

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 22ND DAY OF JANUARY, 2025****R****PRESENT****THE HON'BLE MR JUSTICE KRISHNA S DIXIT****AND****THE HON'BLE MR JUSTICE G BASAVARAJA****WRIT APPEAL NO. 1407 OF 2024 (T-IT)****BETWEEN:**

1. THE INCOME TAX OFFICER,
WARD-6(2)(1), BMTC BUILDING,
80 FEET ROAD, 6TH BLOCK,
KORMANGALA, BENGALURU – 560 095.
2. THE ADDL. COMMISSIONER OF INCOME TAX
RANGE-6(1), BMTC BUILDING,
80 FEET ROAD, 6TH BLOCK,
KORAMANGALA, BENGALURU – 560 095.

...APPELLANTS

(BY SRI. Y V RAVIRAJ., ADVOCATE)

AND:

SMT.PREETHI V,
AGED ABOUT 23 YEARS,
LEGAL REPRESENTATIVE OF DECEASED
SMT. RAMANATHANGURULAKSHMI,
R/AT NO.422, 14TH CROSS, 3RD MAIN,
2ND PHASE STAGE, WEST OF CHORD ROAD,
MAHALAKSHMIPURAM, BANGALORE – 560 086,
KARNATAKA.

...RESPONDENT

(BY SRI. SANDEEP HUILGOL.,ADV., FOR C/R1
(CP NO.15116/2024)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT, PRAYING TO A) SET ASIDE THE
ORDER PASSED BY THE LEARNED SINGLE JUDGE IN
W.P.NO.12537/2024(T-IT) DATED 19.06.2024 AND ETC.,

Digitally
signed by
SHARADA
VANI
Location:
HIGH
COURT OF
KARNATAKA



THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, **KRISHNA S. DIXIT.J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
and
HON'BLE MR JUSTICE G BASAVARAJA

CAV JUDGEMENT

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

This Intra-Court Appeal by the Revenue seeks to call in question a learned Single Judge's order dated 19.06.2024 whereby Respondent-Assessee's W.P.No.12537/2024 having been favoured, relief has been accorded to her as under:

"13. Accordingly, by setting aside the notice issued under Section 148 of the Act and the orders pursuant there to including the order at Annexure-'A2', demand notice at Annexure-'A3' and penalty notices at Annexures-'G', 'H' and 'J' are set aside. The consequential proceedings if any, raising demand are also set aside".

2. FOUNDATIONAL FACTS IN BRIEF:

2.1 The Assessing Authority received information that the Assessee Smt.Ramanatha Gurulakshmi had huge cash deposits and that during the Assessment Year 2016-17 she had made transactions pertaining to immovable properties and further that she had not filed her Returns of



Income declaring interest from the deposits and capital gains. A notice dated 31.01.2023 was issued to her u/s. 148A(b) of the Income Tax Act, 1961 by Speed Post whereby she was asked to show as to why notice u/s.148 should not be issued. The Speed Post came to be served on 03.02.2023 and service is vouched by postal records. Second notice was sent on 15.02.2023.

2.2 As no reply was filed to the above notices, order u/s.148A(d) came to be passed on 11.03.2023 and further notice u/s.148 also was issued directing the Assessee to file her returns. This was followed by statutory notice dated 15.11.2023 issued u/s.142(1) by Speed Post. However, the same went back unserved with a postal shara 'Deceased'. Yet another notice dated 30.11.2023 followed under the same provision. The Respondent herein sent the reply dated 28.11.2023 mentioning that the Assessee died on 14.10.2022. Assessing Authority after referring to Sec.159(2)(d) of the Act made the Assessment u/s.147 r/w Sec.144, on 29.03.2024 against the deceased Assessee for the Assessment Year 2016-17.

2.3 Petitioner filed W.P.No.12537/2024 (T-IT) laying a challenge *inter alia* to the above Assessment Order, Computation Sheet, Notice of Demand & Notice of Penalty mainly on the ground that, all they were generated against a dead person and consequently were



liable to be treated as null & void and therefore could not be enforced against him, even if he is a legal representative of the deceased. The learned Single Judge vide order dated 19.06.2024 agreed with this and granted relief to him. Aggrieved thereby, this Intra-Court Appeal is preferred. The Writ Petitioner who happens to be the Respondent in this Appeal is on Caveat through his counsel, who opposes the Appeal making submission in justification of the reasons of the learned Single Judge.

3. Having heard the learned counsel appearing for the parties and having perused the Appeal papers, we decline indulgence in the matter broadly agreeing with the learned Single Judge that the Assessment Order and other proceedings taken up against the deceased are all null & void. The proceedings initiated against the Assessee by issuing notice after his demise cannot be continued against his/her legal representative. Had the proceedings been initiated against the Assessee during his life time, they could be continued against the legal representatives of the deceased Assessee. However, that is not the factual position here. Therefore, the order of the learned Single



Judge cannot be faltered in quashing what were challenged before him.

3.1 The strong reliance placed by the learned Panel Counsel on the text of Sec.159(2)(a)(b)&(c) of the 1961 Act to alter the impugned judgment does not come to his aid. The text of Sec.159 in its entirety is reproduced for ease of reference:

"159. Legal representatives.

(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 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 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, section 162 and section 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."

3.2 The above provisions are as clear as Gangetic Waters; they inter alia indicate with clarity that the proceedings initiated against the Assessee during his lifetime can be continued against his Legal Representatives, and their liability could be co-extensive with the value of the estate of the deceased. They do not admit the kind of interpretation sought to be placed by the



Revenue to the effect that initiation of proceedings can be made against the deceased Assessee and orders passed therein would bind or can be enforced against the Legal Representatives. Without straining the language of the said provision, a construction in variance cannot be countenanced. We hasten to add that had the proceedings been initiated during the lifetime of the Assessee, but continued against his Legal Representatives, that could have been admissible in the scheme of the Act. However, that is not the case. If the Parliament intended that, a proceeding of the kind can be initiated against the Assessee posthumously and orders passed therein should bind his Legal Representatives, the language of the provision would have been much different. There is a strong presumption that the Parliament fully understands what public policy needs to be enacted and the text of language to be employed for such enactment. English is a foreign language, is a poor ground of rebuttal, especially when a plethora of legislations are in that language, although along with Hindi.

3.3 The second contention of the learned Panel Counsel that liberty ought to have been reserved to the Revenue for initiating fresh proceedings against the Legal Representatives of the Assessee, once proceedings taken up against the deceased Assessee are set at naught, again does not impress us even in the least. This contention is



structured on a premise that the Legal Representatives i.e., persons who hold estate of the deceased Assessee in their hands are under a legal obligation to inform the Revenue as to the death of the Assessee. To support such a premise, no provision of law in general and no section of 1961 Act in particular are brought to our notice. Clause (b) of Section 159(2) enables proceedings being taken against Legal Representatives of the deceased, is true. However, that is subject to such proceedings being capable of being taken against the deceased. If the statutorily prescribed time limit has expired as against the deceased himself, as has happened in this case then no proceedings can be taken against his LRs. This view gains support from Kanga and Palkivala's The Law and Practice of INCOME TAX, 11th Edition (LexisNexis), Page – 2768-69.

The same is as under:

"Assessment on Legal Representative.- If the assessee died before the proceedings for assessment were completed, it is incumbent on the AO to bring the legal representative of the deceased on record and proceed from the stage where it was left at the time of death of the deceased.?" Where the death occurs between the conclusion of the hearing and the making of the assessment order, the non-issuance of notices to the legal representatives does not invalidate the order, and at best it is a defect liable to be corrected. This principle would not apply when the assessee is already dead at the time of issuance of the notice. If, on the date of death of the deceased, a return of income had



not been made under s 139(1) and a notice under ss 142(1)(i) or 148, as the case may be, had not been served on him, the AO should first issue the notice under s 142(1)(i) or 148 to the legal representative of the deceased and then proceed to assess the income of the deceased in the hands of the representative as if the representative were the assessee. In other words, notice cannot be issued in the name of a dead person and such notice would be null and void, and proceedings cannot thereafter be continued against the legal representatives. Notice under the relevant sections should be, issued qua the legal representative within limitation period prescribed under the relevant section under which notice is issued."

3.4 Learned Single Judge at Paragraph Nos. 9, 10 & 11 of the impugned judgment, has rightly observed as under:

"In light of the above, question of continuing with fresh proceedings against the deceased which liberty is sought of by the learned counsel for the revenue would be permissible only if proceedings could have been taken against the deceased if he had survived. The present proceedings under Section 148 of the act are as regards the assessment year 2016-17, the time limit for the proceedings under Section 148 would be in terms of Section 149(1)(b) proviso. In terms of the proviso there is a bar for issuance of notice under Section 148 in a case for a relevant assessment year before 01.04.2012 and in the present case as the assessment year 2016-17 falls within the applicability of the proviso, and proceedings would have been initiated within 31.03.2023 within the outer limit of 6 years from the end of assessment year 2016-17 as against the legal



representative. Accordingly, at this stage while setting aside the notice under Section 148 of the Act, question of granting liberty would be contrary to the mandate of time prescribed under Section 149(1) (b) proviso."

Conspicuously, there is no provision in 1961 Act which provides for discounting the time spent during the pendency of proceedings against the deceased Assessee while computing the limitation period for initiating the proceedings against his Legal Representatives. Therefore, Revenue cannot seek any such discount.

In the above circumstances, this Appeal fails. Costs made easy.

**Sd/-
(KRISHNA S DIXIT)
JUDGE**

**Sd/-
(G BASAVARAJA)
JUDGE**

SNB,BSV,CBC
List No.: 1 Sl No.: 1