

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'SMC' LUCKNOW**

[Through Virtual Hearing]

BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

ITA No.51 /Lkw/2017

A.Y. 2007-08

Smt. Priyamvada Jaiswal, W/o Late Ajit Jaiswal, 7/190C, Swaroop Nagar, Kanpur 208001 PAN : ABUPJ 8331L	Vs.	Income Tax Officer – 3(5), Kanpur
(Appellant)		(Respondent)

Appellant by	Shri Abhinav Mehrotra, Advocate
Respondent by	Shri Ajay Kumar, DR
Date of hearing	23/09/2021
Date of pronouncement	05/10/2021

ORDER

This is an appeal filed by the assessee against the order of Id. CIT(A)-I, Kanpur dated 22.11.2016. The assessee has taken various grounds of appeal. However, at the time of hearing only Ground No.1 was argued which for the sake of completeness is reproduced below”

“1. *Because without prejudice on the facts and in the circumstances of the case the Notice u/s. 148 having been issued in the name of a dead person the entire proceedings is liable to be quashed.*”

2. The Id. AR at the outset submitted that notice u/s 148 of the Act has been issued in the name of a person who was deceased and was not in existence, therefore, the notice issued u/s. 148 is illegal and any order passed in view of such notice is also *void ab initio* and hence, it was prayed that the assessment order passed may be

quashed. Reliance in this respect was placed on a judgment of Lucknow Bench of the Tribunal in the case of Late Harish Bahadur Khare vs. ITO, in ITA No. 720/Lkw/2019 wherein the Tribunal vide order dated 30.07.2021 has held that the notice issued in the name of a dead person cannot empower the Assessing Officer to pass a valid assessment order.

3. The Id. DR, on the other hand, submitted that when the Department came to know the fact that assessee had expired it brought took into records the legal heirs of the assessee and issued further notices in her name only and also passed the assessment order in her name only, therefore, the ground taken by the Id. AR is not justified and which may be dismissed.

4. I have heard the rival parties and have perused the material placed on record. This is an undisputed fact that the assessment order has been passed in the name of legal heir, Smt. Priyamvada Jaiswal. The statement of facts filed before Id. CIT(A) clearly mentions that Shri Ajit Jaiswal had died on 26.05.2010. It is also a fact that the Assessing Officer in his assessment order himself has noted that the assessee had expired and even after having come to know about the fact of having assessee been dead he did not drop the proceedings against him and issued fresh notice u/s. 148 of the Act in the name of legal heir but continued the proceedings in the name of his legal heir. During the course of proceedings before us the Id. DR was directed to file a copy of notice u/s. 148 and which he has filed after the hearing. From the copy of notice u/s. 148 I find that such notice dated 24.02.2014 has been issued in the name of Shri Ajit Jaiswal who was not in existence at the time of issue of notice

u/s. 148 as he had died on 26.05.2010. Such notice issued in the name of a dead person is not enforceable and cannot be said to be valid notice and further I find that no notice u/s. 148 has been issued in the name of the legal heir of the assessee. I find that the Lucknow bench of the Tribunal in the case of Late Harish Bahadur Khare (Supra), vide order dated 30.07.2021 has dealt similar issue and has quashed the assessment order by holding as under:

“4. I have heard the rival parties and have perused the material available on record. I find that it is undisputed fact that assessee had died on 01.07.2012 which fact is noted by the Assessing Officer himself at page 2 in para 2 of his order. The notice was issued on 26.03.2015 and which was served by affixure on 31.03.2015. Therefore, when the notice was issued, the assessee was not in existence and was already dead and therefore such notice cannot be said to be a legal and valid notice. The Revenue was also not able to demonstrate that fresh notice was served u/s. 148 of the Act to the legal heir of the assessee and neither this fact of issuing fresh notice u/s. 148 of the Act is coming out from the material on record. The coordinate Bench of Chandigarh in the case of Shri Balbir Singh vs. ITO (Supra) vide order dated 13.05.2019 has decided similar issue in favour of the assessee by holding as under:

“4. The facts of the case in brief are that in this case the assessment was reopened u/s 147 of the Income-tax Act, 1961 (in short 'the Act') by way of issuance of notice dated 26. 3. 2013 u/s 148 of the Act in the name of deceased assessee Shri Balbir Singh. However, admittedly the assessee had already died on 25. 11. 2012 i. e. much before the issuance of notice u/s 148 of the Act. Even, the notice u/s 148 of the Act was served through affixation and not in a regular mode of service. The notice was issued in the name of the deceased assessee.

The issue, in our view, is squarely covered by the various decisions of the Hon'ble High Courts including the latest decision of the Hon'ble Bombay High Court in the case of 'Sumit Balkrishna Gupta Vs. ACIT' in Writ petition No. 3569 of 2018 vide order dated 15. 2. 2019, wherein, the Hon'ble Bombay High Court has held that

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 a merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. Thus, a notice which has been issued in the name of the dead person is also not protected either by 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. The Hon' ble High Court has further observed that Section 148 of the Act requires that before a proceeding can be taken up for reassessment, a notice 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. That 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 notices and the impugned assessment order required to be quashed and set aside.

Similarly, the Hon' ble Delhi High Court in the case of 'Rajender Kumar Sehgal Vs. ITO' [2019] 101 taxmann. com 233 (Delhi) held that where the notice seeking to reopen assessment was issued in the name of deceased assessee, since she could not have been participated in reassessment proceedings, provisions of section 292BB were not applicable to the assessee's case and as a consequence, reassessment proceedings deserved to be quashed.

5. At this stage, the Ld. DR has pointed out that the LR of the assessee should have promptly come forward to apprise the Assessing officer that the assessee had died so that notice could have been issued in the name of legal representative of the assessee. We do not find any force in the above contention of the Ld. DR. as noticed above, the notice

was not served through registered post / or by regular mode of service.

The notice in this case was allegedly served through substituted mode of the service i.e. by affixation of the same at the door of the house of the assessee. Further, the report of service through affixation have not been witnessed by any person. Had the Income-tax officials actually gone to the house of the deceased assessee and enquired from the villagers about the whereabouts of the assessee for the purpose of service of the notice, they could have easily come to know about the death of the original assessee and would have accordingly apprised the Assessing officer.

6. It is not believable that the Revenue officials had visited the house of the assessee and they could not get the information about the death of the assessee despite affixation of the notice which is also required to be witnessed by some independent / respectable of the village.

7. The Ld. counsel has further invited our attention to the receipt which has been printed on the back of the stamp papers upon which the alleged agreement to sell has been executed, wherein, the name and address of the seller i. e. Shri Balbir Singh has been mentioned as Shri Balbir Singh S/o Shri Dharam Singh 1535/34-D, Chandigarh. However, the alleged notice was never served by the Assessing officer on the said address despite the address of the assessee duly mentioned on the receipt which was the part and parcel of the alleged agreement to sell on the basis of which reopening of the assessment has been made. This otherwise show that even otherwise the notice is never served on the address at which the assessee actually was residing before his death.

8. In view of this, the issue is squarely covered by the decision of the Hon'ble Bombay High Court in the case of 'Sumit Balkrishna Gupta Vs. ACIT' (supra) and of the Hon' ble Delhi High Court in 'Rajender Kumar Sehgal Vs. ITO' (supra). The impugned notice issue u/s 148 of the Act, therefore, is held as 'invalid' and the consequent assessment proceedings, are, therefore, liable to be quashed. We order accordingly.

In the result, the appeal of the appellant is hereby allowed.”

5. *The other case laws relied on by the Id. AR also supports the argument of the assessee that any notice issued in the name of dead person cannot empower the Assessing Officer to pass a valid assessment order. In view of these facts and circumstances, Grounds No. 1 to 4 of the appeal are allowed and rest of the grounds were not argued and hence they are dismissed as not pressed.*

6. *In the result, the appeal of the assessee is partly allowed.”*

5. In view of the facts and circumstances and judicial precedents, the Ground No.1 of the appeal is allowed and the assessment order passed on the basis of notice u/s. 148 of the Act on a dead person is quashed.

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

(Order pronounced in the open court on 05/10/2021)

**Sd/-
(T.S. Kapoor)
Accountant Member**

Aks -
Dtd. 05/10/2021

Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

By order

Assistant Registrar