



\$~33

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 13821/2022, CM APPL. 42282/2022 & CM APPL. 42283/2022
 VIJAY GARG THROUGH HIS LEGAL HEIR
 AMIT GARG Petitioner

Through: Mr. Manish Paliwal, Ms. Megha Yadav & Mr. Vikas Kumar, Advocates.

versus

INCOME TAX OFFICER WARD NO. 30(5)
 NEW DELHI Respondent

Through: Mr. Abhishek Maratha, Senior Standing Counsel for Revenue.

%

Date of Decision: 27nd September, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 42283/2022

Exemption allowed, subject to all just exceptions.

Accordingly, this application is disposed of.

W.P.(C) 13821/2022 & CM APPL. 42282/2022(for interim stay)

1. The present writ petition has been filed by Sh. Amit Garg, being the legal heir of the deceased assessee Smt. Vijaya Garg, seeking quashing of the impugned notice dated 1st June, 2022, furnishing material and information as per Section 148A(b) of the Income Tax Act, 1961, (the



‘Act’), and consequent order dated 28th July, 2022, passed under Section 148A(d) of the Act, and notice dated 29th July, 2022, under Section 148 of the Act for the assessment year 2015-16.

2. Briefly stated the facts giving rise to the present controversy are that the deceased assessee filed her Return of Income on 28th September, 2015, declaring a total income of Rs.10,00,960/- for the Assessment Year (‘AY’) 2015-16. The assessee’s case was selected for limited scrutiny assessment and the returned income was accepted vide assessment order dated 11th May, 2017, passed under Section 143(3) of the Act.

3. Thereafter, the assessee was issued a notice dated 25th April, 2021 during her lifetime, under the unamended Section 148 of the Act, alleging that income for the relevant assessment year has escaped assessment. In the meanwhile, the assessee, Smt. Vijaya Garg passed away on 24th June, 2021, during COVID-19 period. The legal heir of the assessee, Sh. Amit Garg, filed a writ petition bearing W.P. (C) No. 4654 of 2022, before this Court, wherein this Court vide order dated 23rd March, 2022, quashed the notice dated 25th April, 2021, issued under the erstwhile Section 148 of the Act, holding it to be null and void following the judgment of this Court in ***Mon Mohan Kohli v. Assistant Commissioner of Income Tax & Anr., 2021 SCC OnLine Del 5250.***

4. Subsequently, the Respondent in pursuance of the directions given by the Supreme Court in the case of ***Union of India v. Ashish Agarwal, (2022) SCC Online SC 543***, construed the initial notice dated 25th April, 2021, to be a Show Cause Notice (‘SCN’) in terms of Section 148A(b) of the Act, and in continuation issued a notice dated 1st June, 2022, furnishing



information in accordance with the order of the Supreme Court in *Ashish Agarwal* (Supra). A reply dated 25th April, 2022 was filed to the said notice through a Chartered Accountant ('CA'), informing the AO that the assessee had since passed away on 24th June, 2021 and also replied on the merits of the issue, and that no proceedings can be continued against a dead assessee.

5. The AO thereafter, passed an order dated 28th July, 2022, taking note of the death of the assessee and amended the addressee to read as '*Vijaya Garg through Legal Heir Sh. Amit Garg, F-52, East of Kailash-110065, Delhi, India*' opining that the legal heir, Sh. Amit Garg is liable to comply with the present proceedings and consequently issued a notice dated 29th July, 2022, as well in the name of '*Vijaya Garg through Legal Heir Sh. Amit Garg, F-52, East of Kailash-110065, Delhi, India*' under Section 148 of the Act.

6. Learned Counsel appearing on behalf of the Petitioner, Sh. Amit Garg i.e. the legal heir of the assessee, contends that the notice dated 01st June, 2022, furnishing the information, issued in the name of the dead assessee is invalid. He contends it is a *sine qua non* that the notice has to be issued in the name of correct and alive person, failing which, the entire proceeding is vitiated as void-ab-initio, being issued in the name of dead assessee. He sought to place reliance on the decision of this Court in *Sangeeta Vig v. ITO, Ward 28(5), (2022) SCC Online Del 1776*, to state that the notice issued under Section 148A(b) of the Act, in the name of a dead assessee is null and void.

7. Mr. Abhishek Maratha, learned Counsel for the Revenue appears on advance notice.



7.1. We have heard the learned Counsel for the parties. The contention raised by the assessee that the notice dated 1st June, 2022, furnishing information has been issued in the name of the dead assessee and thus, consequent proceedings are void, does not persuade us.

The Supreme Court disposed of the case of *Ashish Agarwal* (Supra), with the direction that the notice(s) issued under erstwhile Section 148 of the Act, between 01st April, 2021 and 30th June, 2021, are to be construed as SCN under Section 148A(b) of the Act. Therefore, the present proceedings are in continuation of earlier notice dated 25th April, 2021 i.e., at the time when the assessee was alive.

7.2. The Petitioner herein Mr. Amit Garg is admittedly the legal heir of the assessee and upon being apprised of the death of the assessee, the Assessing Officer (AO) has passed the order dated 28th July, 2022, under Section 148A(d) of the Act and notice dated 29th July, 2022, under Section 148 of the Act, in the name of 'Vijaya Garg through Legal Heir Sh. Amit Garg' and has thus taken steps as mandated by Section 159 of the Act to continue the assessment proceedings against the legal representative of the assessee. The relevant extract of Section 159(2)(a) of the Act is reproduced hereinunder: -

“159.

(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 provision 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;
...”

(Emphasis supplied)

7.3. Since the present assessment proceedings are in continuation of the initial notice dated 25th April, 2021, issued to the deceased assessee during her lifetime, the same can be continued against the legal representative from the stage at which it stood on the date of the death of the deceased so as to collect the tax from the estate of the deceased person. The Supreme Court in the case *Shabina Abraham & Others v. Collector of Central Excise and Customs, (2015) 10 SCC 770* has concisely explained the said provision as under:

“16. It will be noticed that under Section 159(2), for the purpose of making any assessment, any proceeding taken against the deceased before his death is by deeming fiction deemed to have been taken against his 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. Further, the legal representative under sub-section (3) of Section 159 is again by deeming fiction deemed to be an assessee himself. However, the liability of such representative is limited only to the extent to which the estate left by the deceased is capable of meeting the tax liability subject to the contingencies mentioned in sub-sections (4) and (5) of Section 159.”

8. Therefore, in light of the aforesaid provision, since, the initial notice dated 25th April, 2022, was issued at the time when the assessee was alive (the present proceedings are in continuation) and thus, the AO has rightfully amended the details of the addressee in its consequent order under Section 148A(d) and notice under Section 148 of the Act.



9. Further, the reliance placed by the assessee on the decision of this Court in *Sangeeta Vig* (Supra) is misplaced since in that case the initial notice under the erstwhile Section 148 of the Act, was issued at a time when the assessee was dead. However, in the present case, as noted above, the assessee was alive at the time of the issuance of initial notice under erstwhile Section 148 of the Act.

10. Accordingly, the writ petition is disposed off.

11. This Court clarifies that all rights and contentions of the parties on the merits of the issue are left open except the legal issue of continuation of the assessment proceedings against the legal representative as determined in these proceedings.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

SEPTEMBER 27, 2022

pkv/aa