SC 928**

xi. **Krishnaawtar Kabra vs. Income Tax Officer[11];**

xii. **Meet Lalwani vs. CIT[12];**

xiii. **Sandeep Chopra vs. CIT[13];**

xiv. **Gourang Anil Wakade vs. CIT[14];**

xv. **Neena Jatin Shah vs. Income Tax Officer[15];**

IV. Equity has no place in tax law:

xvi. **Commissioner of Income Tax, Madras & Anr. vs. V. MR. P. Firm Muar & Ors.[16];**

xvii. **Commissioner of Income Tax vs. Calcutta Knitwears, Ludhiana[17];**

xviii. **Jagmittar Sen Bhagat vs. Director Heath Services Haryana[18];**

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11 **2022 SCC OnLine Guj 2607; (2022) 20 ITR-OL 138**

12 **(2025) 483 ITR 172; 2023 SCC OnLine MP 4450; (2024) 337 CTR 602; (2024) 2 MP LJ 328**

13 **(2023) 455 ITR 613; 2023 SCC OnLine Jhar 2595**

14 **(2025) 474 ITR 575; 2024 SCC OnLine Bom 3772**

15 **Bombay High Court in Writ Petition(L) no. 23147 of 2025 vide order dated September 30, 2025 (Neutral Citation BHC-OS:17072-DB)**

16 **1964 SCC OnLine SC 98; (1965) 56 ITR 67**

17 **(2014) 6 SCC 444; (2014) 362 ITR 673; (2014) SCC OnLine SC 227**

18 **(2013) 10 SCC 136; AIR 2013 SC 3060**

V. On Interpretation of Statutes:

xix. **Union of India vs. Deoki Nandan Agarwal**[19]**;**

xx. **Yeshwant Nathuji Meshram vs. State of Maharastra**[20]**;**

xxi. **Manish Goel vs. Rohini Goel**[21]**;**

xxii. **Sandeep Kumar Bafna vs. State of Maharastra**[22]**;**

VI. Limitation period for issuance of notice under Section 148 cannot be extended beyond the statutory period prescribed under Section 149 of the Act.

xxiii. **Sujata Devi vs. Income Tax Officer**[23]

xxiv. **Commissioner of Income Tax Act vs. Hemkunt Timbers Ltd**[24]**;**

CONTENTIONS ON BEHALF OF RESPONDENTS

4. Mr. Paavan Awasthi and Mr. Neerav Chitravanshi,

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19 **1992 Supp(1) SCC 323; 1992 SCC (L&S) 248**
20 **1995(1) Mh.L.J. 48; 1995 Cri LJ 2228; (1996) 5 Bom CR 358**
21 **(2010) 4 SCC 393; AIR 2010 SC 1099**
22 **(2014) 16 SCC 623; (2014) 13 SCR 177; AIR 2014 SC 1745**
23 **2024 SCC OnLine Jhar 425; (2025) 472 ITR 463**
24 **2016 SCC OnLine All 4310; (2016) 380 ITR 658; (2016) 283 CTR 1**

appearing on behalf of respondents have meticulously made the following submissions:-

a. The present writ petition deserves to be dismissed on the ground of suppression, misrepresentation and blameworthy conduct attributable to the petitioner herself as the Income Tax Return for the Financial Year 2023–24 relevant to Assessment Year 2024–25 came to be electronically verified in the name of the deceased assessee through Aadhaar OTP authentication. The return acknowledgment itself records that the return was verified by deceased assessee through electronic verification mode. Thus, the petitioner fully admits the knowledge of death of the assessee at the relevant time and simultaneously admits her active role in causing filing/verification of the return even after the death of the assessee.

b. The aforesaid conduct strikes at the very root of the equitable jurisdiction as Section 140 of the Act, provides that the return of income shall be verified by the individual himself or where it is not possible for the individual to verify the return, it shall be done by any other person duly authorised by him in that behalf. Thus, under the scheme of Section 140 of the Act, 1961, once an assessee has expired, the return can only be verified by the legal representative and not in the name of the deceased person.

c. The verification of a return is not a mere procedural formality but a solemn statutory declaration affirming the correctness and authenticity of the contents of the return. Despite the death of assessee, the return was caused to be verified electronically in his own name several months after his death, which is *ex facie* contrary to the statutory scheme of Section 140 of the Act and the framework governing electronic verification and digital authentication. The petitioner, having admittedly instructed and facilitated such filing, cannot now seek to invoke discretionary and equitable writ jurisdiction by simultaneously disowning the legal consequences flowing from the same return and the participation thereby before the Income Tax department.

d. The conduct of the petitioner *prima facie* attracts the penal consequences contemplated under Section 277 of the Act, which penalizes for making of a false statement in verification or delivering an account or statement which is false and which the maker either knows or believes to be false, or does not believe to be true and also disentitled her from any equitable or discretionary relief on account of her own conduct in causing a false verification to be made before a statutory authority.

e. The petitioner, while asserting herself to be the legal heir/legal representative of deceased assessee, cannot be permitted to approbate and reprobate simultaneously by first causing the return to be filed and verified in the name of the deceased assessee and thereafter contending that the proceedings initiated on the basis of the records and representations available with the department are void.

f. The department was never informed through lawful statutory procedure about the death of the assessee prior to initiation of proceedings under Section 148 of the Act. On the contrary, the records available with the department continued to reflect active electronic compliance in the name of the assessee even after his death, including filing and verification of returns. The petitioner, having herself contributed to creation and continuation of such statutory record in the name of the deceased assessee, cannot now be permitted to take advantage of her own wrong and seek invalidation of proceedings by alleging that the notice was issued in the name of a dead person.

g. Section 159 expressly embodies the legislative intent that the death of an assessee does not result either in extinction of tax liability or in abatement of assessment proceedings. On the contrary, the statute specifically provides that where an assessee 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, and further deems the legal representative to be an assessee for the purposes of the Act.

h. Section 159 contemplates the principle that tax liabilities survive the death of the assessee and continue against the estate in the hands of the legal representative. Thus, the legislative policy underlying Section 159 is to ensure continuity of assessment, reassessment and recovery proceedings notwithstanding the death of the original assessee, so that public revenue is not defeated merely on account of death.

i. Section 159(2) further specifically contemplates continuation and initiation of proceedings even after death of the assessee. The provision expressly states that any proceeding taken against the deceased before his death may be continued against the legal representative and further authorizes that any proceeding which could have been taken against the deceased if he had survived may also be taken against the legal representative. The statutory scheme therefore makes it abundantly clear that the substance of liability and assessment survives and attaches to the legal representative notwithstanding death of the assessee.

j. In the present case, the petitioner steps into the shoes of the deceased assessee as the legal representative and heir by having participated in the reassessment proceedings *via* filing objections and replies before the assessing authority which itself invokes Section 159 of the Act.

k. That the object and purpose of Section 159 would stand completely frustrated if the interpretation sought to be canvassed by the petitioner is accepted. Such an interpretation would permit legal representatives, despite full knowledge of death and despite participating in tax compliances and proceedings, to withhold disclosure of death from the department, continue filings in the name of the deceased assessee, and thereafter seek annulment of proceedings on purely technical grounds after the limitation period expires. Such a construction would not only defeat the statutory scheme but would also cause manifest prejudice to public revenue and encourage abuse of process. The provisions of Section 159 are therefore required to be construed in a manner that advances the legislative object of preservation and continuity of tax liability rather than permitting its artificial extinguishment on account of procedural or technical objections.

l. The alleged defect, in issuance of notice under Section 148 in the name of deceased assessee is curable and protected under Section 292B of the Act which expressly provides that no return of income, assessment, notice, summons or other proceeding shall be invalid merely by reason of any mistake, defect or omission in such notice or proceeding if the same is in substance and effect in conformity with or according to the intent and purpose of the Act

m. The reassessment proceedings in the present case were initiated for lawful assessment of escaped income of deceased assessee and were at all times intended to operate against the estate represented by the legal representative. The substance, object and intent of the proceedings therefore remained fully consistent with the statutory scheme under Sections 147, 148 and 159 of the Act. Any defect in description of the notice or failure to substitute the name of the legal representative at the threshold is therefore curable under Section 292B.

n. The Department was under *bona fide* mistake regarding the death of the assesssee on the basis of official records available with it, which reflect active statutory compliance in the name of the assessee even after his death. The issuance of notice in the name of the deceased assessee therefore occurred solely on account of absence of disclosure by the petitioner and on the basis of records actively maintained and continued under her own instructions. In such circumstances, the defect, if any, is purely technical and procedural in nature and does not strike at the substantive jurisdiction of the department to assess escaped income which otherwise survives against the legal representative under Section 159 of the Act.

o. No prejudice has been caused to the petitioner on account of the notice being initially addressed in the name of the deceased assessee. The proceedings throughout remained referable to the escaped income and tax liability of late Shri Sanjay Dubey, which by operation of Section 159 statutorily survives against the legal representative. Merely because the notice initially bore the name of the deceased assessee would not invalidate the entire proceedings when the legal representative had complete knowledge of the proceedings, participated therein and contested the matter on merits.

p. Equitable jurisdiction under Article 226 of the Constitution of India, ought to construe Section 292B in a manner that advances the legislative object of preserving lawful assessment proceedings rather than frustrating them on account of technical defects which have caused no prejudice whatsoever to the petitioner.

q. This Hon'ble Court, while exercising jurisdiction under Article 226, may mould the relief, if at all required, by granting liberty/direction to the Department to issue fresh notice under Section 148 to the legal representative in terms of Section 150(1) and proceed in accordance with law as Section 150(1) of the Act was specifically enacted to meet such situations and expressly overrides the limitation contained in Section 149 by providing that a notice under Section 148 may be issued "at any time" for the purpose of making an assessment, reassessment or recomputation in consequence of, or to give effect to, any finding or direction contained in an order passed by any authority in any proceeding under the Act by way of appeal, reference or revision, or by a Court in any proceeding under any other law. The very object of Section 150 is to ensure that lawful assessment or reassessment is not frustrated where action becomes necessary in consequence of a finding or direction of a Court or appellate/revisional authority.

r. The interpretation canvassed by the petitioner would render Section 150 otiose and defeat the legislative scheme. The petitioner cannot be permitted to argue, on the one hand, that the existing notice must be quashed as having been issued in the name of the deceased assessee and, on the other hand, that no fresh notice can be issued because limitation under Section 149 has expired. Such a contention would convert a procedural objection into complete immunity from assessment, despite the express mandate of Section 159 that tax liability survives against the legal representative and despite the overriding machinery contained in Section 150.

s. The provisions of the Income-tax Act, 1961, particularly the machinery provisions governing reassessment and continuation of proceedings against legal representatives, are required to be interpreted in a manner that advances the object of the statute and protects the legitimate interests of public revenue rather than in a manner which permits evasion or artificial extinguishment of tax liability on technical pleas. It is a settled principle that the Income-tax Act is not merely a taxing statute but also a complete machinery for assessment, recovery and protection of revenue.

t. Sections 159, 150 and 292B of the Act are manifestly machinery provisions as Section 159 enables continuation and enforcement of tax liability against legal representatives of a deceased assessee; Section 150 provides the machinery by which reassessment proceedings may be initiated notwithstanding ordinary limitation where findings or directions exist and Section 292B validates proceedings despite technical mistakes, defects or omissions. An interpretation that advances the statutory purpose should be construed liberally and purposively so as to make the statute workable and effective and not to defeat the object of taxation.

u. Writ jurisdiction under Article 226 is extraordinary, equitable and discretionary. It is intended to advance the cause of justice rather than defeat it on technical considerations.

v. To buttress his aforesaid arguments, counsel has placed reliance on the following precedents of the Supreme Court and various High Courts for respective propositions:-

I. Blameworthy conduct not entitled to equitable relief:

i. **Union of India v. Maj. Gen. Madan Lal Yadav**[25];

25 **(1996) 4 SCC 127; 1996 SCC (Cri) 592; AIR 1996 SC 1340**

ii. **Municipal Committee Katra v. Ashwani Kumar**[26];

iii. **Chandra Singh v. State of Rajasthan**[27];

iv. **State of Maharashtra v. Digambar**[28]**;**

II. Ommission or defect in service does not erase or efface the liability to pay tax:

v. **Estate of Late Rangalal Jajodia v. Commissioner of Income Tax**[29];

vi. **Sky Light Hospitality LLP v. Assistant Commissioner of Income Tax**[30];

vii. **Sunil Kumar Sahoo v. Deputy Commissioner of Income Tax**[31]**;**

viii. **Maharaja of Patiala v. Commissioner of Income Tax**[32]**;**

ix. **CIT v. Jai Prakash Singh**[33];

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26 **2024 SCC Online SC 840; 2024 INSC 398**

27 **(2003) 6 SCC 545; 2003 SCC (L&S) 951**

28 **(1995) 4 SCC 683; AIR 1995 SC 1991**

29 **(1970) 3 SCC 371; (1971) 79 ITR 505**

30 **(2018) 13 SCC 147**

31 **2026 SCC OnLine Ori 1429; Orissa High Court in W.P.(C) No. 23165 of 2025**

32 **(1943) 11 ITR 202 (Bom); 1942 SCC OnLine Bom 173**

33 **(1996) 3 SCC 525; (1996) 219 ITR 737; 1996 SCC OnLine SC 128**

III. Reassessment proceedings can be initiated against the legal heir of the deceased assessee:

x. **Income-Tax Officer v. Eastern Coal Co. Ltd.**[34];

xi. **CIT v. Vikram Sujitkumar Bhatia**[35];

IV. Fresh notice under Section 148 can be issued due to overriding nature of Section 150:

xii. **Sukhdayal Pahwa v. Commissioner of Income Tax**[36];

xiii. **Commissioner of Income Tax v. Glass Equipment (India) Ltd**.[37];

xiv. **Mahadeo Prasad Bais v. ITO**[38];

xvi. **Union of India v. Ashish Agarwal**[39];

xv. **Comptroller and Auditor-General of India v. K.S. Jagannathan**[40];

xvi. **Common Cause v. Union of India**[41];

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34 **(1975) 101 ITR 477; 1973 SCC Online Cal 200; 1976 Tax LR 197**

35 **(2024) 7 SCC 741; (2023) 453 ITR 417**

36 **(1983) 140 ITR 206 (MP) ; 1981 SCC Online MP 167**

37 **(2014) 366 ITR 59; 2014 SCC OnLine Cal 10765**

38 **(1991) 4 SCC 560; (1991) 192 ITR 402**

39 **(2023) 1 SCC 617; (2022) 444 ITR 1**

40 **(1986) 2 SCC 679**

41 **(1999) 6 SCC 667**

xvii. **State of Uttar Pradesh vs. Mohammad Nooh**[42]′

xviii. **Roshan Deen vs. Preeti Lal**[43];

xix. **Gowthaman S vs. Income Tax Officer**[44]**;**

xx**. Commissioner of Sales tax and Others vs. Subhash & Co.**[45]

V. Scheme of the Act:

xxi. **Malabar Industrial Co. Ltd. vs. CIT**[46];

xxii. **CIT vs. Paville Projects Pvt. Ltd.**[47]**;**

VI. Interpretation of Taxing Statutes:

xxiii. **CIT vs. National Taj Traders**[48];

xxiv. **Gursahai Saigal vs. CIT**[49];

xxv. **State of Tamil Nadu v. M. K. Kandaswami**[50];

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42 **AIR 1958 SC 86; (1958) SCR 595**
43 **(2002) 1 SCC 100**
44 **Madras High Court in WP No. 39793 of 2025 vide order dated October 27, 2025**
45 **(2003) 3 SCC 454**
46 **(2000) 2 SCC 718**
47 **2023 SCC Online SC 371; 2023 (453) ITR 447**
48 **(1980) 1 SCC 370**
49 **AIR 1963 SC 1062**
50 **(1975) 4 SCC 745**

xxvi. **CIT vs. Calcutta Knitwears**[51];

xxvii. **Mahadeo Prasad Bais v. Income Tax Officer**[52];

ISSUES

5. Upon perusal of the contentions and submissions made on behalf of the counsel appearing on behalf of the parties, the following issues emerge for consideration:-

I. Whether the revenue can invoke Section 159 to validate proceedings that were initiated against a person who was already dead on the date of initiation?

II. Whether the issuance of a notice under Section 148 of the Act to a deceased assessee constitutes a mere "mistake, defect or omission" curable under Section 292B of the Act, or whether it amounts to a substantive jurisdictional defect going to the root of the matter that cannot be cured by any subsequent action of the revenue?

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51 **(2014) 6 SCC 444**
52 **(1991) 4 SCC 560**

III. Whether the petitioner, legal heir of the deceased assessee, can be said to have waived her jurisdictional objection or submitted to the jurisdiction of the Assessing Officer by virtue of having filed returns and replies on behalf of deceased assessee in view of Section 292BB of the Act?

IV. Whether reassessment proceedings initiated under Section 148 of the Income-tax Act, 1961, can be justified on equitable grounds to protect the interests of the revenue, or whether such proceedings must satisfy the strict requirements of the statute?

V. If the High Court decides against the department with regard to the validity of the reassessment notice under Section 148 in the present writ petition, would the said decision amount to a 'direction' or 'finding' for issuance of a fresh show cause notice for reassessment against the legal representative of the deceased assessee?

RELEVANT PROVISIONS

6. The provisions of Act relevant to the present case are quoted hereinbelow:-

> "**142.** Inquiry before assessment—(1) For the purpose of making an assessment under this Act, the Assessing Officer may serve on any person who has made a return under section 115WD or section 139 or in whose case the time allowed under sub-section (1) of section 139 for furnishing the return has expired a notice requiring him, on a date to be therein specified,—
>
> (i) where such person has not made a return within the time allowed under sub-section (1) of section 139 or before the end of the relevant assessment year, to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, or :
>
> Provided that where any notice has been served under this sub-section for the purposes of this clause after the end of the relevant assessment year commencing on or after the 1st day of April, 1990 to a person who has not made a return within the time allowed under sub-section (1) of section 139 or before the end of the relevant assessment year, any such notice issued to him shall be deemed to have been served in accordance with the provisions of this sub-section,
>
> (ii) to produce, or cause to be produced, such accounts or documents as the Assessing Officer may require, or
>
> (iii) to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the Assessing Officer may require :
>
> Provided that—
>
> (a) the previous approval of the Joint Commissioner shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts;

(b) the Assessing Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

***

147. Income escaping assessment.—If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued undersub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

[Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:]

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

[(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;]

(c) where an assessment has been made, but—

(i) income chargeable to tax has been underassessed; or

(ii) such income has been assessed at too low a rate; or

(iii) such income has been made the subject of excessive relief under this Act ; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;]

[(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed

income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;]

[(d) where a person is found to have any asset (including financial interest in any entity) located outside India.]

[Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.]

[Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012 (23 of 2012), shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.]

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

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

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

(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any final objection raised by the Comptroller and Auditor-General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

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

(i) a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132-A, on or after the 1st day of April, 2021, in the case of the assessee; or

(ii) a survey is conducted under Section 133-A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under Section 132 or under Section 132-A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under Section 132 or Section 132-A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,

the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

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

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

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

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

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

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

Provided that the provisions of this section shall not apply in a case where,—

(a) a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132-A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under Section 132 or requisitioned under Section 132-A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under Section 132 or requisitioned under Section 132-A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

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

149. Time limit for notice.—(1) No notice under Section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

Provided that no notice under Section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under Section 153-A, or Section 153-C read with Section 153-A, is required to be issued in relation to a search initiated under Section 132 or books of account, other documents or any assets requisitioned under Section 132-A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of Section 148-A or the period during which the proceeding under Section 148-A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of Section 148-A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of Section 151.'.

150. Provision for cases where assessment is in pursuance of an order on appeal, etc.—(1)

Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision [or by a Court in any proceeding under any other law].

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

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159. Legal representatives.—(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability.

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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.

***

292BB. Notice deemed to be valid in certain circumstances.—Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this 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:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

ANALYSIS

7. We have heard the submissions canvassed on behalf of both the parties and perused the documents as well as compilation of judgments placed on record.

8. We attach a caveat herein at the onset. Through the course of the hearing, both sides have relied on a smorgasbord of judgments of the Supreme Court as well as High Courts to buttress their respective arguments. However, we would like to refer to **L.C. Quinn –v- Leathem**[53], wherein the House of Lords had chosen to observe the following:-

> "….that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular

53 **1901 AC 495**

> facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides….”

9. Adhering to the principles delineated in **L.C. Quinn** (supra), we are of the view that while certain judgments are merely replication of the principles of the judgments that have been considered in greater detail through the course of this judgment, some judgments are either not relevant or are distinguishable on facts. Ergo, only the judgments which were absolutely necessary for deciding this case have been considered and dealt with in detail so that brevity is not jeopardized.

10. The counsel on behalf of the petitioner mainly contends that the entire reassessment proceedings emanating from the issuance of notice under Section 148 of the Act against a deceased person is non est in the eyes of law and incapable of conferring any jurisdiction and the revenue cannot sustain the impugned reassessment proceedings by invoking the saving provisions of Sections 150, 159, 292B or 292BB of the Act. Furthermore, it was contended that the department cannot proceed further with liberty from the High Court by relying on Section 150 to issue a fresh notice for reassessment against the legal heir.

11. Per Contra, the learned counsel appearing on behalf of respondents vehemently rebutted the arguments of petitioner and submitted that issuance of notice in the name of deceased person does not constitute a jurisdictional defect but a procedural error. Additionally, it was submitted that notice was issued against the deceased assessee on the *bona fide* mistake that arose due to the fact that return of his income was filed on the portal in his name and also there was no intimation of death of assessee by the legal heirs. It was contended that such a defect was curable in view of Section 292B and revenue can proceed against the legal heir. Furthermore, Section 159 of the Act provides the revenue to proceed against the legal heir for reassessment of deceased assessee and the factum of filing a reply to the notice by the legal heir shall be deemed as valid notice, hence the legal heir cannot take advantage in terms of Section 292BB of the Act. Moreover, the issuance of fresh notice under Section 148 is not barred by limitation in terms of Section 150 of the Act.

12. It is an undisputed fact that the assessee died on January 7, 2024; Income Tax Return for Assessment

Year 2023-24 of the deceased assessee was filed on July 30, 2024 by the petitioner in the name of deceased; notice under Section 148 was issued on March 28, 2025 in the name of deceased assessee; preliminary objection regarding issuance of notice against a dead person for the first time was filed by the petitioner on February 2, 2026 in response to notices issued under Section 142(1); and the Assessment Order was passed on March 24, 2026 in the name of petitioner.

13. One may firstly examine the scheme of the Act in relation to reassessment proceedings. Sections 147 to 151 deal with the procedure of reassessment. Section 148 mandates the assessing officer to serve a notice on the assessee to reopen past year's assessment upon credible evidence that taxable income has escaped assessment. Section 142(1) is a notice for inquiry before assessment to gather information and/or to examine if there is some discrepancy in filing of return. Section 149 restricts the department to issue a reassessment notice under Section 148 for income that has escaped assessment generally capping the window at three years with extensions upto ten or sixteen years in a galore evasion. On the contrary, Section 150 allows the

department to issue a fresh show cause notice beyond the statutory period prescribed under Section 149 so as to give effect to a 'finding' or 'direction' made in the appellate order, revision, reference or court proceedings. Section 147 empowers the assessing officer to reopen assessment proceedings by passing a reassessment order, if he had 'reason to believe' that any income chargeable to tax has escaped assessment for the relevant assessment year. Section 159 allows the department to continue proceedings against the legal representative of the deceased upon the death of the assessee.

14. Issue I pertains to validating reassessment proceedings initiated against a dead person in terms of Section 159 and issue II deals with curing the defect in the said notice soliciting Section 292B. Both the issues are intrinsically linked and are therefore being dealt with together.

15. The petitioner contends that the notice issued against a dead person is non est in law and hence void *ab initio*. The department cannot take recourse to Section 159 of the Act for continuing against the legal heir by

fitting the petitioner in the shoes of deceased assessee as that would amount to acting beyond the statute. Furthermore, it has been contended that the department cannot validate the proceedings by curing the defect under Section 292B as the defect is not merely clerical or technical but is a jurisdictional error which cannot be cured. For the aforesaid proposition counsel has placed reliance on, **Alamelu Veerappan** (Supra)**, Savita Kapila** (Supra), **Satendra Kumar** (Supra), **Shri Devendra** (Supra)**, Sumit Balkrishna Gupta** (Supra), **Bhupendra Bhikhalal Desai** (Supra), **ITO v. Bhupendra Bhikhalal Desai** (Supra), **Mrs. Vanitha Gopal Shetty** (Supra) and **Rajendra Kumar Sehgal** (Supra).

16. Per contra, respondent submits that the notice was issued to deceased assessee on the *bona fide* mistake of department that arose due to filing of Income Tax Return by the wife of deceased in the name of deceased via verifying through Aadhaar OTP authentication. Such a *bona fide* mistake comes under the ambit of curable defect in terms of Section 292B and hence liability for such escaped income can be imposed upon the legal heirs in accordance with Section 159 of

the Act. *Inter alia*, the counsel for the respondents contends that not intimating the department with regard to the death of the assessee and filing false verification in the name of a dead person attracts a penal liability under Section 277 of the Act. For his aforesaid proposition counsel has placed reliance on **Estate of Late Rangalal Jajodia** (Supra), **Sky Light Hospitality LLP** (Supra), **Sunil Kumar Sahoo** (Supra)**, Maharaja of Patiala** (Supra)**, Jai Prakash Singh** (Supra), **Sunil Kumar Sahoo** (Supra), **Eastern Coal Co. Ltd.** (Supra), **Vikram Sujitkumar Bhatia** (Supra), **Maj. Gen. Madan Lal Yadav** (Supra), **Municipal Committee Katra** (Supra), **Chandra Singh** (Supra) **and Digambar** (Supra).

17. We may first examine the judgments cited by the petitioner in support of his arguments in relation to the aforesaid two issues.

18. The Madras High Court speaking through *T.S. Sivagnam, J.* in **Alamelu Veerappan** (Supra) vide order dated June 7, 2018 while concluding that the notice issued against a dead person is wholly without jurisdiction that cannot be enforced in law, has observed that proceedings can be continued against the legal heir if

the proceedings were initiated during the lifetime of the deceased assessee and permitted for proceeding against the legal heir. The relevant paragraphs of the judgment are quoted hereinbelow:-

> "16. The settled legal principle being that a notice issued in the name of the dead person is unenforceable in law. If such is the legal position, would the Revenue be justified in contending that they, having no knowledge about the death of the assessee, are entitled to plead that the notice is not defective. In my considered view, the answer to the question should be definitely against the Revenue.
>
> 17. This court supports such a conclusion with the following reasons:
>
> Admittedly, the limitation period for issuance of notice for reopening expired on March 31, 2017. The impugned notice was issued on March 30, 2017 in the name of the dead person. On being intimated about the death, the Department sent the notice to the petitioner - his spouse to participate in the proceedings. This notice was well beyond the period of limitation, as it has been issued after March 31, 2017. If we approach the problem sans complicated facts, a notice issued beyond the period of limitation, i.e., March 31, 2017 is a nullity, unenforceable in law and without jurisdiction. Thus, merely because the Department was not intimated about the death of the assessee, that cannot, by itself, extend the period of limitation prescribed under the statute. Nothing has been placed before this court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased assessee to immediately intimate the death of the assessee or take steps to cancel the PAN registration."
>
> 18. In such circumstances, the question would be as to whether section 159 of the Act would get attracted. The answer to this question would be in the negative, as the proceedings under section 159 of the Act can be invoked only if the proceedings have already been initiated when the assessee was alive and was permitted for the proceedings to be continued as against the legal heirs. The factual position in the instant case being otherwise, the provisions of section 159 of the Act have no application."

(Emphasis added)

19. Hon'ble Justice T.S. Sivagnam, scrutinized four aspects in **Alamelu Veerappan** (Supra), firstly, with regard to the issuance of show cause notice under Section 148 in the name of dead person or against a non-existent entity, secondly, continuation of existing liability upon the legal heirs in view of Section 159 after the death of the deceased assessee, thirdly, with regard to curing the defect under Section 292B of the Act, and fourthly, extending period of limitation for issuance of notice beyond the period prescribed under Section 149 of the Act.

20. The Madras High Court in the **Alamelu Veerappan** (Supra), *inter alia* has observed the following in the aforesaid aspects:-

I. The show cause notice under Section 148 of the Act cannot be issued to a dead person or against a non-existent entity as such issuing goes to the root of the matter, which is not a procedural irregularity but a jurisdictional defect.

II. For imposing liability upon the legal heir of the deceased in terms of Section 159, notice is required to be issued against and in the name of the legal representative/heir.

III. The issue of limitation is not a curable defect for the revenue to invoke Section 292B of the Act.

IV. There is no statutory obligation on the part of the legal representative to intimate about the death of the assessee and such non-intimation cannot extend the period of limitation prescribed under Section 149 of the Act.

21. The Division Bench of the Delhi High Court constituting *Manmohan and Sanjeev Narula, JJ.* in **Savita Kapila** (Supra) following the decision of Madras High Court in **Alamelu Veerappan** (Supra) vide its judgment dated July 16, 2020 has quashed the notice issued under Section 148 as well as all consequential orders/proceedings in pursuant thereto. The relevant paragraphs of the judgment are quoted hereinbelow:-

> "26. In the opinion of this court the issuance of a notice under section 148 of the Act is the foundation for reopening of an assessment. Consequently, the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. (See Sumit

Balkrishna Gupta v. Asst. CIT (2019) 414 ITR 292(Bom); (2019) 2 TMI 1209-the Bombay High Court).

27. In Chandreshbhai Jayantibhai Patel v. ITO (2019) 413 ITR 276(Guj); [2019] (1) TMI 353-the Gujarat High Court has also held (page 290 of 413 ITR) : "the question that therefore arises for consideration is whether the notice under section 148 of the Act issued against the deceased-assessee can be said to be in conformity with or according to the intent and purposes of the Act. In this regard, it may be noted that a notice under section 148 of the Act is a jurisdictional notice, and existence of a valid notice under section 148 is a condition precedent for exercise of jurisdiction by the Assessing Officer to assess or reassess under section 147 of the Act. The want of valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects the validity of the proceedings for assessment or reassessment. A notice issued under section 148 of the Act against a dead person is invalid, unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection." Consequently, in view of the above, a reopening notice under section 148 of the Act, 1961 issued in the name of a deceased-assessee is null and void.

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30. Section 159 of the Act, 1961 applies to a situation where proceedings are initiated/pending against the assessee when he is alive and after his death the legal representative steps into the shoes of the deceased-assessee. Since that is not the present factual scenario, section 159 of the Act, 1961 does not apply to the present case.

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32. This court is of the view that in the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the Income-tax Department. After all, there may be cases where the legal representatives are estranged from the deceased-assessee or the deceased-assessee may have bequeathed his entire wealth to a charity. Consequently, whether PAN record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In Alamelu Veerappan (supra) it has been held "nothing has been placed before this court by the Revenue to show that there is a statutory obligation on the part of the legal

representatives of the deceased-assessee to immediately intimate the death of the assessee or take steps to cancel the PAN registration".

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35. This court is of the opinion that issuance of notice upon a dead person and non-service of notice does not come under the ambit of mistake, defect or omission. Consequently, section 292B of the Act, 1961 does not apply to the present case.

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38. This court is also of the view that section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative. Further, in the present case one of the legal heirs of the deceased-assessee, i.e., the petitioner, had neither co-operated in the assessment proceedings nor filed return or waived the requirement of section 148 of the Act, 1961 or submitted to jurisdiction of the Assessing Officer. She had merely uploaded the death certificate of the deceased-assessee. In CIT v. M. Hemanathan [2016] 384ITR 177(Mad); [2016] (4) TMI 258-the Madras High Court it has been held (page 182 of 384 ITR) : "In the case on hand, the assessee was dead. It was the assessee's son, who appeared and perhaps co-operated. Therefore, the primary condition for the invocation of section 292BB is absent in the case on hand. Section 292BB is in place to take care of contingencies where an assessee is put on notice of the initiation of proceedings, but who takes advantage of defective notices or defective service of notice on him. It is trite to point out that the purpose of issue of notice is to make the noticee aware of the nature of the proceedings. Once the nature of the proceedings is made known and understood by the assessee, he should not be allowed to take advantage of certain procedural defects. That was the purpose behind the enactment of section 292BB. It cannot be invoked in cases where the very initiation of proceedings is against a dead person. Hence, the second contention cannot also be upheld".

(Emphasis added)

22. The Delhi High Court dissected the issue and has observed the following:-

I. Absence of valid notice under Section 148 strikes at the very root of the Assessing Officer's jurisdiction to proceed with the reassessment and consequently, vitiates the entire proceedings rendering them as null and void unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection.

II. Issuance of notice against dead person and non service of notice do not come under the ambit of mistake, defect or omission invoking Section 292B of the Act.

III. Section 159 is attracted when the assessee is alive and after his death the legal representative steps into the shoes of the deceased-assessee.

IV. Assumption of jurisdiction qua the petitioner for the relevant assessment years beyond the period prescribed, renders the proceedings barred by the limitation in view of Section 149 of the Act.

V. A duty of intimation of death cannot be cast upon the legal representative/heir in absence of statutory provision.

VI. Section 292BB is applicable to the assessee not to a legal representative.

The observation related to Section 292B and Section 292BB will be dealt with a little later while analysing Issue II and III respectively.

23. One may further look into another Division Bench judgment of the Bombay High Court constituting *Akil Kureshi and M.S. Sanklecha, JJ.* in **Sumit Balkrishna Gupta** (Supra) wherein the court had quashed the show cause notice issued under Section 148 of the Act against a dead person as well as further proceedings pursuant thereto being as invalid and not tenable in law. The relevant paragraphs of the judgment are quoted hereinbelow:-

> "7. <u>The issue of a notice under section 148 of the Act is a foundation for reopening of assessment. The sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law.</u> Thus, a notice which has been issued in the name of the dead person is also not protected either by the provisions of section 292B or 292BB of the Act. This is so as the requirement of issuing a notice in the name of correct person is the foundational requirement to acquire jurisdiction to reopen the assessment. This is evident from section 148 of the Act, which requires that before a proceeding can be taken up for reassessment, a notice must be served upon the assessee. The assessee on whom the notice

> must be sent must be a living person, i.e., legal heir of the deceased assessee, for the same to be responded. This in fact is the intent and purpose of the Act. Therefore, section 292B of the Act cannot be invoked to correct a foundational/substantial error as it is meant so as to meet the jurisdictional requirement. Therefore, both the impugned notice dated March 29, 2018 and the impugned order dated November 13, 2018 are quashed and set aside. It is made clear that this order will not prohibit the Revenue from issuing a fresh notice for reassessment, if requirement of section 147/148 of the Act are satisfied, including the limitation period therein."

(Emphasis added)

24. The Bombay High Court in **Sumit Balkrishna** (Supra) has dealt with a situation wherein the petitioner after the death of deceased has registered himself as the legal heir and filed return in the name of deceased assessee. The court reiterated the jurisdictional requirement of notice under Section 148 of the Act and has observed that such jurisdictional requirement is a foundational prerequisite which cannot be cured by invoking Section 292B of the Act.

25. The Division Bench of the Gujarat High Court constituting J.B. Pardiwala and Ilesh J. Vohra, JJ. in **Bhupendra Bhikhalal Desai** (Supra) speaking through Justice Pardiwala has held that want of a valid notice affects the jurisdiction of the Assessing Officer to proceed with the reassessment that cannot be cured under

Section 292B. The relevant paragraphs of the judgment are quoted hereinbelow:-

> "23. The following principles are discernible from the above referred judgment of this court :
>
> "(i) <u>The issuance of the notice to a dead assessee is not a mere technical defect which can be corrected under section 292B of the Act. The issuance of the notice to a dead assessee and the consequent proceedings pursuant thereto would be without jurisdiction and, therefore, null and void.</u>
>
> (ii) 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. <u>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</u>."
>
> 24. We are of the view that the same principle as referred to above would apply even to a notice issued to a dead assessee under section 153C of the Act. It is not in dispute that the legal heir of late Bhupendrabhai Desai had not participated in the proceedings. All that the legal heir of late Bhupendrabhai Desai did was to inform the Assessing Officer about the death of his father and requested to drop the proceedings. It is true that although the father passed away in the year 2017, yet the legal heir did not inform the Department up to October, 2019. However, at the same time, we should not overlook the fact that even after coming to know about the demise of late Bhupendrabhai, the Department could have issued a valid notice to the legal heir as the period of limitation of 21 months had not expired. We fail to understand what prevented the Department from issuing a valid notice to the legal heir within the prescribed time period."

26. The aforesaid judgment of **Bhupendra Bhikhalal Desai** (Supra) went in appeal before the Supreme Court[54] and the same got dismissed.

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54 **Special Leave to Appeal (C) No. 13061 of 2021**

27. The judgment of the Karnataka High Court in **Mrs. Vanitha Gopal Shetty** (Supra) penned by *S. Sunil Dutt Yadav, J.* wherein the court while dealing with the issue of invoking Section 159 of the Act has held that the proceedings ought to have been taken against the legal representatives of deceased at the first instance for invoking Section 159 of the Act for proceeding against the legal heir. The relevant paragraphs of the judgment are quoted hereinbelow:-

> "13. <u>It becomes clear that insofar as the proceedings against an assessee who is alive at the time of initiation of proceedings, the same proceedings could be continued as against his legal representatives from the stage at which it stood on the date of death of the deceased.</u> Insofar as the right of the revenue to initiate proceedings as regards to the deceased assessee, Section 159(2)(b) permits proceedings to be initiated against the legal representatives as regards all proceedings which could have been taken against the deceased if he had survived.
>
> 14. In the present facts, admittedly, the proceedings are initiated under Section 148 for reassessment relating to escapement of income of late Kurkal Gopal Shetty and such proceedings as has been initiated in the year 2018 by when Kurkal Gopal Shetty had already died (on 11.11.2014). <u>The proceedings in terms of Section 159(2)(b) ought to have been taken against the legal representatives of late Kurkal Gopal Shetty at the first instance.</u> It ought to be noted that the period allowable for initiating the proceedings under Section 148 is the period prescribed under Section 149(1) (b) which position is not in dispute and accordingly, proceedings ought to have been initiated as on 31.03.2018.
>
> 15. <u>The question as to whether proceedings initiated against the deceased Kurkal Gopal Shetty was sufficient to continue proceedings of reassessment as regards the legal representatives is a matter that requires to be</u>

answered. The learned counsel for the revenue would contend that the concept of abatement cannot be extended to assessment proceedings and where the original assessee has died, the proceedings against his legal representatives would be good in law as made out under Section 159(2) of the Act as well as in light of the definition of assessee under Section 2(7)(b) read with Section 159 is a matter that also requires consideration.

16. There is no dispute as regards to the general proposition that proceedings against an assessee would continue even after his death as against his legal representatives and there would be no abatement of such proceedings. However, in the present case, the question is as regards to the initiation of proceedings under Section 148 vis-à-vis the legal representatives of the deceased Kurkal Gopal Shetty. As noticed earlier, notice issued at the first instance on 28.03.2018 is as regards Kurkal Gopal Shetty and at that relevant point of time, the said assessee was dead. It comes out from the subsequent proceedings that the revenue, upon being informed by the 2nd petitioner through an e-mail on 30.05.2018 that Kurkal Gopal Shetty had died, has issued notice to the legal representatives on 19.11.2018 and on 21.12.2018 under Section 142 and hence, in effect, there was no notice to the petitioners with respect to the initiation of proceedings for reassessment under Section 148. The proceedings under Section 142 being a part art of the re-assessment proceedings, the starting point for initiation of proceedings under Section 148 is the issuance of notice, which notice to be valid is required to be initiated within the time prescribed under Section 149(1)(b). Notice issued against Kurkal Gopal Shetty on 28.03.2018 being against a dead person, at the very inception would not be a tenable notice for initiation of proceedings under Section 148 as regards the legal representatives insofar as any proceedings against the legal representatives are to be governed by Section 159. While Section 159(2)(a) provides for continuation of proceedings against the legal representatives when initiated against the assessee when he was alive. Clearly Section 159(2)(b) would require a separate notice to be issued under Section 148 within the time prescribed under Section 149(1)(b) as against the legal proceedings are initiated beyond the time prescribed under Section 149(1)(b) such proceedings would not be valid."

28. Now we will examine the judgments cited by the counsel for the respondents in relation to Issue I and Issue II.

29. A pre-independence era judgment of Division Bench of the Bombay High Court in **Maharaja of Patiala** (Supra) penned by Beaumont, C.J. and Kania, J. in separate concurring decisions while answering a reference made by the tribunal has considered the question regarding certain technical defects alleged to exist in the order of assessment of Late Maharaja of Patiala. The court has specifically dealt with Section 24B of the Income Tax Act, 1922 which is akin to Section 159 of the Act. The relevant paragraphs of the judgment are quoted hereinbelow:-

> "2. The late Maharaja of Patiala died on March 23, 1938, and the papers relating to the assessment on him were sent by the Commissioner of Income-Tax of the Punjab to the Commissioner of Income-Tax, Bombay, after the date of the Maharaja's death because of the decision of the Allahabad High Court, to which I will refer presently, which suggested that the estate of the late Maharaja could not be assessed unless a statutory agent were appointed under Section 43 of the Indian Income-Tax Act. After the papers reached Bombay, some correspondence took place between the Income-Tax Officer, Bombay, and a gentleman who is described as the Foreign Minister of the Patiala State, and eventually, in November, 1938, two notices were served on His Highness the Maharaja of Patiala, which in terms were issued under Section 22(2) of the Indian Income-Tax Act, one for the year 1937, and the other for the year 1938, requiring the Maharaja (that is, the present

Maharaja) to make a return of his income. Returns were made of the late Maharaja's income, and on September 16, 1940, assessment orders for the respective years 1937-38 and 1938-39 were passed. In those orders the name of the assessee is stated to be "His Highness Maharajadhiraj Sir Bhupindra Singh," that is, the late Maharaja, and subsequently notices to pay were served on the Foreign Minister on behalf of the late Maharaja in the case of one notice, and of the present Maharaja in the case of the other.

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14. In view of that answer, the assessment is illegal, and the first question is really of only academic interest. The first question is:

"Whether in the circumstances found by the Tribunal in its order under Section 33, the assessment was not made in accordance with the provisions of Section 24B of the Indian Income-Tax Act and is for that reason invalid?"

15. I observe in passing, with regret, that it seems from the wording of this question and others which have been submitted to us by the Tribunal that the Tribunal are adopting the practice followed by Subordinate Judges of framing issues in the negative, a practice which I have often condemned as inconvenient. A simple question "Is the assessment valid" can be answered "Yes" or "No." If the question be "Is the assessment not valid" or "not invalid,"? a simple answer either in the affirmative or in the negative becomes ambiguous, and one has to look at the reasons to see what is meant. <u>The question here is whether the assessment was not made in accordance with the provisions of Section 24B.</u> If the question is answered in the negative, thus introducing a double negative, would it mean that the assessment was made in accordance with the section? I hope that the Tribunal will abandon this practice of stating questions in the negative before it becomes a habit. However, I take the question as being whether the assessment was made in accordance with the provisions of Section 24B. Now, Section 24B deals with the assessment of a deceased person. In this case the person to be assessed was the late Maharaja, who had died before he was served with any notice under Section 22, and, therefore, the provisions of Section 24B (2) apply, and the Income-Tax Officer was entitled to serve on the executor, administrator or other legal representative of the deceased Maharaja a notice under Section 22(2) or under Section 34 as the case

> might be, and then proceed to assess the total income of the deceased Maharaja as if such executor, administrator or other legal representative were the assessee. As observed by the President of the Tribunal in his judgment, the Income-Tax Officer made no attempt to observe the provisions of that sub-section. He served the notice on the present Maharaja, without showing in what capacity. <u>But the Tribunal have found, as a fact, that the present Maharaja is the legal representative of the deceased Maharaja, and although it would obviously have been better so to describe him in the notice, I am not prepared to say that the notice was bad, if it was served on the legal representative, merely because it omitted to state that it was served in that capacity. It should have been stated that it was served on the legal representative of the late Maharaja, and that the return required was of the late Maharaja's income.</u> It was not so stated, and the present Maharaja himself may have had taxable income for the years in question; <u>but I think there is a good deal of force in the contention of the Tribunal that any irregularities in this respect were waived by the Maharaja, because returns of the late Maharaja's income were made by the Foreign Minister on behalf of the Maharaja, and then subsequently corrections were made in the assessment at the instance of the Maharaja.</u> There is no doubt that the present Maharaja knew perfectly well that what was being assessed was the income of his predecessor.
>
> 16. Then when one comes to the actual assessment, it is made on the deceased Maharaja. It is, of course, wholly irregular to assess a deceased person. The assessment should have been made on the legal representative in respect of the income of the deceased. However, there again, the Patiala authorities seem to have accepted the view that it was an assessment made on the agent in respect of the income of the deceased person, because they have actually appealed against the assessment, and <u>if the assessment was an assessment on a dead man, it was obviously a nullity, and there is nothing to appeal from.</u>"

(Emphasis added)

30. In **Estate of Late Ranglal Jajodia** (Supra), the Constitution Bench of the Supreme Court speaking through A.N. Ray, J., in an appeal arising on a certificate

to appeal against a judgment of Madras High Court on a reference has interpreted the second proviso to Section 34(3) that is akin to Section 150 whereby the reassessment is saved from the bar of limitation as well as whether legal representative is an assessee entitled to benefit of Section 34(3). The relevant paragraph of the judgment is quoted hereinbelow:-

> "15. Counsel for Aruna Devi contended that the expression "any person" occurring in the second proviso to Section 34(3) of the Act could not be referable to a stranger and that Aruna Devi was a stranger. In support of that proposition reliance was placed on the decision of this Court in S.C. Prashar v. Vasantsen Dwarkadas [49 ITR 1] . The facts of that case are entirely different and are of no assistance for the reason that in the present appeals Aruna Devi was impleaded as a party to the assessment proceedings as a legal representative of Rangalal Jajodia. <u>The words "any person" were construed in Murlidhar's case to be confined to a person intimately connected with the assessment year under appeal</u>. It was said in that case that "modification or setting aside of assessment made on a firm, joint Hindu family, association of persons for a particular year may affect the assessment for the said year on a partner or partners of the firm, member or members of the Hindu undivided family or the individual, as the case may be. In such cases though the latter are not so nominee parties to the appeal, their assessments depend upon the assessments on the former. The said instances are only illustrative. It is not necessary to pursue the matter further. We would, therefore, hold that the expression 'any person' in the setting in which it appears must be confined to a person intimately connected in the aforesaid sense with the assessments of the year under appeal". In the present appeals the finding was that the assessment was made on Aruna Devi but no notice was given to her. The necessary direction was therefore given that notice should be given to her. Aruna Devi was heard and the assessment was made. She was not merely intimately connected with the assessment. She

was in fact an assessee. Therefore, the second proviso to Section 34(3) applied.

16. We are therefore of opinion that the second proviso to Section 34(3) of the Act applies to the present appeals because, first the proceedings against Rangalal Jajodia commenced on filing of returns before the Income Tax authorities; secondly, the assessment proceedings continued after the death of Rangalal Jajodia against the legal representatives Shankerlal Jajodia and Aruna Devi; thirdly, the assessment proceedings on being set aside and not cancelled pursuant to the appeal filed by Shankerlal Jajodia on the ground that notice was not given to Aruna Devi were continued, and, fourthly, the setting aside of the assessment was only on the ground that notice was not given to Aruna Devi and therefore the finding and direction was vital to the assessment proceedings. The High Court was in error in holding that the assessment proceedings were barred by limitation.

17. The <u>other question is as to the applicability of Section 24-B of the Act. Counsel on behalf of Aruna Devi repeated the contentions advanced in the High Court that Section 24-B does not cover the entire field of procedure to be followed in assessing the income of the deceased person.</u> The High Court held that Section 24-B of the Act applied but Aruna Devi should have been given opportunities to object to the assessment by repeating the entire procedure of Section 24-B of the Act as during the lifetime of the deceased. <u>Counsel for the Revenue Authority did not impeach the conclusion of the High Court that in relation to Aruna Devi the provisions of Section 24-B of the Act were to be followed de novo</u>. We are of opinion that the High Court correctly held that Section 24-B of the Act applies to the present case. The third sub-section of Section 24-B deals with a case of a person dying after having furnished a return. Further, in the present case the Income Tax Officer had reason to believe the return to be incorrect or incomplete, and he called upon Rangalal to furnish evidence. The Act further confers power on the Revenue Officer to make the assessment and determine the tax payable by the deceased on the basis of the assessment and for that purpose to issue appropriate notice which would have had to be served upon the deceased had he survived and in that behalf to require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of Sections 22 and 23 require from the deceased person.

These provisions adequately answer the contention of the appellant Aruna Devi.

18. For these reasons we hold that the High Court was in error in holding that the second proviso to Section 34(3) of the Act did not save the assessments and therefore we set aside the judgment of the High Court and allow the appeals of the Revenue authority in CAs Nos. 2336-2339 of 1966."

31. The aforesaid judgment of Supreme Court in **Estate of Late Ranglal Jajodia** (Supra) deals with the application of 34(3) akin to Section 150 to the peculiar facts of the case therein and procedure to be followed against the legal heir (Aruna Devi). Therefore, this case does not support the proposition of the counsel for the respondent for validating irregularity in defective notice.

32. The Supreme Court in **Jay Prakash Singh** (Supra) speaking through *B.P. Jeevan Reddy and S.B. Majumdar, JJ.* has considered the judgment of **Estate of Late Ranglal Jajodia (Supra)** and had approved **Maharaja of Patiala** (Supra). The relevant paragraphs of the judgment are quoted hereinbelow:-

"11. We are of the opinion that the High Court was not right in holding in the above circumstances that the assessment orders made are null and void. They are not. At the worst, they are defective proceedings — or irregular proceedings — as has been rightly held by the Appellate Assistant Commissioner and the tribunal. In Chatturam v. CIT [(1947) 15 ITR 302 (FC)] , it has been held by the Federal Court that the liability to pay the tax arises by virtue of Sections 3 and 4 of the Indian Income Tax Act, 1922 (charging sections) and that Section 22 and other sections of the said Act are merely machinery provisions to determine the quantum of tax. The following observations are apposite:

> " The income tax assessment proceedings commence with the issue of a notice. The issue or receipt of a notice is not, however, the foundation of the jurisdiction of the Income Tax Officer to make the assessment or of the liability of the assessees to pay the tax. It may be urged that the issue and service of a notice under Section 22(1) or (2) may affect the liability under the penal clauses which provide for failure to act as required by the notice. The jurisdiction to assess and the liability to pay the tax, however, are not conditional on the validity of the notice. Suppose a person, even before a notice is published in the papers under Section 22(1), or before he receives a notice under Section 22(2) of the Income Tax Act, gets a form of return from the Income Tax Office and submits his return, it will be futile to contend that the Income Tax Officer is not entitled to assess the party or that the party is not liable to pay any tax because a notice had not been issued to him. The liability to pay the tax is founded in Sections 3 and 4 of the Income Tax Act, which are the charging sections. Section 22 etc. are the machinery sections to determine the amount of tax."

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15. The facts in this case are telling. They are: Rangalal Jajodia filed his income tax return for the Assessment Years 1942-43 and 1943-44 under the Income Tax Act as well as under the Excess Profits Tax Act, 1940. Before the assessments were completed, he died (on 11-1-1946). Rangalal had a son, Shankar Lal, by his predeceased wife. He married a second time and had children from the second wife, Aruna Devi. Rangalal executed a Will totally disinheriting Shankar Lal and appointing Aruna Devi and another as executors of his Will. The Income Tax Officer, probably unaware of the Will, gave notice to Shankar Lal, who objected that he is not the legal representative of the deceased and that the second wife (Aruna Devi) and the other executor are the proper persons to be notified. The Income Tax Officer called for a copy of the Will but it was not produced. The Income Tax Officer thereupon completed the assessment describing the assessee as "the estate of late Shri Rangalal Jajodia by legal heirs and representatives Shri Shankar Lal Jajodia, son of Rangalal Jajodia, Smt Aruna

Devi, wife of Rangalal Jajodia and her children". Appeals were preferred by the second wife, Aruna Devi, contending inter alia that the assessments having been made without notice to her or the other executor were illegal and invalid. This plea was rejected by the Appellate Assistant Commissioner and the tribunal, who remitted the matters to the Income Tax Officer to complete the assessments after notice to Aruna Devi. The High Court too rejected the said contention whereupon the matter was brought to this Court, which held that absence of notice to Aruna Devi makes the assessment merely defective but not null and void. It is in this connection that the aforesaid observation was made. This Court sustained the direction given by the Appellate Assistant Commissioner to the Income Tax Officer to make fresh assessment on Aruna Devi in accordance with the provisions of the Act. This decision, in our opinion, is sufficient to reject the assessee's contention herein. <u>If an assessment made with notice to Shankar Lal (who was not really the legal representative of the deceased Rangalal) and without serving notice upon the lawful legal representatives (Aruna Devi, the other executor or Aruna Devi's children) — that too, despite the objection of Shankar Lal that he is not the legal representative and that notice must be sent to Aruna Devi etc., who are the legal representatives of the deceased Rangalal — is only 'defective' and not null and void, it would be rather odd to contend that assessments made on the basis of returns filed by one of the legal representatives (disclosing the total income received by the deceased) is null and void on the ground that notices were not sent to other legal representatives. The principle that emerges from the above decision is 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."</u>

(Emphasis added)

33. In **Maharaja of Patiala** (Supra), the court while dealing with the issue of validity of such notices, adopted a liberal and substance-oriented interpretation

and held that mere technical defects in the notice would not invalidate the assessment proceedings when the substance and purpose of the notice were fully understood by the assessee's representative. The Court further observed that the Foreign Minister, who was managing the affairs of the deceased Maharaja, clearly understood that the notices related to the income and assessment was issued for late Maharaja and had in fact participated in the proceedings by filing returns and pursuing appeals. The Court specifically held that although it would have been more proper to describe the noticee expressly as legal representative, the defect was merely technical and not fatal.

34. We are of the view the ratio laid down in **Maharaja of Patiala** (Supra) is not applicable to the facts of the present case as in that case return and appeal were filed by foreign minister of present Maharaja. However, both the concurring judges were at consensus ad idem on the proposition that the assessment on a dead person is obviously a nullity and for the same appeal does not lie. Though this judgment was relied upon by the counsel for the respondent but the per curium was in favour of assessee.

35. The Supreme Court in **Estate of Rangalal** (Supra) has validated the assessment proceedings in view of Section 24B but we are of the opinion that the case is distinguishable from the present case as the proceedings in the former case commenced during the lifetime of the deceased and continued after death. Moreover, the return was filed and notices were issued on the deceased during his lifetime, thereby making the assessment proceedings against legal representative valid.

36. Furthermore, in **Jai Prakash Singh** (Supra) quoted above, the Supreme Court holding in the peculiar facts of the case has held in favour of revenue, observing that failure to serve notice upon all the legal representatives within the period of limitation of a deceased assessee does not automatically render the assessment proceedings void *ab initio*, particularly where the legal representatives who were served had participated in the proceedings without prejudice. The Court observed that such defect in service of notice is essentially a procedural irregularity and not a jurisdictional nullity, unless prejudice is demonstrated.

37. The judgment in **Jay Prakash Singh** (Supra) is in a different periphery from the present one. It examines the situation where the notice was not served on all the legal heirs but the order mentions the names of all the legal heirs. Moreover, some of the legal heirs have filed return, appeared and produce relevant books and accounts in response to notice under Section 142 unlike the present situation where the petitioner has filed preliminary objection after receiving notice under Section 142 of the Act. Accordingly, the present one is clearly distinguishable on facts from **Jay Prakash Singh** (Supra) wherein the service of notice was held to be defective and hence was cured.

38. The Supreme Court in **Skylight Hospitality LLP** (Supra) has held as follows:-

> "In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292-B of the Income Tax Act. The special leave petition is dismissed. Pending applications stand disposed of."

39. In so far as the judgment of **Skylight Hospitality LLP** (Supra) is concerned, the Supreme Court holding in favour of revenue in the peculiar facts of the case has held that wrong name given in the notice was merely a clerical error which could be corrected

under section 292B as the Skylight Hospitality LLP, a limited liabilities partnership had taken over and acquired the rights and liabilities of M/s Skylight Hospitality (P) limited. Therefore, the decision in the case of **Skylight Hospitality** (Supra) is clearly distinguishable on facts and it does not support the case of revenue.

40. Furthermore, the judgment of Orissa High Court in **Sunil Kumar Sahu** (Supra) relied upon by the respondents deals with the distinction between issuance of notice and service of notice and the facts of the case clearly reveals that the notice was issued on the assessee who was alive within the limitation period even if the service of notice took place subsequently. Under such circumstances, the court has held that as long as service has taken place subsequently and the notice has been issued within the period of limitation, there would be no question of lack of jurisdiction on the part of the assessing officer. These facts are in complete contradiction to the present case wherein the notice was issued upon a dead person.

41. The judgment of the Madras High Court in **Gowthaman S** (Supra) relied upon by the respondents,

delivered by a Single Judge is in our view not the correct view in law as the same holds that proceedings against the dead person would be covered under Section 159(2)(b) of the Act. The reasoning therein is based on the fact that Section 159(3) of the Act makes it clear that the legal representative of the deceased shall for the purposes of the Act be deemed to be an assessee. The court therein upon examining Section 159 has come to the conclusion that if the petitioner has not taken any steps to inform the department about the death of the deceased assessee, the department can issue notice upon the dead assessee within the period of limitation and such issue of reassessment proceedings would be valid in law and the legal representative would be liable to participate in proceedings and face the consequences thereof. In our view, this interpretation would expand the scope of Section 159(2)(b) and allow the issue of reassessment notice on a dead person. In our view, Section 159(2)(b) only allows proceedings to be initiated against the legal representative within the time limitation provided. The sub-clause does not allow issue of a show cause notice on the dead assessee. The deeming provision under section 159(3) would only allow the revenue to issue notice under section 159(2)(b) as the legal representative would be deemed to be assessee. In our view, treating the deeming provision as an enabling provision to issue reassessment notice on the dead person and continue the same against the legal representative would amount to adding words to the statute or/and interpreting the statute in a broader and liberal manner. Such an interpretation in taxing statutes is not allowed keeping in view Article 265 of the Constitution of India and the interpretation of taxing as held in a catena of the Supreme Court judgments that have been discussed in greater detail in issue IV.

42. The Division Bench of the Delhi High Court in **Spice Entertainment Ltd. v. CST**[55] had held that framing of assessment against a non-existent entity/individual is impermissible and such defect cannot be cured. The relevant paragraphs of the judgment are quoted hereinbelow:-

> "3. In this backdrop, the question that arises for consideration is as to whether the assessment in the name of a company which had been amalgamated and had been dissolved with the said amalgamating company will be null and void or whether framing of assessment in the name of such a company is a mere procedural defect which can be cured. The appeals

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were, thus, finally admitted and heard on the following questions of law:

> "(*i*) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the action of the Assessing Officer in framing assessment in the name of "Spice Corp Ltd", after the said entity stood dissolved consequent upon its amalgamation with Mcorp (P) Ltd. w.e.f 1-7-2003, was a mere "procedural defect"?
>
> (*ii*) whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that in view of the provisions of Section 292B of the Act, the assessment, having in substance and effect, been framed on the amalgamated company which could not be regarded as null and void?"

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13. The Punjab & Haryana High Court stated the effect of this provision in *CIT* v. *Norton Motors*, 2004 SCC OnLine P&H 1276 : (2005) 275 ITR 595 : 275 ITR 595 in the following manner:

> "A reading of the above reproduced provision makes it clear that a mistake, defect or omission in the return of income, assessment, notice, summons or other proceeding is not sufficient to invalidate an action taken by the competent authority, provided that such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the provisions of the Act. <u>To put it differently, Section 292B can be relied upon for resisting a challenge to the notice, etc. only if there is a technical defect or omission in it. However, there is nothing in the plain language of that section from which it can be inferred that the same can be relied upon for curing a jurisdictional defect in the assessment notice, summons or other proceeding. In other words, if the notice, summons or other proceeding taken by an authority suffers from an inherent lacuna affecting his/its jurisdiction, the same</u>

> cannot be cured by having resort to Section 292B.
>
> ***
>
> 16. When we apply the ratio of aforesaid cases to the facts of this case, the irresistible conclusion would be provisions of Section 292B of the Act are not applicable in such a case. The framing of assessment against a non-existing entity/person goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect as there cannot be any assessment against a "dead person"."

(Emphasis added)

43. The aforesaid judgment of the Delhi High Court was affirmed by the Supreme Court in **CIT v. Spice Enfotainment Ltd.**[56] by dismissing the appeal being devoid of merits.

44. If the show cause notice is issued upon the legal representative within the time period prescribed the notice would be valid, otherwise the same would be liable to be fail. This proposition has been supported by the judgments in **Alamelu Veerappan** (Supra), **Savita Kapila** (Supra), **Shri Devendra** (Supra), **Bhupendra Bhikhalal Desai** (Supra) and **Mrs. Vanitha** (Supra).

45. All the other judgments cited by the counsel for respondents are patently distinguishable from the present case, and hence, cannot come to the rescue of the respondent with regard to the second issue.

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56 **(2020) 18 SCC 353**

46. Section 159 of the Act, 1961 applies to a situation where proceedings are initiated/pending against the assessee when he was alive and after his death the legal representative steps into the shoes of the deceased-assessee.

47. The scheme of Section 159(2) operates in two distinct fields: Section 159(2)(a) operates where proceedings have already been initiated against the deceased before his death and are thus deemed to have been taken against the legal representative, and may be continued from the stage they stood on the date of death; and Section 159(2)(b) where proceedings which could have been taken against the deceased if he had survived may be taken against the legal representative, meaning fresh proceedings must be initiated in the name of the legal representative, not in the name of the dead person.

48. As has been clearly articulated, after the death of the assessee, proceedings must be initiated against the legal heirs to treat the legal heirs as deemed assessees. Any notice issued in the name of a dead person cannot make the legal heirs binding unless a

proper notice is issued on the legal heirs within limitation for liability of deceased assessee.

49. The revenue's invocation of Section 159 to validate a notice issued after the death of the assessee is, therefore, wholly misconceived. Section 159 presupposes a valid foundational notice issued during the lifetime of the assessee. Where the initiating notice itself is void, Section 159 has no substratum to operate upon. The correct course, as mandated by Section 159(2)(b), was to issue a fresh notice within limitation directly upon the legal representative which was admittedly never done in the present case.

50. Upon perusal scheme of Section 159 of the Act as well as judgments of the High Courts in **Alamelu Verrappan** (Supra), **Savita Kapila** (Supra), **Devendra** (Supra), **Bhupendra Bhikalal Desai (Supra)** and **Mrs. Vanitha Gopal Shetty** (Supra) as well as the judgment of the Supreme Court in **Spice Infotainment** (Supra) and **Bhupendra Bhikhalal** (Supra), we may unequivocally hold that notice under Section 148 of the Act against a dead person is void *ab initio* rendering all the proceedings pursuant thereto as null and void.

Moresoever, stepping the legal representative/heir into the shoes of the deceased assessee for continuing proceedings, initiated against the deceased subsequent to his death cannot be taken recourse to under Section 159. If the proceedings were not initiated during the lifetime of the deceased and the notice was issued against the assessee subsequent to his death then the proceedings in terms of Section 159 cannot be continued against the legal representative/heir of the deceased. For proceeding against the legal representative of the deceased the notice under Section 148 ought to have been issued against the legal representatives of deceased assessee at the first instance within limitation. Since, the statute does not provide for intimation of death of deceased to the department, such duty with regard to factum of death cannot be cast upon the legal representative. Accordingly, the first issue is answered in the negative.

51. The judgments of **Devendra** (Supra), **Alamelu Veerappan** (Supra), **Savita Kapila** (Supra), **Bhupendra Bhikalal Desai** (Supra), **Spice Enfotainment Ltd.** (Supra) and **Skylight Hospitality** (Supra) have already been discussed while dealing with the first issue wherein it has been consistently held that

Section 292B, provides for curing the defect of the notice issued if the notice is in substance and in conformity with the intent and purpose of the Act. Indubitably, the issuance of notice against a dead person, in substance is not in conformity with the provision of Section 148 which is the foundation for reopening an assessment and jurisdiction can only be acquired, if the notice is issued to the correct person. Issuance of notice to a dead person is not merely a procedural error but a jurisdictional error that renders the entire proceedings void.

52. The revenue cannot validate a notice under Section 148 against a dead person by invoking Section 292B as it is not a mere procedural defect. Ergo, the notice issued against a dead assessee is void *ab initio* that cannot be cured taking recourse to Section 292B. We do not agree with the submission of the respondent that notice addressed to a dead person can be cured by substituting the name of deceased assessee with his legal heir. Accordingly, the second issue is also answered in the negative.

53. Now advancing to the third issue with regard to the contention of the respondent that petitioner has

waived of its objection by filing return and participating in re-assessment proceedings.

54. It was contended by the counsel for the petitioner that the petitioner did not file reply and return in response to notice under Section 142, and therefore, never submitted to the jurisdiction of the assessing officer. In fact, at every stage the petitioner specifically raised the objection that the proceedings initiated against the deceased person was void *ab initio* and without jurisdiction. Even if there is implicitly a waiver, acquiescence or consent by mere participation in proceeding that would not halt the petitioner from challenging the jurisdiction of the assessing officer for the reason that acquiescence, waiver or consent cannot confer jurisdiction upon an authority when the statute does not provide for it. For this proposition, counsel for the petitioner has placed reliance on the **Maruti Suzuki India limited** (Supra), **Krishnaawtar Kabra** (Supra), **Meet Lalwani** (Supra)**, Sandeep Chopra** (Supra)**, Gourang Anil Wakade** (Supra), **Neena Jatin Shah** (Supra).

55. On the contrary, the respondents submit that since the petitioner has filed the Income Tax Return in the name of the deceased representing him to be a living person, therefore, the blameworthy conduct cannot estop the department from continuing proceedings against the legal heir.

56. At this juncture one may look to the Division-bench judgment of the Bombay High Court in **Shri Devendra** (Supra) wherein the court had quashed the show cause notice under Section 148 as the jurisdictional requirement was not fulfilled and also held that resort to Section 292BB cannot be invoked as the primary condition for invoking Section 292BB is that assessee is put on notice and not the legal heir. The relevant paragraph of the judgment is quoted hereinbelow:-

> "14. Another contention of the respondents is that as the petitioner has responded to the notice and participated in the proceeding, section 292BB comes into picture and the notice issued against a dead person cannot be a nullity...
>
> > "14. <u>A cursory look at section 292BB would show that the same would apply only to two types of proceedings, namely, (i) proceedings, in which, the assessee had appeared and (ii) any inquiry, in which, the assessee had co-operated.</u>
> >
> > 15. <u>In the case on hand, the assessee was dead. It was the assessee's son, who appeared and perhaps co-operated. Therefore, the</u>

primary condition for invocation of section 292BB is absent in the case on hand.

16. Section 292BB is in place to take care of contingencies where an assessee is put on notice of the initiation of proceedings, but who takes advantage of defective notices or defective service of notice on him. It is trite to point out that the purpose of issue of notice is to make the noticee aware of the nature of the proceedings. Once the nature of the proceedings is made known and understood by the assessee, he should not be allowed to take advantage of certain procedural defects. That was the purpose behind the enactment of section 292BB. It cannot be invoked in cases where the very initiation of proceedings is against a dead person.""

(Emphasis added)

57. In **Maruti Suzuki India limited** (Supra), the two-judge bench of the Supreme Court speaking through Dr. D.Y. Chandrachud, J. held in favour of assessee, and authoritatively observed in relation to Section 292B and Section 292BB, that the framing of assessment against a non-existent entity is impermissible and participation of new entity/person who was not an assessee does not create estoppel against law or validate proceedings that are otherwise void *ab initio*. The relevant paragraphs of the judgment are quoted hereinbelow:-

"21. In Spice Entertainment [Spice Entertainment Ltd. v. Commr. of Service Tax, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] , a Division Bench of the Delhi High Court dealt with the question as to whether an assessment in the name of a company which has been amalgamated and has been dissolved is null and void or, whether the framing of an assessment in the name of such company is merely a procedural defect which can be cured. The High Court held that upon a notice under Section 143(2) being addressed, the amalgamated company had brought the fact of the amalgamation to the notice of the assessing officer. Despite this, the assessing officer did not substitute the name of the amalgamated company and proceeded to make an assessment in the name of a non-existent company which renders it void. This, in the view of the High Court, was not merely a procedural defect. Moreover, the participation by the amalgamated company would have no effect since there could be no estoppel against law : (SCC OnLine Del paras 11-12)

> "11. After the sanction of the scheme on 11-4-2004, Spice ceases to exit w.e.f. 1-7-2003. Even if Spice had filed the returns, it became incumbent upon the Income Tax Authorities to substitute the successor in place of the said "dead person". When notice under Section 143(2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the assessing officer made the assessment in the name of M/s Spice which was non-existing entity on that day. In such proceedings an assessment order passed in the name of M/s Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppel against law.
>
> 12. Once it is found that assessment is framed in the name of non-existing entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292-B of the Act."

Following the decision in Spice Entertainment [Spice Entertainment Ltd. v. Commr. of Service Tax, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] , the Delhi High Court quashed assessment orders which were framed in the name of the amalgamating company in:

(i) Dimension Apparels [CIT v. Dimension Apparels (P) Ltd., 2014 SCC OnLine Del 7588 : (2015) 370 ITR 288] ;

(ii) Micron Steels [CIT v. Micron Steels (P) Ltd., 2015 SCC OnLine Del 7321 : (2015) 372 ITR 386] ; and

(iii) Micra India [CIT v. Micra (India) (P) Ltd., 2015 SCC OnLine Del 14631] .

22. In Dimension Apparels [CIT v. Dimension Apparels (P) Ltd., 2014 SCC OnLine Del 7588 : (2015) 370 ITR 288] , a Division Bench of the Delhi High Court affirmed the quashing of an assessment order dated 31-12-2010. The respondent had amalgamated with another company and thus, ceased to exist from 7-12-2009. The Court rejected the argument of the Revenue that the assessment was in substance and effect in conformity with the Act by reason of the fact that the assessing officer had used correct nomenclature in addressing the assessee; stated the fact that the company had amalgamated and mentioned the correct address of the amalgamated company. It was the Revenue's contention that the omission on the part of the assessing officer to mention the name of the amalgamated company is a procedural defect. The Delhi High Court rejected this contention. In doing so, it relied on the holding in Spice Entertainment [Spice Entertainment Ltd. v. Commr. of Service Tax, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] , where the High Court expressly clarified that "the framing of assessment against a non-existing entity/person" is a jurisdictional defect. The Division Bench also relied on the holding in Spice Entertainment [Spice Entertainment Ltd. v. Commr. of Service Tax, 2011 SCC OnLine Del 3210 : (2012) 280 ELT 43] that participation by the amalgamated company in proceedings does not cure the defect as "there can be no estoppel in law", to affirm the quashing of the assessment order.

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36. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a coordinate Bench of two learned Judges which dismissed the appeal of the Revenue in Spice Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] on 2-11-2017. The decision in Spice Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] has been followed in the case of the

respondent while dismissing the special leave petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment [CIT v. Spice Enfotainment Ltd., (2020) 18 SCC 353] ."

(Emphasis added)

58. Section 292BB creates a statutory estoppel wherein an assessee has appeared or cooperated in proceedings without objecting to the service of notice; such an assessee shall be deemed to have been duly served and cannot raise a plea of non-service thereafter.

59. From the perusal of Section 292BB it is clear that it applies only to two types of proceedings; namely when the assessee had himself appeared, and secondly, when the assessee had cooperated in the enquiry. In the present case, the assessee was dead at the time of issuance of notice. It was the assessee's wife who appeared and allegedly cooperated in the proceedings.

60. The primary condition for invocation of Section 292BB is absent in the present case. Section 292BB is in place to take care of contingencies where assessee is put on notice of the initiation of proceedings. The purpose behind the enactment of Section 292BB is to make the noticee aware of the nature of proceedings and once the nature of proceedings is made known and understood by

the assessee, he should not be allowed to take advantage of certain procedural defects.

61. The argument of the respondent that the petitioner has waived of its objection by participation in proceeding cannot be countenanced by us for two reasons. Firstly, petitioner has filed objection before the department after receiving notice stating that the assessee has already died, and secondly, even if it is assumed that the petitioner has participated then also mere participation cannot confer jurisdiction upon the authority when the statute is silent on the same as observed by the Supreme Court in **Maruti Suzuki** (Supra).

62. In the present case, right from the inception the petitioner has objected to the validity of the notice, and thereafter, to the continuation of proceeding and has at no point of time participated in the proceedings, by providing documents in response to notice issued under section 142.

63. Consequently, the third issue is answered in the negative, with the court holding that a notice issued in

the name of the deceased person is not saved by Section 292BB of the Act and is therefore legally unsustainable.

64. Moving towards the fourth issue with regard to the justification of reassessment proceedings on equitable grounds and interpretation of taxing statutes.

65. It has been been submitted by the petitioner that validating reassessment against the dead by taking recourse to the principles of estoppel, waiver, acquiescence, approbate and reprobate which are all equitable doctrines cannot be countenanced as it is trite law that equity has no place in taxation statutes.

66. Per contra, the counsel for the respondent contends that the conduct of the petitioner completely disentitles her from invoking discretionary writ jurisdiction under Article 226 in view of the return of income having been filed and electronically verified in the name of the deceased amounting to deliberate concealment and abuse of the provisions of law by legal representatives. For this proposition reliance in this regard is placed upon the judgment of the Hon'ble Supreme Court in **V. MR. P. Firm Muar** (Supra).

67. I must attach a caveat here that estoppel, waiver and acquiescence, approbate and reprobate are all equitable doctrines. Traditionally tax laws have their own interpretation regime wherein strict interpretation of the statute and preference for literal meaning is the order of the day.

68. The kenspeckle observation of Rowlett, J. adroitly remarked in the judgment of **Cape Brandy Syndicate v. Inland Revenue Commissioners**[57] which is pertinent to be looked into is quoted hereinbelow:-

> “There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”
>
> **(Emphasis added)**

69. The doctrine of estoppel puts an embargo on a party from resiling from a representation upon which another has relied to his detriment. In ordinary civil law, estoppel is a powerful weapon. In tax law, however, it operates under severe constraints.

70. Furthermore, in a three judge-Bench constituting *J.C. Shah, S.M. Sikri and K. Subba Rao, JJ.*, the Supreme Court in **MR. P. Firm Muar** (Supra)

57 **(1921) 1 KB 64**

speaking through K.Subba Rao, J., has held that doctrine of estoppel would not hold the field in tax law in the case where a non taxable income under Income Tax Act, has been taxed. The relevant paragraph of the judgment is quoted hereinbelow:-

> "13. The Central Board of Revenue issued further instructions on the above scheme by its letter dated December 1, 1947. One of the instructions was that debts due to the assessee if paid in Japanese currency would be taken to have been satisfied to that extent and excluded from the asset side in the balance sheet, provided that if any recovery was subsequently made, it was to be taken as income. Briefly stated, under the scheme the losses suffered by an assessee during Assessment Years 1942-43 to 1946-47 were set off against his profits for Assessment Years 1942-43 and 1941-42 and any unabsorbed loss could not be carried forward. The debts discharged in Japanese currency were excluded from the assets side in the balance sheet but the authority reserved for itself the right to treat any recoveries subsequently made as income. The contention is that the assessees having opted to accept the scheme, derived benefit thereunder, and agreed to have their discharged debts excluded from the asset side in the balance sheet subject to the condition that subsequent recoveries by them would be taxable income, they are now precluded, on the principle of "approbate and reprobate", from pleading that the income they derived subsequently by realization of the revived debts is not taxable income. The doctrine of "approbate and reprobate" is only a species of estoppel; it applies only to the conduct of parties. As in the case of estoppel, it cannot operate against the provisions of a statute. If a particular income is not taxable under the Income Tax Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. Equity is out of place in tax law; a particular income is either exigible to tax under the taxing statute or it is not. If it is not, the Income Tax Officer has no power to impose tax on the said income."

(Emphasis added)

71. Another recent *locus classicus* on this aspect is the decision of Constitution Bench of the Supreme Court

in **Commr. of Customs v. Dilip Kumar & Co.**[58] presided over by *Ranjan Gogoi, N.V. Ramana, R. Banumathi, M.M. Shantanagoudar And S. Abdul Nazeer, JJ.* wherein the court speaking through *N.V. Ramana, J.* has regimented the proposition that in case of ambiguity, a taxing statute should be construed in favour of the assessee. Forbye, the court has held that every taxing statute including charging, computation and exemption clauses at the threshold stage should be interpreted strictly and after becoming eligible at later stage should be construed liberally. The relevant paragraphs of the judgment are quoted hereinbelow:-

> "26**.** Next, we may consider the meaning and scope of "strict interpretation", as evolved in Indian law and how the higher courts have made a distinction while interpreting a taxation statute on one hand and tax exemption notification on the other. In Black's Law Dictionary (10th Edn.) "strict interpretation" is described as under:
>
> Strict interpretation. (16c) 1. An interpretation according to the narrowest, most literal meaning of the words without regard for context and other permissible meanings. 2. An interpretation according to what the interpreter narrowly believes to have been the specific intentions or understandings of the text's authors or ratifiers, and no more. Also termed (in senses 1 & 2) strict construction, literal interpretation; literal construction; restricted interpretation; interpretatio stricta; interpretatio restricta; interpretatio verbalis. 3. The philosophy underlying strict interpretation of statutes. Also termed as close interpretation; interpretatio restrictive. See strict constructionism under constructionism. Cf. large interpretation; liberal interpretation (2).

58 **(2018) 9 SCC 1**

“Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular case.” Willam M. Lile et al., Brief Making and the Use of Law Books 343 (Roger W. Cooley & Charles Lesly Ames eds., 3d Edn. 1914).

“Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meaning may be wider than the other, and the strict (i.e. narrow) sense is not necessarily the strict (i.e. literal) sense.” John Salmond, Jurisprudence 171 n. (t) [Glanville L. Williams (Ed.), 10th Edn. 1947].

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34. The passages extracted above, were quoted with approval by this Court in at least two decisions being CIT v. Kasturi and Sons Ltd. [CIT v. Kasturi and Sons Ltd., (1999) 3 SCC 346] and State of W.B. v. Kesoram Industries Ltd. [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201] (hereinafter referred to as “Kesoram Industries case”, for brevity). In the later decision, a Bench of five Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute:

“(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly.”

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55. There is abundant jurisprudential justification for this. In the governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must

be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualising different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the Revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the Revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view."

(Emphasis added)

72. A conjoint reading of the preceeding judgments leads to the inexorable conclusion that if income is not taxable under the statute, the tax authorities cannot compel the assessee into paying tax by pointing to some prior representation or admission by the assessee that the income is taxable. The charge must flow from the

statute but not from any representation/reply. The provision of taxing statutes should operate within the fringes of its jargon and not beyond it for conferring jurisdiction in case it is not provided. Apropos the waiver and acquiescence, a taxpayer cannot implicitly waive his right and allow the revenue to forgo to the statutory conditions for imposing a tax. There is no waiver or estoppel against a statute. Hence, where the statute prescribes a jurisdictional condition such as the requirement that a notice under Section 148 be served on a living person, the conduct of the legal heir cannot waive compliance with that jurisdictional requirement.

73. In re '*qui approbat non reprobat*' that is the doctrine of approbate and reprobate which proffers that a party cannot be allowed to 'blow hot and cold'. We hold that this doctrine can apply only within the statutory framework. For instance, if an assessee who has claimed and received a deduction under a particular head cannot simultaneously contend that the income under that head is not taxable. But this operates only where both positions are within the statutory framework, not as a means to impose or excuse a liability that the statute creates or excludes. Furthermore, it has been contended

by the department that the estate of a deceased assessee or a taxpayer who has taken advantage of a procedural defect is being "unjustly enriched" at the expense of the public exchequer. The aforesaid argument of unjust enrichment as contended by the counsel for the respondent has no relevance in the context of tax law. If the assessee is not liable to pay tax under the statute, the fact that he may benefit from the strict application of the law does not justify imposing the tax by importing equitable notions of unjust enrichment.

74. The reason for the strict exclusion of equity is well-reasoned and principled as the citizen's liability to pay tax must be certain and predictable, arising only from clear statutory language. If equity were allowed to operate in tax law, the clarity and certainty that the rule of law requires in the imposition of fiscal burdens would be annihilated.

75. Now comes the issue of interpretation of Section 148 that has a unique interpretative paradox in the Act.

76. The Supreme Court has authoritatively resolved this paradox by holding that Section 148 operates on a

two-tier interpretive framework. Jurisdictional conditions and conditions precedent within Section 148 which is to be strictly construed and procedural aspects, forms, and technical requirements which is to be liberally and purposively construed to ensure the charge does not fail.

77. The Supreme Court in **CIT v. Amarchand N. Shroff**[59], laid down the foundational principle that elaborate provisions were made in the Act specifically because the statute requires the person sought to be assessed to be in existence at the time of assessment. The relevant paragraph of the judgment is quoted hereinbelow:-

> "The individual assessee has ordinarily to be a living person and there can be no assessment on a dead person and the assessment is a charge in respect of the income of the previous year and not a charge in respect of the income of the year of assessment as measured by the income of the previous year: Wallace Brothers & Co. Ltd. v. Commissioner of Income-tax [1948] 16 I.T.R. 240, 244 (P.C). By section 24B the legal representatives have, by fiction of law, become assessee as provided in that section but that fiction cannot be extended beyond the object for which it was enacted. As was observed by this court in Bengal Immunity Co. Ltd. v. State of Bihar ((1955) 2 S.C.R. 603, 646) legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field. In the present case the fiction is limited to the cases provided in the three sub-sections of section 24B and cannot be extended further than the liability for the income received in the previous year."

(Emphasis added)

59 **(1963) 48 ITR 59 (SC); 1962 SCC OnLine SC 193**

78. The Supreme Court in **Calcutta Knitwears** (Supra) in relation to strict interpretation of taxing statute has held as follows:-

> "20. Section 158-BD of the Act provides for "undisclosed income" of any other person. Before we proceed to explain the said provision, we intend to remind ourselves of the first or the basic principles of interpretation of a fiscal legislation. It is time and again reiterated that the courts, <u>while interpreting the provisions of a fiscal legislation should neither add nor subtract a word from the provisions of instant meaning of the sections.</u> It may be mentioned that the foremost principle of interpretation of <u>fiscal statutes in every system of interpretation is the rule of strict interpretation which provides that where the words of the statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule</u>. (Swedish Match AB v. SEBI [(2004) 11 SCC 641 : AIR 2004 SC 4219] and CIT v. Ajax Products Ltd. [(1965) 55 ITR 741 (SC)])
>
> 23. Lord Granworth in Gundry v. Pinniger [(1852) 21 LJ Ch 405 : (1843-60) All ER Rep 403 : 42 ER 647] , has observed that: (ER p. 648)
>
> "… <u>to adhere as closely as possible to the literal meaning of the words used, is a cardinal rule from which if we depart we launch into a sea of difficulties which it is not easy to fathom</u>."
>
> That is to say, once the literal rule is departed, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of the edifice of fiscal legislations which impose economic duties and sanctions.
>
> 24. <u>In taxing statutes, even if the literal interpretation results in hardship or inconvenience, it has to be followed</u> (G.P. Singh's Principles of Statutory Interpretation, 12th Edn., 2010, Lexis Nexis Butterworths Wadhwa Nagpur; Bennion on Statutory Interpretation, 5th Edn., Lexis Nexis, p. 863; Vepa P. Sarathi, Interpretation of Statutes, 5th Edn., Eastern Book Company, Chapter VIII, Taxing Statutes). This Court in CIT (Ag) v. Keshab Chandra Mandal [1950 SCC 205 : AIR 1950 SC 265] , <u>has held that hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is</u>

clear and apparent. Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint to do so. (Pandian Chemicals Ltd. v. CIT [(2003) 5 SCC 590] , Nasiruddin v. Sita Ram Agarwal [(2003) 2 SCC 577 : AIR 2003 SC 1543] , Bhaiji v. SDO [(2003) 1 SCC 692] , J.P. Bansal v. State of Rajasthan [(2003) 5 SCC 134 : 2003 SCC (L&S) 605] , State of Jharkhand v. Govind Singh [(2005) 10 SCC 437 : 2005 SCC (Cri) 1570] , Jinia Keotin v. Kumar Sitaram Manjhi [(2003) 1 SCC 730] , Shiv Shakti Coop. Housing Society v. Swaraj Developers [(2003) 6 SCC 659] , Grasim Industries Ltd. v. Collector of Customs [(2002) 4 SCC 297] and Union of India v. Hansoli Devi [(2002) 7 SCC 273] .)

25. The Australian High Court in Federal Commr. of Taxation v. Westraders Pty. Ltd. [(1980) 144 CLR 55 (Aust)] , considered the scope of Section 36-A of the Income Tax Assessment Act, 1936 (Cth), which on a literal interpretation allowed the taxpayer to make a profit and still claim a loss for tax purposes. The Commissioner argued that the taxpayer's conduct amounted to a tax avoidance scheme and should therefore be disallowed under Section 260 of the Income Tax Assessment Act, 1936 (Cth). The Court held that under a literal interpretation Section 36-A could apply to allow the taxpayer to claim a loss. Barwick, C.J., speaking for the majority relied on the decision in IRC v. Duke of Westminster [1936 AC 1 : 1935 All ER Rep 259 (HL)] , which advocated that the literal approach be applied when interpreting taxation legislation and stated the following:

"It is for Parliament to specify, and to do so, in my opinion, as far as language will permit, with unambiguous clarity, the circumstances which will attract an obligation on the part of the citizen to pay tax. The function of the court is to interpret and apply the language in which Parliament has specified those circumstances. The court is to do so by determining the meaning of the words employed by Parliament according to the intention of Parliament which is discoverable from the language used by Parliament. It is not for the court to mould or to attempt to mould the language of the statute so as to produce some result which it might be thought Parliament may have intended to achieve, though not expressed in the actual language employed."

26. In Cooper Brookes (Wollongong) Pty. Ltd. v. Federal Commr. of Taxation [(1981) 147 CLR 297 (Aust)] it is held that in a taxing statute if the language is unambiguous, departing from the literal approach "may lead Judges to put their own ideas of justice or social policy in place of the words of the statute". Similar view was espoused in C. & J.

Clark Ltd. v. IRC [(1975) 1 WLR 413 : (1975) 1 All ER 801 (CA)] and BP Refinery (Westernport) Pty. Ltd. v. Shire of Hastings [(1977) 180 CLR 266 (Aust)] .

27. In Hepples v. Federal Commission of Taxation (No. 2) [(1992) 173 CLR 492 (Aust)] , the High Court of Australia unequivocally favoured the principle that taxation legislation should be subject to a strict literal interpretation and opined that such an approach was supported by "common sense". Therein, the taxpayer, on ceasing to be employed, was paid $40,000 by his employer in exchange for the taxpayer agreeing that he would not carry on or be interested in certain businesses and would not divulge any trade secrets. The issue before the Court was whether or not such payment would form part of the taxpayer's assessable income for the purposes of the Income Tax Assessment Act, 1936 (Cth). It was held that since the Act did not provide for such payments to form part of a taxpayer's assessable income, the payment would not be assessable.

29. In Prakash Nath Khanna v. CIT [(2004) 9 SCC 686] , this Court has explained that the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency. Where the legislative intent is clear from the language, the Court should give effect to it. (Delhi Financial Corpn. v. Rajiv Anand [(2004) 11 SCC 625] and State of A.P. v. Road Rollers Owners Welfare Assn. [(2004) 6 SCC 210])

31. Thus, the language of a taxing statute should ordinarily be read and understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation. A taxing statute should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play. Nothing is to be read in, nothing is to be implied; one can only look fairly at the language used and nothing more and nothing less. (J. Srinivasa Rao v. State of A.P. [(2006) 12 SCC 607 : (2006) 13 Scale 27] and Jagdambika Pratap Narain Singh v. CBDT [(1975) 4 SCC 578 : 1975 SCC (Tax) 356 : (1975) 100 ITR 698] .)"

(Emphasis added)

79. The recent Division bench judgment of the Supreme Court in **Vikram Sujitkumar Bhatia** (Supra), penned by M.R.Shah, J. has clarified the law with regard to interpretation of Section 153-C of the Act and had held it to be a machinery provision. The ratio laid down in the aforesaid judgment is quoted hereinbelow:-

> "62. Therefore, if the submission on behalf of the respective respondent assessees that despite the fact that the incriminating materials have been found in the form of books of account or documents or assets relating to them from the premises of the searched person, still they may not be subjected to the proceedings under Section <u>153-C solely on the ground that the search was conducted prior to the amendment is accepted, in that case, the very object and purpose of the amendment to Section 153-C, which is by way of substitution of the words "belongs or belong to" to the words "pertains or pertain to" shall be frustrated.</u> As observed hereinabove, any interpretation, which may frustrate the very object and purpose of the Act/statute shall be avoided by the Court. <u>If the interpretation as canvassed on behalf of the respective respondents is accepted, in that case, even the object and purpose of Section 153-C, namely, for assessment of income of any other person (other than the searched person) shall be frustrated.</u>"

(Emphasis added)

80. The Supreme Court in **Vikram Sujitkumar Bhatia** (Supra) has interpreted Section 153-C as a machinery provision as the primary intention of the parliament behind that provision was to proceed against the third party in case any incriminating material was found against the third party during the search conducted by the department which was being frustrated, if it was

construed strictly. In the peculiar facts of the aforesaid case the provision was interpreted liberally to suppress the mischief the legislature intended to suppress so that the charge did not fail.

81. Following the judgments of the Supreme Court in **Amarchand N. Shroff** (Supra), the judgment of Bombay High Court in **Sumit Balkrishna** (Supra) and the judgment of Delhi High Court in **Savita Kapila** (Supra), it is abundantly clear that Section 148, at the very inception of reassessment should be construed strictly, as it is not merely a machinery provision but also a jurisdictional provision by reason of its dual and paradoxical nature. The following principles may be culled out for construing Section 148 with strict rigour:-

I. Reason to believe and recording of reason;

II. Prior Approval under Section 151 before issuing notice;

III. The limitation period (Section 149);

IV. The identity of the person to whom the notice is addressed; and

V. The jurisdictional competence of the issuing authority;

82. In the present case, it is undisputed that the Income Tax Return was filed in the name of the deceased assessee and verified through the Aadhaar OTP of the deceased, subsequent to his death, by the petitioner. The revenue is correct in its stand that the petitioner has wrongly filed the return contrary to the provisions of Section 140 of the Act and the same may also attract penal consequences under Section 277 of the Act on the ground of false verification. Therefore, the revenue is at liberty to proceed against the petitioner for violation of the provisions of Section 140 of the Act. However, the argument of the revenue, that the petitioner on the grounds of equity should not be allowed to invoke the discretionary and equitable writ jurisdiction, is without any basis in law as a writ of certiorari is being sought for quashing of a show cause notice on the ground that the same is void *ab initio*. The conduct of the petitioner in filing the return of her husband after his death does not confer jurisdiction upon the revenue to act in a manner contrary to the Act. The revenue cannot be allowed to defend its action and act in an illegal manner by issuing a

notice which is void *ab initio* taking the plea that the petitioner had acted in an illegal manner.

83. Ergo, the reassessment proceedings initiated under Section 148 of the Income-tax Act, 1961, cannot be sustained on equitable considerations merely to safeguard the interests of the revenue. It is a settled principle that equity has little or no role to play in the interpretation of taxing statutes, particularly where the provision confers jurisdiction upon the assessing authority. The validity of reassessment proceedings must, therefore, be tested solely on the touchstone of the statutory requirements prescribed under the Act. If the mandatory conditions precedent for the assumption of jurisdiction are not strictly fulfilled, the proceedings are rendered void, irrespective of the amount of tax sought to be recovered or the perceived loss to the revenue. Accordingly, the fourth issue is answered in the negative.

84. Closing in on towards the fifth issue with regard to the issuance of fresh show cause notice by lifting the bar of limitation in terms of Section 150(1) of the Act.

85. The counsel for the petitioner relies on sub-section(2) of Section 150 and has submitted that no fresh

show cause notice can be issued as the limitation period has already expired. The protection under Section 150(1) could have been available to the respondents only if the assessment ‘order’ itself had been passed within the statutory period of limitation. Since the order itself is beyond limitation, Section 150(1) affords no assistance whatsoever to the respondent department. Accordingly, the very ‘order’ sought to be relied upon by the respondent department is itself barred by limitation. Once the assessment ‘order’ itself is beyond limitation, Section 150(1) cannot be invoked to revive or validate proceedings which had already become time barred.

86. Furthermore, it has been submitted that extending the benefit of Section 150(1) in the facts of the present case would effectively amount to conferring jurisdiction upon the Assessing Officer which otherwise does not exist in view of the bar created under Section 149 of the Act as conferment of jurisdiction is purely a legislative function and jurisdiction cannot be created either by consent of parties, acquiescence, waiver or even by orders of a superior court contrary to statutory provisions. This submission relates to role of equity in

taxation statutes which we have already dealt with in the fourth issue.

87. For his aforesaid proposition counsel for the petitioner has relied on **Deoki Nandan Agarwal** (Supra), **Jagmittar Sen Bhagat** (Supra), **Sujata Devi** (Supra), **Sukhdayal Pahwa** (Supra), **Eastern Coal Co. Ltd**. (Supra), **Glass Equipment (India) Ltd.** (Supra) and **Mahadeo Prasad Bais** (Supra).

88. Per contra, counsel for the respondent relies on sub-section(1) of Section 150 of the Act and submitted that a 'finding' or 'direction' by the Court that the escaped income of deceased assessee is required to be assessed in the hands of/through his legal heir under Section 159 would automatically amount to a consequential direction to the Assessing Officer to proceed afresh by issuing notice to the legal heir. Such notice would fall squarely within the ambit of Section 150(1) and would not be barred by Section 149. The very object of Section 150 is to ensure that lawful assessment or reassessment is not frustrated where action becomes necessary in consequence of a 'finding' or 'direction' of a Court or appellate/revisional authority.

89. Furthermore, the counsel for the respondent submits that the interpretation canvassed by the petitioner would render Section 150 otiose and defeat the legislative scheme. The petitioner cannot be permitted to argue, on the one hand, that the existing notice must be quashed as having been issued in the name of the deceased assessee and, on the other hand, that no fresh notice can be issued because limitation under Section 149 has expired. Such a contention of petitioner would convert a procedural objection into complete immunity from assessment, despite the express mandate of Section 159 that tax liability survives against the legal representative and despite the overriding machinery contained in Section 150.

90. For his aforesaid proposition counsel for the respondent has relied on **Sukhdayal Pahwa** (Supra) , **Eastern Coal Co. Ltd.** (Supra), **Glass Equipment (India) Ltd.** (Supra), **Ashish Agarwal** (Supra) and **Mahadeo Prasad Basis** (Supra).

91. At this moment, it is pertinent to look at sub-clause (1) and (2) of Section 150, which is quoted hereinbelow:-

> "150. (1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.
>
> (2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken."

92. Moreover, it is also pertinent to refer to Section 153(2) of the Act and the proviso to this subsection as amended w.e.f. 1st April, 2017 that provides for timeline for completion of reassessment proceedings and passing an order under Section 147 which is quoted hereinbelow:-

> "No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served: Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted."

93. With regard to lifting bar of limitation for issuance of fresh notice under Section under Section 148, a three-judge Bench judgment of the Supreme Court in **Mahadeo Prasad Bais** (Supra) may be looked into

wherein the court recognized the broad remedial scope of Section 150 of the Income-tax Act and approved the principle that the provision is intended to preserve the efficacy of reassessment proceedings undertaken pursuant to findings or directions contained in appellate proceedings. The Hon'ble Supreme Court approved the reasoning adopted in **Eastern Coal Co. Ltd.** (Supra) and emphasized that Section 150 operates to remove the ordinary bar of limitation where reassessment becomes necessary to give effect to such findings or directions. The relevant paragraphs of the judgment are quoted hereinbelow:-

> "4. <u>The issue involved in this appeal is basically a short one turning on the language of Section 150(1)</u>. Before considering the interpretation of this section, we may, however, point out that, on this question, there appears to be a conflict of judicial opinion between the several High Courts. The Allahabad High Court, in the decision presently under appeal [(1980) 125 ITR 49 : 1978 TLR 344 (All)] and the Calcutta High Court in ITO v. Eastern Coal Co. Ltd. [(1975) 101 ITR 477 (Cal)] have taken the view that a reassessment in such circumstances is saved by the provisions of Section 150(1) of the 1961 Act. An earlier Allahabad decision in CIT (Addl.) v. Kamalapat Motilal [(1977) 110 ITR 769 : 1977 TLR 233 : 1976 UPTC 693 (All)] and an earlier Bombay decision in Ambaji Traders P. Ltd. v. ITO [(1976) 105 ITR 273 (Bom)] took a similar view on the analogous provision contained in Section 153(3) of the 1961 Act but a contrary view was taken by the latter High Court in the later case reported as CIT v. T.P. Asrani [(1980) 122 ITR 735 : (1979) 11 CTR (Bom) 298] . Both sets of decisions have placed reliance on certain observations of this Court in differing contexts. But it will be best to have a look at the statutory

provisions first, in the context of the facts of the present case.

5. To start with, there is no dispute that reassessment proceedings were rightly initiated under Section 148 of the Act. It is also common ground that on the language of Section 148, as it stood at the relevant time, no notice under Section 148 could have been issued in March 1977 for the assessment years in question. The revenue can successfully support the validity of this notice only by reference to Section 150(1). Two questions then arise: (i) Are the provisions of Section 150(1) attracted? (ii) If yes, do they save the impugned proceedings? The answer to the first question is furnished by Section 297(2)(d)(ii), the very clause which authorises the issue of the notice of reassessment under Section 148. It permits the issue of the notice under Section 148, "subject to the provisions contained in Section 149 or Section 150". Though the words "subject to" may be appropriate in the context of Section 149 and Section 150(2) (which place restrictions on the issue of the notice under Section 148), they are somewhat inappropriate apropos Section 150(1) which relaxes the conditions for issue. But there is no doubt that the statute clearly intends that the benefit of enlargement of the time limited under Section 149 should be available in respect of the notice issued under Section 148 read with Section 297(2)(d)(ii). The answer to the second question is furnished by Section 150(1) itself. It removes the bar of time when the reassessment proceedings are initiated in consequence of or to give effect to a finding contained in an order passed by any authority in any proceeding by way of appeal, reference or revision. There is no difficulty here for the orders of the Tribunal and the High Court for the several years between 1949-50 and 1961-62 were passed in proceedings by way of appeals and reference and there is no dispute that the reassessment proceedings have been initiated to give effect to findings in such orders. There is, however, a catch in applying the terms of Section 150(1) to this case. There is no doubt that the whole idea of the sub-section was to lift the embargo placed on initiation of reassessment proceedings and to remove the time-limit where the notice of reassessment is issued with a view to give effect to a direction or finding contained in an appellate order or an order passed on revision or on reference. Unfortunately, however, in expressing its above intention, the legislature has worded the exemption from time-limit so as to cover only cases where the finding or direction is contained in an order passed by any such authority in any such proceeding "under this Act" i.e. the 1961 Act. In the present case the assessments for 1949-

50 and subsequent years in the case of the family were made under the old Act and were the subject matters of appeal to the Appellate Assistant Commissioner and Tribunal and of reference to the High Court under the provisions of the 1922 Act. In other words, the finding in consequence of which the assessments presently under consideration are being sought to be reopened is a finding contained in orders passed not 'under this Act' but in orders passed under the 1922 Act. Literally applied, therefore, the language of Section 150(1) does not help the department to overcome the bar of limitation otherwise imposed by Section 149.

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10. The position is no doubt a little different here. The provisions of Section 150(1) have been specially made applicable and operative in respect of the notice under Section 148 issued in pursuance of Section 297(2)(d)(ii) and, as pointed out earlier, the application of the provisions of Section 297(2)(d)(ii) gives rise to two sets of situations to one of which the language of Section 150(1) would squarely apply and so the interpretation sought for by the appellant does not render the words of Section 150(1) redundant. Despite this point of difference in the two situations, we think that the principle of the above decisions that the mutatis mutandis rule should be invoked in interpreting Section 297(2) has application here also. Not to do so would no doubt not make Section 150(1) redundant but it will bring about an unintended and inequitable situation. It is clear that Section 150(1) will operate to lift the time bar in cases where the reassessment is initiated under Section 148 to give effect to an order passed under the 1961 Act. Equally, where assessments had been reopened under Section 34 of the 1922 Act before April 1, 1962 to give effect to orders passed under the 1922 Act and are continued after that date by virtue of Section 297(2)(d)(ii), the provisions of the second proviso to Section 34(3) of that Act would preclude the operation of the normal rule of limitation for reassessments. In this situation, it will be a great anomaly to reach the conclusion that the time-limit will operate in cases where proceedings under Section 148 are initiated to give effect to an order on appeal, revision and reference merely because such order is one passed under the 1922 Act. Neither reason nor rhyme can explain how the statute could have intended such anomaly or why it should be so interpreted as to result in a discriminatory treatment only to this class of cases. An interpretation which will result in such anomaly or absurdity should be avoided. It is also necessary to remember that Section

297(2) is a provision enacted with a view to provide for continuity of proceedings in the context of repeal of one Act by a fresh one broadly containing analogous provisions and the transitory provisions should, as far as possible, be construed so as to effect such continuity and not so as to create a lacuna. For these reasons we think that it will be appropriate to so read the words of Section 297(2)(d)(ii) as to permit the applicability of Section 150 (or Section 153) with the necessary modifications. To paraphrase, the last words of Section 297(2)(d)(ii) should be read to mean that where the proceedings initiated under Section 148, subject to the relaxations and limitation of Sections 149 and 150, all the provisions of the Act shall apply accordingly: that is to say, in the same manner as they would apply in case of proceedings normally initiated under these provisions. Since reassessment proceedings so initiated to give effect to orders on appeal, revision or reference will not be subject to a time-limit, the proceedings likewise initiated under Section 297(2)(d)(ii) read with Section 148 will also not be subject to any limitations save to the extent mentioned in Section 150(2).

11. We would like to add that, even if Section 150(1) is to be read literally and considered as posing a hurdle as contended for by the appellant, we think this result can be overcome by a liberal interpretation of Section 297(2)(k). This clause reads:

"(k) any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provision of this Act, be deemed to have been entered into, made, granted, given or issued under the corresponding provision aforesaid and shall continue in force accordingly;"

(emphasis added)

This is principally a provision intended to save administrative steps taken under the 1922 Act by deeming them to be steps taken under the 1961 Act. Strictly construed, the words "order issued" also would seem, prima facie, to carry only a similar connotation. But we see no objection, for our present purposes, in the way of our construing these words liberally and consequently deeming the orders passed and issued by the Tribunal and the High Court in this case for the assessment year 1949-50 and subsequent assessment years as orders passed or issued under the corresponding provisions of the new Act. Once this deeming is made, there is no difficulty in the

> way of accepting the revenue's contention. We think that the circumstances justify a slight straining of the language of this clause and applying it so interpreted to the problem before us so as to avoid a meaningless anomaly. Thus construed, the statute can be said not to have misfired in its application to the situation in the present case.”

94. The counsel for the respondent, relying on the judgment of **Mahadeo Prasad** (Supra) contends that this case is squarely covered by the aforesaid judgment whereas the counsel for the petitioner contends that this case is not applicable to the present facts as the aforesaid judgment does not consider the effect and applicability of Section 150(2) nor do they deal with a situation where reassessment proceedings had already become barred by limitation under Section 149 of the Act.

95. However, upon a careful perusal of the judgment in **Mahadeo Prasad** (Supra), we find that the aforesaid judgment is distinguishable from the present case as it deals with a situation where the notice under Section 148 of the Act is issued in pursuance of Section 297(2)(d)(ii), the repeal and savings clause in the Act unlike the present scenario where notice is issued pursuant to search conducted under Section 132 of the Act. Section 297(2) is a provision enacted with a view to

provide for continuity of proceedings in the context of repeal of one Act by a fresh one broadly containing analogous provisions and the transitory provisions should, as far as possible, be construed so as to effect such continuity and not so as to create a lacuna.

96. The Supreme Court in **Ashish Agarwal** (Supra) while dealing with a bunch of petitions from all over the High Courts has held that the respective Section 148 notices impugned therein issued to the respective assessees shall be deemed to have been issued under Section 148-A of the Act as substituted by the Finance Act, 2021 and treated to be a show-cause notices in terms of Section 148-A(*b*). The relevant paragraphs of the judgment are quoted hereinbelow:-

> "22. Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided Section 148 notice has been issued on or after 1-4-2021. We are in complete agreement with the view taken by the various High Courts in holding so.
>
> ***
>
> 23. However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted Sections 147 to 151 of the IT Act. The Revenue cannot be made

remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bona fide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under Section 148 after the amendment was enforced w.e.f. 1-4-2021, under the unamended Section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of Sections 147 to 151 of the IT Act as per the Finance Act, 2021.

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24. There appears to be genuine non-application of the amendments as the officers of the Revenue may have been under a bona fide belief that the amendments may not yet have been enforced. Therefore, we are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of the IT Act, the High Courts ought to have passed an order construing the notices issued under the unamended Act/unamended provision of the IT Act as those deemed to have been issued under Section 148-A of the IT Act as per the new provision Section 148-A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of Sections 147 to 151 of the IT Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of Sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law.

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25.1. The respective impugned Section 148 notices issued to the respective assessees shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of Section 148-A(*b*). The respective assessing officers shall within thirty days from today provide to the assessees the information and material relied upon by the Revenue so that the assessees can reply to the notices within two weeks thereafter.

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27. Therefore, we have proposed to pass the present order with a view to avoiding filing of further appeals before this Court and burden this Court with

> approximately 9000 appeals against the similar judgments and orders passed by the various High Courts, the particulars of some of which are referred to hereinabove. We have also proposed to pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India by holding that the present order shall govern, not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to PAN INDIA."

97. The Supreme Court in **Ashish Agarwal** (Supra) has held that the revenue cannot be rendered remediless merely because of technical or procedural defects in the notices, and accordingly, exercised its power under Article 142 to preserve the reassessment proceedings. The Supreme Court while explaining the changes brought into effect *vide* Finance Act, 2021 has specifically dealt with the issue of application of substituted Sections 147 to 151 *vide* Finance Act, 2021 and extended the benefit of the substituted provisions to past assessment years in cases where notice was issued under the erstwhile Section 148 but post April 1, 2021. The Supreme Court had specifically stated that they have exercised their powers under Article 142 of the Constitution of India in the peculiar facts and circumstances of the case, that being the case, the judgment of the Supreme Court in **Ashish Agarwal**

(Supra) cannot be used as a precedent. The aforesaid judgment was passed to ensure continuity of the substituted provisions of law in the Act and does not lay down any ratio with regard to curing the jurisdictional defect.

98. The Madras High Court in **Alamelu Veerappan** (Supra), Delhi High Court in **Savita Kapila** (Supra), the Bombay High Court in **Devendra** (Supra) and **Sumit Balkrishna Gupta** (Supra) while quashing the notice under Section 148 issued against the deceased assessee, held that a notice issued to a dead person does not fulfill the sine qua non for assumption of jurisdiction under Section 148. The Court held that since the notice itself was void and non est, there were no valid proceedings before the court. In essence, although the courts did not specifically deal with Section 150, therefore, no liberty was given to issue a fresh notice.

99. A perusal of sub-section(1) of Section 150 of the Act carves out an exception to the period of limitation prescribed under Section 149. It provides that notwithstanding anything contained in Section 149, an assessment or reassessment may be made at any time

for the purpose of giving effect to any finding or direction contained in an order passed by a court in any proceeding under any law, including by way of appeal, reference, revision, or writ.

100. However, Section 150(2) imposes a critical caveat, the benefit of Section 150(1) is expressly denied if the relevant assessment year had already become barred by limitation at the time when the 'order' (not the notice) which was the subject matter of such proceeding was itself made.

101. In essence, the revenue seeks to use the very order of quashing passed in favour of the assessee as a springboard to revive otherwise time-barred proceedings.

102. The legal position, as consistently affirmed by the various High Courts and the Supreme Court, is that where a notice under Section 148 is issued against a deceased assessee and is quashed by a court as void *ab initio*, the revenue cannot invoke Section 150(1) to issue a fresh notice against the legal representatives beyond the period of limitation.

103. At this point, we make it clear that the order of quashing of the show cause notice by the High Court

does not constitute a "finding or direction" within the meaning of Section 150(1), because the notice itself being void, no valid proceeding was ever pending before the court. Furthermore, the correct course mandated by Section 159(2)(b) was for the revenue to have initiated fresh proceedings directly against the legal representatives within the prescribed period of limitation, which having not been done the entire reassessment proceedings was foreclosed in law.

104. In view of the above, the argument of the respondent that the bar of limitation can be lifted in view of any 'finding' or 'direction' of any court by way of appeal, reference or revision is unsustainable in law as the order of the High Court observing the void initiation of proceedings against the dead cannot *ipso facto* amount to a 'finding' or 'direction' for the purpose of lifting bar of limitation for reassessment. Ergo, the department cannot, after the invalid initiation of reassessment proceedings against a deceased assessee, circumvent the statutory bar of limitation by issuing a fresh notice under Section 148 to the legal representative by invoking Section 150(1) of the Act. Furthermore, the argument of the petitioner that the assessment order itself was passed

beyond limitation cannot be countenanced by us as the proviso to Section 150(2) provides that the assessment order under Section 147 shall be made within 12 months from the end of financial year of notice, if the notice was served on or after April 1, 2019. In our view, Section 150(1) of the Act has no application whatsoever in the present case wherein the reassessment notice has been issued to a dead person and is accordingly a void initiation of proceedings. Section 150(1) does not come into operation at all as the same would come into operation only when there is a finding or direction by an authority by way of appeal, reference, or revision or by any court in any proceeding under any other law. In the present case, there is no such order passed by any authority whatsoever and the present order of the High Court is simpliciter a reassertion of the fact that the initiation of the reassessment proceedings were void *ab initio*. This order is definitely not a finding or direction that would require a reassessment or recomputation in consequence of the finding that the issuance of the notice is invalid. Where the time prescribed under Section 149 for issuance of a notice under Section 148 has expired, the Department cannot revive a time-barred proceeding merely on equitable considerations or by relying upon Section 150(1). Consequently, if the limitation prescribed under Section 149 has lapsed, the issuance of a fresh notice to the legal representative is impermissible in law and the reassessment proceedings are barred by limitation. Hence, the fifth issue is also answered in the negative.

CONCLUSION

105. Upon sifting through the ratios laid down in multifarious views of various High Courts and the Supreme Court, the following principles can be culled out:-

I. A notice under Section 148 for reopening past years assessment is a jurisdictional notice that must be issued in the name of the correct person and not against the dead and such issuance of notice against a dead person is void *ab initio* rendering all the consequential proceedings as null and void.

II. The department can continue reassessment proceedings against the legal representative of the deceased assessee invoking Section 159 if the notice at the very first instance was issued on the assessee when he was alive [Section 159(2)(a)]; and after his death against the legal representative/heir of the deceased assessee within the prescribed limitation under Section 149 of the Act [Section 159(2)(b)].

III. The fact of issuance of notice against a dead person is a jurisdictional error that cannot be cured resorting to Section 292B of the Act.

IV. The estoppel created under Section 292BB applies to original assessee and not to other individuals as the estoppel created under the statute operates within the fringes of its jargon and not beyond it for conferring jurisdiction.

IV. In interpreting taxing statutes equitable considerations should be entirely out of place and cannot be interpreted on any presumption or assumption and have to be interpreted in light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency.

V. Equity and tax are strangers to each other. If a particular income is exigible to tax under the taxing statute, then the individual may be taxed and if inexigible, then cannot be taxed.

VI. The order of this court quashing the show cause notice under Section 148 holding the same as void *ab initio* does not amount to 'finding' or 'direction' within the meaning of Section 150(1) of the Act so as to lift the bar of limitation as provided under Section 149 of the Act.

106. Before parting with this matter, this Court deems it apposite to observe that the present case is an illustration of lackadaisical attitude of the department. The Income Tax Department, armed with the vast machinery of the State and entrusted with the solemn responsibility of administering a complex fiscal statute, proceeded to initiate, pursue, and conclude reassessment proceedings initiated against a dead person undeterred by categorical intimations of his death, and apparently oblivious to the foundational legal principle that a dead person is not a legal entity and cannot be subjected to reassessment proceedings.

107. It would be an act of audacity if I miss to quote Benjamin Franklin: *"nothing is certain except death and taxes."* To tax the dead is a contradiction in terms. Tax laws are made by the living to tax the living. What survives the dead person is what is left behind in the form of such a person's property.

108. To tax the dead is, in the rudimentary sense, a contradiction in terms, for taxation, as a statutory exercise of sovereign power, operates upon living persons possessed of legal personality, capacity to respond, and ability to participate in proceedings. A dead man can do none of these things. He can neither receive a notice, nor file a reply, nor appear before an authority, nor challenge an order. The impugned proceedings in the present case were, therefore, not merely void *ab initio* in the technical sense but were void in the most profound and elementary sense and furthermore such an order of a High Court quashing a notice under Section 148 issued to a deceased assessee as void *ab initio* does not constitute a 'finding' or 'direction' within the meaning of Section 150(1) for reassessment. Ergo, the revenue is not allowed to derive benefit from its own jurisdictional transgression.

109. This Court, accordingly, quashes the impugned notice dated March 28, 2025 under Section 148 of the Act, and all proceedings, orders, and demands consequential thereto are quashed and set aside. Accordingly, writ petition is **allowed**.

110. This court would like to put on record its appreciation with regard to the arguments placed by the counsel appearing on behalf of both the parties and the diligent spadework in preparation of notes of arguments. I would also like to thank my Research Associate Ms. Saumya Patel for the painstaking and assiduous dexterity in the research carried out by her.

(Shekhar B. Saraf, J.)

I agree

(Abdhesh Kumar Chaudhary, J.)

EPILOGUE

111. The ticklish and complex issues that have arisen in the present writ petition, makes one fathom the intricacies of the law applicable in the present case. Article 265 of the Constitution of India categorically

states that “No tax shall be levied or collected except by authority of law”. In the present case, we have held that the revenue authorities cannot proceed against the petitioner as the show cause notice issued for reassessment was issued on the deceased-husband of the petitioner. The facts have clearly revealed that the petitioner by filing return in the name of the late deceased husband by using the authentication of the deceased person has also acted in an illegal manner. However, taxing statutes require a strict interpretation of the law and for the various reasons discussed above, the notice has been held to be void *ab initio* and the proceedings taken thereunder have been quashed by us.

112. The arguments raised by the department have to be negated by the Bench simpliciter, due to a lacuna in the law that proscribed proceedings against the estate of the deceased in the manner discussed above. There is no doubt that the loophole in the law has caused prejudice to the department and possibly loss to the public exchequer. However, keeping in view the general principles of separation of powers under the Constitution of India, this Court has not ventured into reading down any provision and/or adding to a provision of a taxing

statute keeping in mind the principles established in law by the Hon'ble Supreme Court with regard to the interpretation of taxing statutes.

113. We are of the view that the present loophole that exists is one that is required to be plugged by the Parliament with regard to the Act and other taxing statutes, where similar provisions have been enacted.

114. In light of the same, we direct transmission of the judgment to the Ministry of Finance, Government of India, so that the Government of India may make elaborate deliberations on this loophole and if they consider it necessary, the Parliament may step in, to remove the lacuna by appropriate amendments to the law.

115. Accordingly, the Senior Registrar of this Court is directed to send a copy of this judgment to the Ministry of Finance, Government of India.

(Shekhar B. Saraf, J.)

I agree

(Abdhesh Kumar Chaudhary, J.)

July 21, 2026
Chandra Kant Singh