



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10163 OF 2022

Dhirendra Bhupendra Sanghvi,]
(legal heir of Late Smt. Ushaben]
Bhupendra Sanghvi having PAN]
AAQPS0656L) an individual, aged]
49 years, residing at A-25 Sahaj,]
Amba Township Sector 1, Behind]
Simandhar City, Near Trimandir,]
Adalaj, Gandhinagar - 382421] ... Petitioner

V/s.

1. Assistant Commissioner of]
Income Tax Circle - 27(3),]
Mumbai, 423, Tower No. 6,]
Vashi Railway Station]
Commercial Complex Vashi,]
Navi Mumbai - 400703]

2. Principal Commissioner of]
Income-tax 27, Mumbai, Tower]
No. 6, Vashi Railway Station]
Commercial Complex, Vashi,]
Navi Mumbai - 400703]

3. National Faceless Assessment]
Centre, 2nd Floor, E-Ramp,]
Jawaharlal Nehru Stadium, Delhi]
- 110003.]

4. Union of India, Through The]
Secretary, Department Of]
Revenue, Ministry of Finance,]
Government of India, North]
Block, New Delhi - 110 001.] ... Respondents

...

Mr. Dharan V. Gandhi for the Petitioner.

Mr. Devvrat Singh for the Respondents.

...

**CORAM: DHIRAJ SINGH THAKUR AND
KAMAL KHATA, JJ.**

PRONOUNCED ON: 27TH JUNE, 2023.

J U D G M E N T

[PER: KAMAL KHATA, J.]

1 At the request of the parties, this Petition is taken up for final disposal at the admission stage.

2 Being aggrieved by the notice dated 19th March 2022 under section (u/s) 148A(b) of the Income Tax Act, 1961 ('Act') the order dated 31st March 2022 u/s 148A(d) and the notice dated

wp.10163.22
wadhwa

31st March 2022 issued u/s 148 all in the name of Late Smt. Usha B. Sanghvi (**‘the deceased assessee’**) and the approval granted on 30th March 2022 by the Respondent No.2 to Respondent No.1 to re-open the assessment of the deceased, the Petitioner being the legal heir has filed the present Petition under Article 226 of the Constitution in the circumstances mentioned hereunder:

FACTS:

3 The Petitioner is the legal heir of the deceased assessee who expired on 4th December 2019 at Gandhinagar. It is stated that the deceased assessee had filed her return of income u/s 139(1) of the Act on 5th June 2018 declaring her total income of ₹1,94,28,890/- earned from capital gains and income from other sources as the deceased was an investor in shares.

4 It is stated that the deceased and her family had applied for change of address in PAN as well as transfer of jurisdiction on account of shift in residence from Mumbai to Gandhinagar by her letter dated 9th January 2019 addressed to (i) Asst Commissioner of Income Tax Circle - 27(3) Mumbai (Respondent No.1), (ii) Additional/Joint Commissioner of Income Tax, Circle - 27(3), (iii) Principal Commissioner of Income-tax 27 (Respondent No.2), (iv) Commissioner of Income-Tax, Gandhinagar Circle and (v) Deputy

wp.10163.22
wadhwa

Commissioner of Income-Tax Gandhinagar Circle. It is stated that whereas the file of the deceased was not transferred, files of other family members were transferred to Gandhinagar for the reasons best known to the Respondents.

5 Upon death of the deceased, Petitioner's request for being registered as the legal heir dated 11th April 2020 sent along with copy of (i) the death certificate, (ii) the Will, and (iii) PAN Card was approved on 13th April 2020. On 20th July 2020, as the legal heir of the deceased, the Petitioner, filed the return of income of the deceased assessee for AY 2020-21. On 4th February 2021 the return of income was processed u/s 143(1) of the Act with 'no demand'.

6 Since the PAN of the deceased was not cancelled, emails dated 13th December and 15th December 2021 were sent to the Respondent once again and a grievance was also filed on the portal on 15th December 2021 intimating about the death of the deceased. On 29th January 2022, the Respondents reverted on the portal seeking (i) indemnity bond (ii) original pan card to be deleted (iii) legal heir documents and other relevant documents. Thus, the Respondents were aware of the death of the assessee

Late Smt. Usha B Sanghvi.

wp.10163.22
wadhwa

7 The learned counsel for the Petitioner submitted that inspite of being aware, the Respondent No.1 on 19th March 2022 issued notice under section 148A(b) of the Act in the name of the deceased. He pointed out that though the notice was dated 19th March 2022 it could be evinced that it was signed on 26th March 2022 and the deceased assessee was asked to reply by 28th March 2022; consequently, less than seven days' time was given in contravention to the provisions of section 148A of the Act. He submitted that the Petitioner filed a reply on 27th March 2022 giving all reasons and details to substantiate that there was no case to issue notice. On 31st March 2022 the Respondent No. 1 passed an order disposing off the objections u/s 148A(d) of the Act with the prior approval of Respondent No. 2 taken on 30th March 2022. On the same day a notice u/s 148 was issued in the name of the deceased assessee requiring her to file return of income within 30 days. On 8th April 2022 the Petitioner as the legal heir, filed the return of income under protest and also sought copy of the reasons recorded for reopening the assessment. On 28th April 2022 the Respondent No.1 reverted reiterating the contents of the notice to which the Petitioner filed detailed objection on 29th April 2022. The learned counsel submitted that apprehending huge additions and consequently demands the present Petition was filed.

wp.10163.22
wadhwa

8 Mr. Singh the learned counsel for the Respondents in response submitted that an alternate remedy was available before the Assessing Officer (AO) to the Petitioner as the Assessment Order has not been passed. He submitted that the case has been reopened after following the due process of law. He submitted that the Petitioner has not challenged the intimation order u/s 143(1) in the name of the deceased assessee by the CPC, ITD. He submitted that the Petitioner had failed to file the indemnity bond as required to register himself as the Legal Heir. He further submitted that having accepted the Intimation order u/s143(1) passed by the CPC the Petitioner cannot complain about the reassessment proceedings in the name of the deceased. In support of his contention he relied upon the judgment of the Gujarat High Court in the case of ***Chandreshbhai Jayantibhai Patel v Income Tax Officer***¹. He however, fairly pointed out the averment in paragraph 20 of the reply which states as under:

“20. Thus, it is respectfully and humbly stated that the AO was aware that the assessee Smt. Usha Bhupendra Sanghvi had passed away. However, since the ITBA System also is undergoing a change and is being updated, with new functionalities and modalities being introduced for the convenience of the assessee as well as the Department and the fact that the Legal Heir also could not upload and update the data in the system, the notices had been issued in the name of the assessee Late Smt. Usha Bhupendra Sanghvi. Wherever possible, the AO had tried to mention it in the body of the order and notices that the proceedings

¹ (2019) 413 ITR 276
wp.10163.22
wadhwa

are in the name of the Legal Heir but where the proceedings are system generated, then they are associated and linked to a particular PAN and the name and details associated to than PAN and no changes are possible.”

He therefore submitted that the Petitioner should avail his remedy before the AO.

Conclusion:

9 We have heard both counsel and perused the papers and proceedings.

10 The facts are not in dispute. The impugned notice for reopening the assessment was issued on a dead person. There are several judgments of different High Courts holding that the notice issued on a dead person or reopening of assessment of a dead person is null and void in law and the requirement of issuing a notice to a correct person is not merely a procedural requirement but a condition precedent for a notice to be valid in law. A reference in this respect can be made to a decision of this court in *Sumit Balkrishna Gupta vs Assistant Commissioner of Income Tax, Circle 16(2), Mumbai*². In the case of *Principal Commissioner of Income Tax, New Delhi vs Maruti Suzuki India Ltd.*³ the Apex Court has held that the notice issued and the order passed in the

²[2019] 103 taxmann.com 188 (Bombay)

³ [2019] 107 taxmann.com 375(SC)
wp.10163.22
wadhwa

name of an old entity is bad in law and that such error was not curable u/s 292B of the Act as the same constitutes a substantive illegality and not a mere procedural violation.

11 This Court in the case of *CLSA India Private Limited vs The Deputy Commissioner of Income Tax, 4(1)(1) & Ors.* in Writ Petition No. 2462 of 2022 whilst allowing the Petition has held that the stand of the revenue that the reassessment was justified in view of the fact that the PAN in the name of the non-existent entity had remained active does not create an exception in favour of the revenue to dilute in any manner the principles enunciated by the Apex Court in *Saraswati Industrial Syndicate Ltd. v/s CIT⁴* and in the case of *PCIT New Delhi vs. Maruti Suzuki India Ltd.* (supra).

12 Keeping in mind, the averments in paragraph 20 of the reply, extracted hereinabove, this Court is of the view that the respondent no.1 **would not have been wrong**, keeping the settled law in mind, in abstaining from issuing a notice on the deceased assessee. The respondent no.2 **would also not have been wrong** in not granting the sanction to the respondent no.1 for issuance of a notice on the deceased assessee, since the department was aware

⁴186 ITR 278 (SC)
wp.10163.22
wadhwa

of the demise of the assessee and since the ITBA system is undergoing a change and being updated with new functionalities and modalities. In our view, if the concerned officers follow the settled law and abstain from issuing notices which are null and void, would not only help the citizenry but also the courts in the country who are already overburdened. In fact, it would be in tune with the Finance Act 2021 which aims to achieve the ultimate object of simplifying the tax administration, ease compliance and reduce litigation.

13 For the reasons stated above, this Court holds that the notice and all consequential proceedings in the name of a deceased assessee are null and void and consequently, the impugned notice dated 31st March 2022 u/s 148 of the Act, the Order dated 31st March 2022 u/s 148A(d) of the Act and Notice dated 19th March 2022 u/s 148A(b) of the Act are quashed and set aside and all actions in furtherance thereto are prohibited.

14 This Petition is allowed with no order as to costs.

(KAMAL KHATA, J.)

(DHIRAJ SINGH THAKUR, J.)