IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No. 1853/DEL/2021
Assessment Year 2011-12

Sheela Devi (wife- legal heir of Vas Dev (deceased) C/o The Tax Chambers Advocates & Legal Advisors C-177, Defence Colony, LGF, New Delhi.	v.	Principal Commissioner of Income Tax, Faridabad.
TAN/PAN: BCVPD7807C		
(Appellant)		(Respondent)

Appellant by:	Ms. Swati Talwar, Adv.		
Respondent by:	Shri Ajay Kumar, Sr.D.R.		
Date of hearing:	16	02	2022
Date of pronouncement:	03	03	2022

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the legal heir and wife of the deceased-assessee (Vas Dev) against the revisional order of the Principal Commissioner of Income Tax, Faridabad ('PCIT' in short) dated 28.03.2021 passed under Section 263 of the Income Tax Act, 1961 (the Act) whereby the assessment order passed by the Assessing Officer dated 15.11.2018 under Section 143(3) read with Section 147 of the Act was sought to be set aside for reframing the assessment in terms of supervisory jurisdiction.

2. As per the grounds of appeal, the assessee has challenged the

revisional action of the PCIT whereby the Assessing Officer was directed to pass the assessment order *denovo* after making inquiries on the points set out revisional order. The assessee has challenged the assumption of jurisdiction by the PCIT under Section 263 of the Act on the ground that; (i) the initiation of revisional proceedings and consequential order under Section 263 of the Act is in the name of a deceased person is a *nonest* and unsustainable in the eyes of law (ii) the assessment order under revision is neither erroneous nor prejudicial to the interest of the Revenue and thus revisional commissioner was not competent to exercise revisional powers.

3. Briefly stated, return of the assessee under Section 143(3) r.w. Section 147 was assessed at Rs.1,35,682/-. Thereafter, the PCIT called for the assessment records and opined that the assessment order so passed is erroneous in so far as prejudicial to the interest of the Revenue. A show cause notice dated 20.03.2021 was issued to the assessee seeking his response. It may be pertinent to reproduce the show cause notice issued by the PCIT for abbreviation of controversy.

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX
PCIT, Faridabad

To, *VAS DEV* *HOUSE N 05 FARRUKH NAGAR KHURAM* *PUR GATE FARRUKH N , FARRUKH* *NAGAR* *GURGAON 123506 , Haryana* *India*	

PAN/TAN: BBRPD6119C	A.Y. 2011-12	DIN & Notice No.: ITBA/REV/F/REV1/2020-21/1031634235(1)	Dated: 20/03/2021

NOTICE FOR THE HEARING

M/s/Mr/Ms

Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT, 1961 - Assessment Year 2011-12.

In this regard, a hearing in the matter is fixed on 05/04/20^1 at 11:00 AM. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in

The assessment in this case was completed u/s 143(3)/147 vide order dated 15.11.2018 by the Assessing Officer and returned Income of Rs.1,35,682/- was accepted.

2. On perusal of the assessment records of the aforesaid assessee for the A.Y. 2011-12, following discrepancies are noticed:

> *"The assessee had not filed Income Tax Return for A.Y. 2011-12. Later on the case was selected for scrutiny under 148 as the assessee has deposited cash of Rs. 1,00,01,000/- on various dates in his bank accounts maintained with State Bank of Patiala. Subsequent to service of Notice u/s 148, the assessee filed ITR declaring income of Rs. 1,35,682/-.*
>
> *From the records, it is observed that the assessee submitted bank statement which depicted cash deposits of Rs.50,01,000/- received against sale of land. The assessee submitted that the land in consideration was agricultural land and not a capital asset as population of Farrukhnagar MC in last census was only*

9521 which is less than defined in section 2(14).

But the contention of assessee is not correct the municipal committee existed in Farrukhnagar as per sale deed and population of Farrukhnagar as per last census (www.censusindia.co.in) was 134848 instead of 9521. Hence, the land sold was capital asset and Capital Gain tax is applicable on sale of the same. ”

3. On the basis of discrepancies, it is observed that the assessment framed by the Assessing Officer u/s 143(3)/147 is prima facie erroneous in so far as it is pre-judicial to the interest of revenue.

4. Keeping in view the above facts, you are provided an opportunity to show cause as to why the assessment order passed by the ITO, dated15.11.2018 for the A.Y. 2011-12 in your case should not be revised u/s 263 of the Act. You are requested to present the case on 23.03.2021 in writing or produce or cause to be produced at the said time, any documents or any other evidence on which you rely in your support.

5. In case of no reply/non-attendance as per above, it shall be assumed that you do not wish to say anything in the matter and the matter would be decided as per material available on record without any further notice/intimation to you.

PCIT, Faridabad

4. A revision order was eventually passed by which the PCIT set aside the assessment so completed and remanded the matter back to the file of the Assessing Officer for fresh adjudication thereof on issues alleged in the show cause notice.

5. Aggrieved, the assessee preferred appeal before the Tribunal.

6. When the matter was called for hearing, two fold contentions

were raised on behalf of the assessee.

6.1 Firstly, it was contended that the assessee, namely, Vas Dev expired on 04.12.2020 whereas the show cause dated 20.03.2021 has been issued and addressed to the deceased-assessee, namely, Vas Dev instead of legal heir. It was thus contended that the show cause notice issued in the name of a deceased person is *nonest* and thus liable to be quashed at the threshold. For this proposition, the ld. counsel for the assessee vehemently referred to the judgment rendered by the Hon'ble Delhi High Court in the case of *Dharamraj vs. ITO, WP (C) 9227/2021 dated 17.10.2022* and *Savita Kapila vs. ACIT WP (C) No.3258/2020 judgment dated 16.07.2020;* (ii) secondly, show cause notice was issued initially on 20.03.2021 asking the assessee to appear on 05.04.2021, i.e., after the expiry of the limitation on 31.03.2021. However, the aforesaid show cause notice was later modified and the fresh notice dated 25.03.2021 was issued through e-mail and the matter was fixed for hearing on the immediate next date on 26.03.2021 in grave violation of principle of natural justice. There was no participation on behalf of the deceased-assessee in the proceedings and no further opportunity was given to the assessee/legal heir to defend his case. The revisional order was summarily passed on 28.03.2021 whereby the assessment order in question and the revision was set aside for fresh consideration. It was submitted by the ld. counsel for the assessee that the revisional order is not sustainable in law in the absence of mandatory requirement of opportunity enshrined in Section 263 itself. It was thus urged for cancellation of the revisional order passed under Section 263 of the Act in question.

7. Ld. Sr.DR, on the other hand, relied upon the contents of the revisional order.

8. We have heard the rival submissions and perused the material placed before us and case laws cited. Firstly, we consider it expedient to address ourselves on legality of show cause notice and consequent revisional order passed under Section 263 of the Act. The issue of validity of a notice and proceedings held subsequent thereto against a dead person is no longer *res integra*. The Hon'ble Delhi High Court in the case of Dharamraj vs. ITO (supra) has examined the issue in length and held that the notice issued against a death person is null and void and all consequent proceedings/orders being equally tainted are liable to be set aside. The relevant operative paragraph in Dharamraj's case is reproduced herein for the sake of completeness of the point.

> *8. The issue of validity of a notice and proceedings held subsequent thereto against a dead person is no longer res integra. This Court in Savita Kapila vs. Assistant Commissioner of Income-Tax, in W.P. (C) No.3258/2020 has held as under:*
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> *"AN ALTERNATIVE STATUTORY REMEDY DOES NOT OPERATE AS A BAR TO MAINTAINABILITY OF A WRIT PETITION WHERE THE ORDER OR NOTICE OR PROCEEDINGS ARE WHOLLY WITHOUT JURISDICTION. IF THE ASSESSING OFFICER HAD NO JURISDICTION TO INITIATE ASSESSMENT PROCEEDINGS.*
>
> *THE MERE FACT THAT SUBSEQUENT ORDERS HAVE BEEN PASSED WOULD NOT RENDER THE CHALLENGE TO JURISDICTION INFR UCTUOUS.*
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> *24. Further, the fact that an assessment order has been passed and it is open to challenge by way of an appeal, does not denude the petitioner of its right to challenge the notice for assessment if it is without jurisdiction. If the assumption of jurisdiction is wrong, the assessment order passed subsequent would have no legs to stand. If the notice goes, so does the order of assessment. It is trite law that if the Assessing Officer had no jurisdiction to*

initiate assessment proceeding, the mere fact that subsequent orders have been passed would not render the challenge to jurisdiction infructuous.

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THE SINE QUA NON FOR ACQUIRING JURISDICTION TO REOPEN AN ASSESSMENT IS THAT NOTICE UNDER SECTION 148 SHOULD BE ISSUED TO A CORRECT PERSON AND NOT TO A DEAD PERSON. CONSEQUENTLY. THE JURISDICTIONAL REQUIREMENT UNDER SECTION 148 OF THE ACT. 1961 OF SERVICE OF NOTICE WAS NOT FULFILLED IN THE PRESENT INSTANCE.

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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 Commissioner of Income Tax, Circle 16(2), Mumbai & Ors., (2019) 2 TMI1209- Bombay High Court],

27. xxxxx 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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AS IN THE PRESENT CASE PROCEEDINGS WERE NOT INITIATED/PENDING AGAINST THE ASSESSEE WHEN HE WAS ALIVE AND AFTER HIS DEATH THE LEGAL REPRESENTATIVE DID NOT STEP INTO THE SHOES OF THE DECEASED ASSESSEE. SECTION 159 OF THE ACT. 1961 DOES NOT APPLY TO THE PRESENT CASE.

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.

31. xxxxx

THERE IS NO STATUTORY REQUIREMENT IMPOSING AN OBLIGATION UPON LEGAL HEIRS TO INTIMATE THE DEATH OF THE ASSESSEE.

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) [2018 (6) TMI 760 - Madras High Court] 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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34. Consequently, the legal heirs are under no statutory obligation to intimate the death of the assessee to the Revenue.

SECTION 292B OF THE ACT. 1961 HAS BEEN HELD TO BE INAPPLICABLE. VIS-A- VIS. NOTICE ISSUED TO A DEAD PERSON IN RAJENDER KUMAR SEHGAL 12018 (12) TMI 697 (DELHI)]. CHANDRESHBHAI JAYANTIBHAIPATEL 12019 (I) TMI353 - GUJARAT HIGH COURT1 AND ALAMELU VEERAPPAN f2018 (6) TMI 760 - MADRAS HIGH COURT1.

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.

IN RAJINDER KUMAR SEHGAL (SUPRA) A COORDINATE BENCH OF THIS COURT HAS HELD THAT SECTION 292BB OF THE ACT 1961 IS APPLICABLE TO AN ASSESSEE AND NOT TO A LEGAL REPRESENTATIVE.

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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 cooperated 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.

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40. Consequently, the applicability of Section 292BB of the Act, 1961 has been held to be attracted to an assessee and not to legal representatives. "

9. The above judgment was followed by this Court in W.P.(C) No.2678/2020 titled Mrs. Sripathi Subbaraya Manohara L/H Late Sripathi Subbaraya Gupta vs. Principal Commissioner of Income Tax 22, N.Delhi & Anr.

10. In the present case also, as the notice under Section 148 of the Act was issued against a dead person, the same is null and void and all consequent proceedings/orders, including the assessment order and the subsequent notices, being equally tainted, are liable to be set aside.

11. Consequently, the impugned notice dated 30.03.2019 issued under Section 148 of the Act is set aside along with all consequential proceedings/notices/assessment orders.

12. The petition is allowed. There shall be no order as to costs."

9. In terms of the explicit observations made in the judgment of

the Hon'ble Delhi High Court, we find considerable merit in the plea on behalf of the legal heir for the assessee that the entire proceedings beginning from issue of show cause notice and culminating in revisional order under Section 263 of the Act is a *nonest* exercise and cannot be given effect in law regardless of the fact whether the revenue was privy to death or otherwise.

10. We also advert to the second plank on behalf of the assessee that the show cause notice dated 20.03.2021 originally issued fixing the date of hearing beyond the limitation period is bad in law and is not a curable defect. We see no merit in such plea. The show cause notice was admittedly revised and a fresh notice dated 25.03.2021 was issued fixing the date of hearing within the limitation period. The revisional authority was entitled in law to rectify such error.

11. We also simultaneously advert to another plank on behalf of the assessee alleging total lack of opportunity while concluding the proceedings under Section 263 of the Act. It is apparent from the records that solitary show cause notice issued to the assessee was for attendance on the very next date, i.e., 26.03.2021 in substitution of the first show cause notice fixing the hearing beyond limitation period. No other opportunity was given to the assessee. We are constraint to observe that such a casual approach of a very senior functionary of the Department does not augur well in the eyes of public and cannot be countenanced on the touchstone of sacrosanct principle of natural justice explicit in 263 itself. A question would arise as to whether a failure to give a reasonable opportunity to the assessee of being heard was only a procedural irregularity in such gross circumstances and thus curable and did not render the order passed by PCIT *void ab initio* and *nonest* in law per se.

12. In the case of *Tata Chemicals Limited vs. DCIT, ITA*

No.3127/Mum/2010, order dated 30.06.2011, the co-ordinate bench after making reference to the decision in the judgment in Maneka Gandhi vs. Union of India, AIR 1978 SC 597, and other judgments observed that the order which infringes the fundamental principle, passed in violation of *audi alteram partem* rule, is a nullity. When a competent Court or authority holds such an order as invalid or sets it aside, the impugned order becomes null and void. Once it is concluded that the order in question is null and void, it is not for the adjudicating authority to advise the Commissioner as to what should he do. He is always at liberty to do whatever action he can take in accordance with the law, but a life to null and void order by remitting it back to the Commissioner for giving a fresh opportunity of passing the order, after giving the assessee an opportunity of hearing, cannot be given. In a case, where it is possible for the Commissioner to pass a fresh order at this stage in accordance with the scheme of the Act, he can very well do so but in case the time limit for passing such order has already expired, such time limit cannot be extended by directing him to pass the order after giving an opportunity of hearing to the assessee. Otherwise, this would tantamount to giving premium to the authority committing default. The finality of the assessment cannot be disturbed for the failure of the PCIT to obdurately adhere to the explicitly prescribed requirement of opportunity to assessee.

13. Hence, in the absence of any opportunity to the assessee, for which the fault is attributable squarely to the PCIT is fatal and such defect being incurable, the revisionary order passed under Section 263 of the Act is also required to be quashed independently on this ground also.

14. Hence, looking from any angle, the impugned revisional order

passed under Section 263 of the Act is set aside and quashed.

15. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 03/03/2022.

Sd/-	Sd/-
[AMIT SHUKLA]	**[PRADIP KUMAR KEDIA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: **03/03/2022**
Prabhat