

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 16323 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE N.V.ANJARIA

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

HIMADRI KANDARP MEHTA L/H OF LATE KANDARP YASHASHVIBHAI
 MEHTA
 Versus
 THE INCOME TAX OFFICER

Appearance:

MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1
 M R BHATT & CO.(5953) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 01/08/2022

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

Having regard to the compass of the case involved in the petition and on the request made by the learned advocates appearing for the parties, the petition is taken up for final consideration.

1.1 **Rule** returnable forthwith. Learned advocate Mr. Karan Sanghani for the respondent authorities appear on behalf of M.R. Bhatt & Company waives service of Rule.

1.2 Heard learned Senior Advocate Mr. Tushar Hemani assisted by learned advocate Ms. Vaibhavi Parikh for the petitioner and learned Senior Advocate Mr. M.R. Bhatt for M.R. Bhatt & Co. assisted by learned advocate Mr. Karan Sanghani for the respondent.

2. By filing this petition under Article 226 of the Constitution, the petitioner Himadri Kandarp Mehta has prayed to set aside the notice dated 12.03.2019 issued to one Kandarp Yasasvibhai Mehta, which is a notice under Section 148 of the Income Tax Act, 1961 seeking to reopen the assessment stating that the assessing officer had reason to believe that income of the said assessee chargeable to tax in respect of assessment year 2012-13 has escaped the assessment. The aforementioned impugned notice came to be issued after a gap of four years.

3. Noticing the relevant facts, while the impugned notice was received on 12.03.2019, it was stated in the petition that the said assessee Kandarp

Yasashvibhai Mehta died on 21.12.2012. The factum of death of the said assessee is evidenced by the death certificate issued by the competent authority and produced on the record of the petition. The petitioner herein, who happens to be the daughter and legal heir of the deceased assessee Kandarp Y. Mehta, addressed a letter to the authority on 03.07.2019 stating that the said Kandarp Y. Mehta had passed away, sending with the communication, copy of the death certificate as well.

3.1 It appears that the respondent authorities did not drop the reassessment proceeding despite the above intimation and proceeded to issue another notice dated 13.09.2019 in the name of the deceased under Section 142(1) of the Act calling upon the petitioner to show cause as to why ex-parte order under Section 144 of the Act should not be passed. The petitioner again addressed a letter dated 13.09.2019 to state that the assessee had passed away and therefore, re-assessment proceedings were required to be dropped.

4. The question whether the income tax authorities can subject a dead person to assessment proceeding, is no longer *res integra*.

5. The Division Bench of this Court in **Urmilaben Anirudhhasinji Jadeja Vs. Income Tax Officer, Ward 7(1)(3) [(420) ITR 226]**, addressed the very issue.

The Court considered various decisions of the Supreme Court and the High Court, touching the aspects of the issue, held that there cannot be any assessment against a dead person. In that case also, notice was issued to the dead assessee under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the "Act").

5.1 While holding that the proceedings would be nullity against the dead assessee, the rider was provided that in cases where legal representatives participate in the assessment or re-assessment proceedings, the proceedings may be maintained and continued. It was at the same time held that mere intimation by the legal representative to the assessing officer that the noticee is dead, would not amount to legal representation or participation in that proceedings.

5.2 In **Urmilaben Anirudhhasinji Jadeja (supra)**, while the revenue raised various contentions seeking a proposition that the proceedings against the dead assessee would be maintained, the Court negatived them all.

5.3 One of the contention was based on Section 292B of the Act. The said provision contemplates that the notice shall be deemed to be valid in certain circumstances. It mentions that where an assessee has appeared in any proceedings or cooperated in any

inquiry relating to assessment or re-assessment, it shall be deemed that a notice required to be served under the Act has been duly served upon him. Such, it is provided, shall be precluded by taking any objection about the service of the service of the notice and manner of the service.

5.4 The Division Bench held that the said provision would not apply in cases where notices are gone to the dead assessee and the proceedings are started against a dead assessee. It was observed and held in paragraph 23 thus,

"The purport of Section 292B of the Act is that in the event of any mistake, defect or omission in the notice or other proceedings, if the same is in conformity with or according to the intent and purpose of the Act, the notice cannot be termed as invalid. To put it in other words, the notice should be in conformity with and in accordance with the intent and purpose of the Act. In our opinion, a case in which notice is issued to a dead person could be termed as nullity. It is something like a safeguard passing a decree against a dead person which cannot be executed through the legal representatives of the judgment-debtor."

5.4.1 The continuation of proceedings pursuant to notice under Section 148 of the Act was held to be without authority of law by the Court stating thus -

"...the notice under section 148 of the Act, which is a jurisdictional notice, has been issued to a dead person. Upon receipt of such notice, the legal representative has raised an

objection to the validity of such notice and has not complied with the same. The legal representative not having waived the requirement of notice under section 148 of the Act and not having submitted to the jurisdiction of the Assessing Officer pursuant to the impugned notice, the provisions of section 292B of the Act would not be attracted and hence, the notice under section 148 of the Act has to be treated as invalid. In the absence of a valid notice, the Assessing Officer has no authority to assume the jurisdiction under section 147 of the Act and, hence, continuation of the proceeding under section 147 of the Act pursuant to such invalid notice, is without authority of law. The impugned notice as well as the proceedings taken pursuant thereto, therefore, cannot be sustained."

5.5 Thus, the law is well settled that unless the heirs and legal representatives of the deceased assessee could be said to have been submitted to the jurisdiction of the assessing officer and have participated in the assessment or re-assessment proceedings, notice to the dead assessee and commencement of assessment or re-assessment proceedings against dead person is rendered null and void.

5.6 The attempt on the part of the income tax authorities to start proceedings for assessment or re-assessment against the dead person is viewed not merely as procedural irregularity but it is stated as jurisdictional defect.

5.7 There cannot be an assessment against the dead person. As noticed above, the provisions of Section

292B of the Act are also not applicable and no assessment can be framed against a non-existing entity or a person who has died.

6. Reverting back to the facts of the present case, Kandarp Yasashvibhai Mehta died on 21.12.2012 in whose name, notice was issued by the income tax authorities on 12.03.2019 under Section 148 of the Act seeking to reopen assessment in respect of assessment year 2012-13 by communication dated 03.05.2019, the petitioner herein who happens to be the legal representative intimated to the income tax officer concerned that the noticee Kandarp Yasashvibhai Mehta had died long back and that the notice was without jurisdiction. The income tax authorities did not pay heed to the said intimation.

6.1 The facts of the case did not offer any fact or circumstances to suggest that the legal representative of the deceased assessee in any manner submitted to the jurisdiction of the income tax authorities or in any way participated in the proceedings to persuade the court to hold otherwise. On the contrary, the intimation in form of communication dated 03.05.2019 was sent to the income tax officer by the legal representative that the noticee Kandarp Yasashvibhai Mehta had died. This intimation was repeated in form of communication dated 13.09.2019.

6.2 In view of the above, the present petition deserves to be allowed. It is hereby allowed by holding that the impugned notice, which was against the dead assessee could not be sustained.

6.3 Resultantly, the notice dated 12.03.2019 received in the name of Kandarp Yasashvibhai Mehta, as a dead person, by the income tax department is held to be illegal.

7. The Notice dated 12.03.2019 issued by the income tax authorities is set aside. The income tax authorities shall not proceed against the said dead assessee.

Rule is made absolute to the aforesaid extent.

(N.V.ANJARIA, J)

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THE HIGH COURT
OF GUJARAT

(BHARGAV D. KARIA, J)

BIJOY B. PILLAI

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