

In the High Court of Judicature at Madras

Dated : 07.6.2018

Coram :

The Honourable Mr. Justice T.S.SIVAGNANAM

Writ Petition No.30060 of 2017
& WMP.No.32631 of 2017

Alamelu Veerappan

...Petitioner

Vs

The Income Tax Officer, Non
Corporate Ward 2(2), Chennai.

...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent contained in its notice issued under Section 148 of the Income Tax Act, 1961 issued in the name of S.Veerappan dated 30.3.2017, quash the same as arbitrary, unjust and illegal and consequently forbear the respondent from in any manner conducting any proceedings for re-assessment as set out in the said notice dated 30.3.2017 or pass any orders consequent thereto under Section 147 of the Income Tax Act, 1961 for the assessment year 2010-11.

For Petitioner : Ms.Deepika Sekar

For Respondent : Mrs.Hema Muralikrishnan, SPC

ORDER

Heard the learned counsel on either side.

2. The petitioner has filed this writ petition praying for the issuance of a Writ of Certiorarified Mandamus to quash the notice dated 30.3.2017 issued under Section 148 of the Income Tax Act, 1961 (hereinafter called the Act) in the name of her deceased husband one Mr.S.Veerappan and to forbear the respondent from in any manner conducting any proceedings for re-assessment as set out in the said notice dated 30.3.2017 or passing any consequential orders thereto under Section 147 of the Act for the assessment year 2010-11.

3. The petitioner is the wife of the said Mr.S.Veerappan, who died on 26.1.2010 and this fact is not disputed by the

respondent. The petitioner claims to be a home maker and is living with the support of her two daughters along with mother in law. The petitioner received a notice dated 30.3.2017 addressed to her late husband - the said Mr.S.Veerappan. In the said notice, it was stated that certain income of the said Mr.S.Veerappan escaped assessment for the assessment year 2010-11 and that the respondent proposed to re-assess the income for the said assessment year. The petitioner sent a reply dated 04.4.2017 pointing out that her husband died on 26.1.2010 and enclosed a copy of the death certificate to establish the said fact.

4. The petitioner would state that she was receiving frequent telephone calls from the office of the respondent calling upon her to appear before the officer in respect of the notice dated 30.3.2017 issued in the name of her late husband under Section 148 of the Act. The petitioner's case is that she was repeatedly harassed by way of telephone calls from the Income Tax Office in spite of her clarification dated 04.4.2017. The petitioner would further state that though the petitioner specifically stated that she is not aware of any of her husband's business activities, she was directed to appear for an enquiry. Therefore, left with no option, the petitioner visited the office of the respondent on 13.11.2017. The petitioner was informed that she should submit all the documents pertaining to her husband's assessment including the details of bank account statements for the financial year 2009-10. The petitioner, in turn, informed the officer that she did not have any of the documents, which were sought for. In this background, the petitioner has filed this writ petition challenging the impugned notice.

5. The learned counsel for the petitioner submits that the impugned notice is void and unenforceable in law, as it has been issued to a dead person. The defect in issuing the notice in the name of a dead person goes to the root of the exercise of jurisdiction under Section 147 of the Act and that the notice under Section 148 of the Act is, therefore, a nullity.

6. Relying upon the decision of the Hon'ble Supreme Court in the case of CIT Vs. Amarchand N.Shroff [reported in AIR 1963 SC 1448], it is submitted that no income tax assessment can be made in the name of a dead person and that the observations made by the Hon'ble Supreme Court will equally apply to the notices issued under Section 148 of the Act. It is further submitted that the petitioner, being the wife of the deceased Mr.S.Veerappan, to whom, the notice under Section 148 of the Act was issued, cannot be made liable to participate in the re-assessment proceedings.

7. In this regard, she also relies upon the decision of the High Court of Madhya Pradesh in the case of Shaikh Abdul Kadar Vs. ITO [reported in AIR 1959 M.P. 101]. Further, relying upon the decision in the case of Mrs. Kesar Devi Vs. CIT [2010 (321) ITR

341(Raj.)], it is submitted that the notice issued under Section 148 of the Act to a dead person is illegal.

8. Much reliance has been placed on the decision of the High Court of Delhi in the case of Vipin Walia Vs. ITO [reported in (2016) 382 ITR 19], which was followed by the High Court of Gujarat at Ahmedabad in the case of Rasid Lala Vs. ITO [Special Leave Application No.18987 of 2016 dated 29.11.2016].

9. Therefore, it is submitted by the learned counsel for the petitioner that the impugned notice is liable to be quashed. It is further submitted that the defect, which has occurred, is not curable and that the Revenue cannot place reliance on Section 292B of the Act in support of their stand, as the said provision has no applicability to the facts of this case. On the above grounds, the learned counsel for the petitioner has sought for quashing the impugned proceedings.

10. However, the learned Senior Panel Counsel for the Revenue submits that though the Revenue does not dispute the factum of death of the said Mr.S.Veerappan on 26.1.2010, as evidenced from the death certificate, the factum of death was not reported by the petitioner to the Department and that the PAN registration in the name of the dead person has not been cancelled. Therefore, the Department was fully justified in issuing the notice in the name of the deceased assessee and that the notice, having been issued before the end of the period of limitation, i.e. 30.3.2017, is valid in the eye of law.

11. It is further submitted by the learned Senior Panel Counsel that the Department, after having knowledge of the death of the assessee, as intimated by the petitioner, issued notice to the petitioner and directed her to produce the documents and to cooperate in the reopening proceedings. It is also submitted that there is no defect in the issuance of the notice dated 30.3.2017 and in any event, even assuming without conceding that the notice is defective, the same is a curable defect, which was cured by the issue of the proceedings in the name of the writ petitioner in her capacity as the legal heir of the deceased - the said Mr.S.Veerappan. It is submitted that the impugned notice under Section 148 of the Act was issued within the period of limitation and thereafter, on coming to know of the death of the assessee, the impugned proceedings continued in the name of the legal heirs by issuing the notice under Section 142 as contemplated under the Act.

12. The learned Senior Panel Counsel for the Revenue has also relied upon the decision of the High Court of Delhi in the case of Sky Light Hospitality LLP Vs. AC (CT) [reported in (2018) 90 Taxmann.Com 413]. By referring to this decision, she has

submitted that the High Court of Delhi considered the decision in the case of Spice Entertainment Ltd. Vs. CST [reported in (2011) SCC Online Del. 3210] and held that the notice issued in the case of Sky Light Hospitality LLP was a nullity and that errors and mistakes can be corrected. Therefore, it is submitted that the petitioner should respond to the notice, file her objections and participate in the proceedings.

13. This Court has carefully considered the submissions made by the learned counsel on either side and perused the records.

14. The issue, which falls for consideration, is as to whether the impugned notice under Section 148 of the Act issued in the name of the dead person - the said Mr.S.Veerappan is enforceable in law and the subsidiary issue being as to whether the petitioner, being the wife of the said Mr.S.Veerappan, can be compelled to participate in the proceedings and respond to the impugned notice. The fact that the said Mr.S.Veerappan died on 26.1.2010 is not in dispute. If this fact is not disputed, then the notice issued in the name of the dead person is unenforceable in the eye of law.

15. The Department seeks to justify their stand by contending that they were not intimated about the death of the assessee, that the legal heirs did not take any steps to cancel the PAN registration in the name of the assessee and that therefore, the Department was justified in directing the petitioner to cooperate in the proceedings pursuant to the impugned notice.

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 31.3.2017. The impugned notice was issued on 30.3.2017 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 31.3.2017. If we approach the problem sans complicated facts, a notice issued beyond the period of limitation i.e. 31.3.2017 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. 19. The Revenue seeks to bring their case under Section 292 of the Act to state that the defect is a curable defect and on that ground, the impugned notice cannot be declared as invalid.

20. The language employed in Section 292 of the Act is categorical and clear. The notice has to be, in substance and effect, in conformity with or according to the intent and purpose of the Act. Undoubtedly, the issue relating to limitation is not a curable defect for the Revenue to invoke Section 292B of the Act.

21. All the above reasons are fully supported by the decision in the case of Vipin Walia. In that case, the notice dated 27.3.2015 was issued under Section 148 of the Act to the assessee, who died on 14.3.2015. The validity of the said notice was put to challenge. The Income Tax Officer took a stand that since the intimation of death of the assessee on 14.3.2015 was not received by her, the notice was issued on a dead person. However, the fact regarding the death of the assessee could not be disputed by the Department. The Department continued the proceedings under Section 147/ 148 of the Act and at that stage, the son of the deceased approached the High Court of Delhi. The High Court of Delhi pointed out that what was sought to be done by the Income Tax Officer was to initiate proceedings under Section 147 of the Act against the deceased assessee for the assessment year 2008-09, for which, the limitation for issuance of notice under Section 147/148 of the Act was 31.3.2015 and on 02.7.2015 when the notice was issued, the assessee was already dead and if the Department intended to proceed under Section 147 of the Act, it could have done so prior to 31.3.2015 by issuing the notice to the legal heirs of the deceased and beyond that date, it could not have proceeded in the matter even by issuing

notice to the legal representatives of the assessee. The decision in Vipin Walia fully supports the case of the petitioner herein.

22. The decision in the case of Vipin Walia was followed in the decision of the High Court of Gujarat in the case of Rasid Lala, in which, the re-assessment proceedings were initiated against the dead person, that too, after a long delay. The Court pointed out that even if the provisions of Section 159 of the Act are attracted, in that case also, the notice was required to be issued against and in the name of the heirs of the deceased assessee and under the said circumstances, Section 159 of the Act shall not be of any assistance to the Revenue.

23. In the decision of the Delhi High Court in the case of Spice Entertainment Ltd., one of the questions, which fell for consideration, is as to whether such framing of assessment against a non existing entity or a dead person could be brought within the ambit of Section 292B of the Act and after referring to the decisions on the point including the decision of the Allahabad High Court in the case of Sri Nath Suresh Chand Ram Naresh Vs. CIT [reported in (2006) 280 ITR 396], it has been held that the provisions of Section 292B of the Act are not applicable and that 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.

24. The learned Senior Standing Counsel for the Revenue has sought to distinguish the decision in the case of Spice Entertainment Ltd., by referring to Sky Light Hospitality LLP.

25. On a perusal of the factual position therein, the Court came to the conclusion that the defect was curable because it was held that the notice was not addressed to the correct name and that the PAN mentioned was also incorrect. The factual background was taken into consideration and the Court held that errors and mistakes cannot and should not nullify the proceedings, which are otherwise valid and that no prejudice had been caused, as this being the mandate of Section 292B of the Act. The decision in the case of Sky Light Hospitality LLP is clearly distinguishable on facts and it does not support the case of the Revenue.

26. For all the above reasons, this court holds that the impugned notice is wholly without jurisdiction and cannot be enforced against the petitioner.

27. Accordingly, the writ petition is allowed as prayed for. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

To

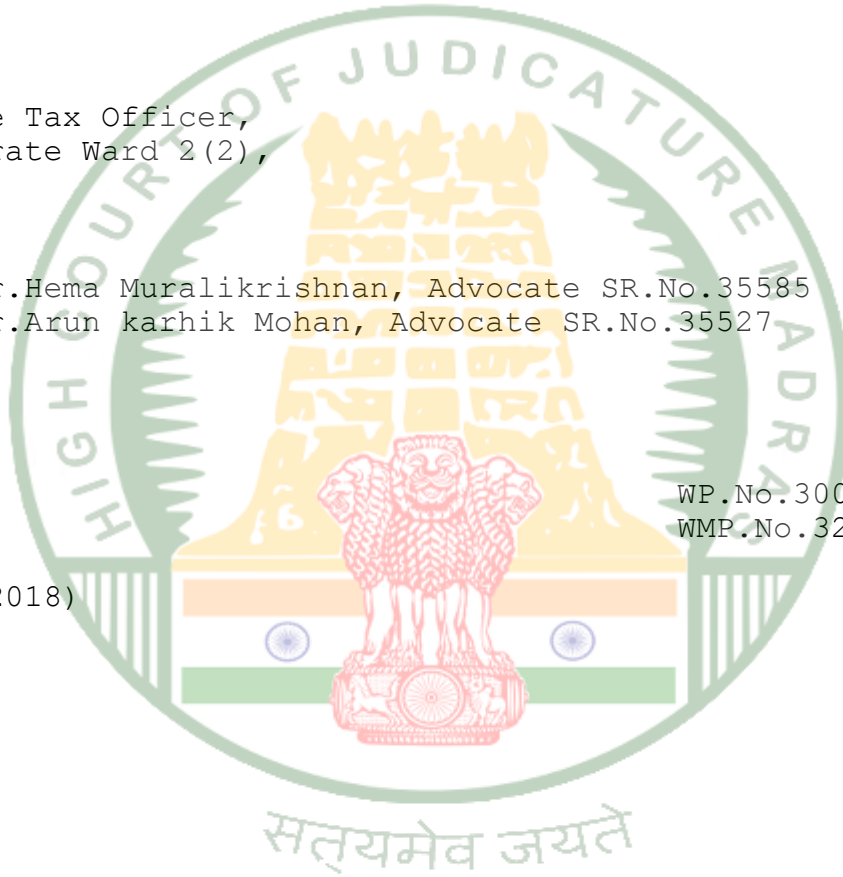
The Income Tax Officer,
Non Corporate Ward 2(2),
Chennai.

+1cc to Mr.Hema Muralikrishnan, Advocate SR.No.35585
+1cc to Mr.Arun karhik Mohan, Advocate SR.No.35527

RS

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GN(18/06/2018)



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