

\$~26

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

%

Date of Decision: 19.11.2018

+

W.P.(C) 11255/2017, CM No.46017/2017

RAJENDER KUMAR SEHGAL Petitioner
Through : Sh. Yogesh Kumar Jagia, Sh.
Amit Sood and Sh. Rishab, Advocate.
versus
INCOME TAX OFFICER WARD 56(1)
NEW DELHI Respondent
Through : Sh. Ashok. K. Manchanda, Sr.
Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

S.RAVINDRA BHAT, J. (ORAL)

1. The petitioner by filing this writ petition seeks directions to quash a notice dated 29.03.2017 issued under Section 148 of the Income Tax Act, 1961 (hereafter called the "Act") to the deceased assessee, late Smt. Rukmani Sehgal (hereafter called the "deceased assessee") and to prohibit the respondent Assessing Officer (hereafter called the "AO") from conducting proceeding for re-assessment in any manner or take any consequential action under the Act for the assessment year (AY) 2010-11.

2. The undisputed facts are that the deceased assessee had filed income tax returns and continued to do so, till her death. The return for AY 2010-2011 was processed, in a routine manner and the deceased assessee was intimated about it. On 17.01.2015, the said assessee died. The impugned reassessment notice was issued under

Section 148 of the Act to the said deceased; the petitioner, a legal representative of the deceased, Rajendra Kumar Sehgal (hereafter called the “petitioner”) and he was intimated this fact; without prejudice. Thereafter, vide letter dated 15.05.2017, the petitioner also sought a copy of the “reasons to believe”. The revenue furnished the “reasons to believe” recorded on its file in support of its opinion that reassessment was necessary. This indicated that according to information received, the deceased had shown some transactions which led to a claim for losses brought forward, pertaining to one Varun Capital Services Limited. The petitioner protested that this was not correct; after rejecting the objections received from the petitioners, the AO issued a clarification, ostensibly “clarifying” that the entity from which the deceased had received the amounts and claimed losses was different, and that the original “reason to believe” contained a typographical error.

3. The petitioner approached this court, seeking the reliefs that she has claimed, primarily on three grounds: firstly, the Act does not provide any mechanism for issuing and carrying on reassessment in respect of a dead person, *if the reassessment notice is issued against a deceased*. It is urged, secondly, that the “clarification” issued camouflages the fact that the so called “reasons to believe” was not based on application of mind and was also premised on no reason. The third ground is that the AO completed the reassessment without issuing notice under Section 143 (2) of the Act

4. In support of the first submission, the petitioner cites the Division Bench of this court, in *Vipin Walia Vs. ITO*(2016) 382 ITR

19, which was followed by the High Court of Gujarat at Ahmadabad in the case of *Rasid Lala Vs. ITO* [Special Leave Application No.18987 of 2016, decided on 29.11.2016].

5. The revenue resists the petition; its counsel relies on *Sky Light Hospitality LLP v. AC (CT)* (2018) 90 Taxmann.Com and submits that the error, in issuing the notice to a non-existent person or entity is capable of correction and by reason of Section 292B of the Act, the notice is not invalid. He also relied on *Pankajbhai Rameshbhai Zalavadia vs Jethabhai Kalabhai Zalavadiya (Deceased) through LRs & Ors* (2017) 9 SCC 700 to contend that any assessment made in the present case cannot be treated as void.

Analysis and Conclusions

6. The provision relevant to decide the first issue is Section 159 of the Act, which reads as follows:

“159. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or re-computation 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 provisions 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;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of section 161, 162 and 167 shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability."

7. After noticing the facts of the case, the Division Bench, in *Vipin Walia* (supra) (where again the reassessment notice was issued in the name of the deceased and no notice was issued to the legal representative), held that:

"11. Section 159 (2) of the Act makes a specific reference to a reassessment proceeding under Section 147 of the Act. While Section 159 (2) (a) of the Act talks of a proceeding already taken against an Assessee 'before his death'. Section 159 (2) (b) of the Act envisages any proceeding which could have been taken against the deceased if he had survived. It permits such a proceeding to be taken against the LRs of the deceased Assessee even if it had not taken while the Assessee

was alive. Section 159 (2) (b) is relevant as far as the present case is concerned.

12. What was sought to be done by the ITO was to initiate proceedings under Section 147 of the Act against the deceased Assessee for AY 2008-09. The limitation for issuance of the notice under Section 147 /148 of the Act was 31st March 2015. On 27th March 2015, when the notice was issued, the Assessee was already dead. If the Department intended to proceed under Section 147 of the Act, it could have done so prior to 31st March 2015 by issuing a notice to the LRs of the deceased. Beyond that date it could not have proceeded in the matter even by issuing notice to the LRs of the Assessee.”

8. This court sees no reason to disagree with the decision in *Vipin Walia* (supra); the summation of the principle applicable, given the plain words of the statute are unexceptionable. The revenue’s argument that the “defect” was curable, in regard to the issuance of notice, to a deceased individual, is, in the opinion of this court, untenable. The phraseology of Section 292BB precludes the contention. That provision reads as follows:

“292BB. Notice deemed to be valid in certain circumstances.—Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—

(a) not served upon him; or

(b) not served upon him in time; or

(c) served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

9. If the original assessee had lived and later participated in the proceedings, then, by reason of Section 292BB, she would have been precluded from saying that no notice was factually served upon her. When the notice was issued in her name- when she was no longer of this world, it is inconceivable that she could have participated in the reassessment proceedings, (nor is that the revenue's case) to be estopped from contending that she did not receive it. The plain language of Section 292BB, in our opinion precludes its application, contrary to the revenue's argument.

10. As far as *Pankajbhai Rameshbhai Zalavadiya (supra)* is concerned, this court notices that the judgment is an authority on the proposition that rejection of an application under Order XXII Rule 4 CPC without adjudicating its merits is not *per se* a bar for impleadment of the legal heirs and successors of a party under Order-I Rule 10(2) CPC. This court is of opinion that the absence of any provision in the Act, to fasten revenue liability upon a deceased individual, in the absence of pending or previously instituted proceeding which is really what the present case is all about, renders fatal the effort of the revenue to impose the tax burden upon a legal representative.

11. As far as the second argument, with regard to the clarification is concerned, this court is unpersuaded by the revenue's argument. The petitioner's objection that the transaction with an entity attributed to the deceased was unsupported by the books furnished to the revenue,

was straightaway rejected. However, the “reasons to believe” are premised upon such a transaction with one Varun Capital Services Ltd. (as is evident from the table at Appendix B to that document). After rejection, of the objection, which meant that according to the revenue, such a transaction was indeed recorded in the deceased’s books, the revenue attempted to “correct” the “error” by changing the name of the entity (with whom the suspect transaction occurred). This court is of opinion that such “correction” is neither innocuous nor innocent; it was clearly aimed at improving what was a fatally defective “reasons to believe” and mask the reality, to wit, that the revenue authorities utterly failed to apply their minds to the facts and circumstances of the case. On the last issue, i.e the fatality attached to the completed reassessment in the absence of a notice under Section 143 (2), this court notices that the omission renders the assessment (or reassessment as in this case) void a proposition of law enunciated in *Asstt. CIT v. Hotel Blue Moon* (2010) 321 ITR 362.

12. In view of the foregoing conclusions, the impugned reassessment notice and all consequent proceedings- including the reassessment order-have to be and are, hereby quashed. The writ petition is accordingly allowed, but without order on costs.

**S. RAVINDRA BHAT
(JUDGE)**

**PRATEEK JALAN
(JUDGE)**

NOVEMBER 19, 2018