

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
A N D  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)**

ITA. Nos. 3721, 3722 & 3723/Del/2019  
(Assessment Years: 2008-09, 2009-10 & 2010-11)

Lalita Agarwal, Legal Heir of Late Shri Subhash Chandra Agarwal, Flat No. 70, Pocket-B, SFS Flats, Sukhdev Vihar, N.Delhi-110025. <b>PAN : AANPA3967D</b>	Vs.	ACIT,  Circle : 68 (1)  New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Piyush Kaushik, Adv. & Shri Rupak Agarwal, Adv.
Revenue by:	Shri Vipul Kashyap, Sr. DR
Date of Hearing	15/12/2020
Date of pronouncement	28/12/2020

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. These are three appeals filed by the assessee against the order of the ld. CIT (Appeals)-28, New Delhi, dated 20.02.2019 passed as a consolidated order for the Assessment Years 2008-09, 2009-10 and 2010-11. This is challenged by the assessee by the above three separate appeals. The assessee is challenging the re-opening of the assessment under Section 148 of the Income Tax Act, 1961 (the Act) issued in the name and under the PAN number of a deceased assessee.
2. The brief facts are required to be stated succinctly that one Shri Subhash Chandra Agarwal having Permanent Account Number AANMPA3967D passed away on 4<sup>th</sup> December, 2014. On 16<sup>th</sup> January, 2015 the Income Tax Officer, Investigation, issued a query letter in the name of deceased person Shri Subhash Chandra Agarwal raising certain queries. On 23<sup>rd</sup>

January, 2015, Legal heir of Late Shri Subhash Chandra Agarwal, the wife of the assessee, namely, appellant in these appeals, Ms. Lalita Agarwal informed the Revenue about the demise of Shri Subhash Chandra Agarwal on 4<sup>th</sup> December, 2014 submitting the copy of death certificate. Such letter was duly acknowledged by the Revenue and this fact is evident from the first page of the assessment order for Assessment year 2008-09. Subsequently on 30<sup>th</sup> March, 2015, a notice under Section 148 of the Act was issued in the name of Shri Subhash Chandra Agarwal stating his Permanent Account Number for Assessment Year 2008-09. Admittedly the notice was issued on the deceased person. Subsequently on 21<sup>st</sup> March, 2016 assessment order was passed in the hands of legal heir Ms. Lalita Agarwal, wife of the deceased Shri Subhash Chandra Agarwal. On 29<sup>th</sup> of March, 2016 once again notice for Assessment Year 2009-10 was issued in the name of the deceased and on the Permanent Account Number of the deceased. On 30<sup>th</sup> March, 2016 an assessment order under Section 144 read with Section 147 of the Act was also passed in the name and on PAN of deceased Shri Subhash Chandra Agarwal. On 12<sup>th</sup> August, 2016 the assessment order under Section 144 of the Act was passed for Assessment Year 2009-10. Similarly notice under Section 148 of the Act was issued on 29<sup>th</sup> March, 2017 which culminated into assessment on 31.10.2017 on the name of the deceased and on the PAN of the deceased for Assessment Year 2010-11. Thus, it was apparent that for all the above said three years the assessment orders, the notices were issued on the deceased assessee and on the PAN of that deceased assessee.

3. The Id. Authorised Representative submitted a paper book narrating the above facts and submitting the copies of notices and assessment orders to demonstrate that notices as well as the assessment has been passed in the name of deceased assessee and on PAN of deceased person. For all these years, assessment orders on legal heir and wife of the assessee have been separately passed in the PAN number of the assessee, Lalita Agarwal and in these orders no assessment has been made with respect to income of late Shri Subhash Chandra Agarwal.
4. Thus, the issue is that assessee challenges those assessment orders which have been passed in the name of late Shri Subhash Chandra Agarwal and

on his PAN, who has already passed away on the date of issue of notices / passing of the assessment order.

5. The assessee challenged the same before the Id. CIT (Appeals) who held that in the present case the Assessing Officer was not having any knowledge of assessee being deceased on the date of issue of notice under Section 148 of the Act. Therefore, he rejected the arguments of the assessee on that ground.
6. The learned Authorised Representative challenges that notice issued under Section 148 in the name of deceased and importantly on the Permanent Account Number of the deceased is invalid and all subsequent proceedings is null and void. To support his contention, he relied on the decision of the Hon'ble Delhi High Court in the case of Savita Kapila Vs. ACIT dated 16<sup>th</sup> July, 2020. He also submitted that in the present case the assessee informed the Revenue about the death of Mr. Subhash Chandra Agarwal on 23<sup>rd</sup> January, 2015. He otherwise stated that there is no statutory obligation on the legal heirs to intimate the death of the assessee to the Assessing Officer. He further stated that even otherwise the orders are not sustainable in law because the proceedings have been initiated against the deceased. The Id. AR also dealt with the issue by extracting from the site of the Department that what is the Permanent Account Number. He also dealt with the decision of the Hon'ble Delhi High Court in Savita Kapila (supra) and submitted that the case is squarely covered by that decision in favour of the assessee.
7. The Id. Departmental Representative relied upon the order of the Id. CIT (Appeals) who dealt with the challenge to the notice under Section 148 vide para Nos. 6.1 and 6.2 of the order.
8. We have carefully considered the facts stated above in these appeals wherein the notice under section 148 is issued in the name of a deceased assessee stating his PAN number. Further the assessment orders are also framed in the name of the deceased assessee stating his PAN number. The issue before us is squarely covered by the decision of Savita Kapila (supra) in 426 ITR 502 wherein it has been held that there is no legal requirement that legal representative should report death of an assessee to the Income

Tax Department. Therefore, the order of the Id. CIT (Appeals) in sustaining the assessment order is not correct. The sustenance of a notice under section 148 of the Act is the foundation stone on which subsequent re-assessment proceedings are built up. To acquire the valid jurisdiction necessarily such notices are to be addressed to the correct person and not to a deceased. The Hon'ble Delhi High Court in the above decision of Savita Kapila (supra) dealt with an identical situation and has allowed the Writ petition of that assessee quashing the notices issued u/s 148 and all subsequent consequential orders passed thereafter. The Hon'ble High Court also dealt with the applicability of Section 292BB of the Act in para No. 38 of the order. The Hon'ble High Court dealt with the issue stating the facts as under :-

#### "Facts

2. The relevant facts of the present case are that an information was received by the Assessing Officer that in the financial year 2011-12, the assessee-Shri Mohinder Paul Kapila had cash deposits of rupees ten lakhs (Rs. 10,00,000) in his bank account, time deposits of rupees eleven lakhs five thousand five hundred and eighty six (Rs. 11,05,586) and receipts of

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rupees twenty five thousand four hundred and fourteen (Rs. 25,414) as per Form 26AS. It was noticed that no return had been filed and the source of the aforesaid deposits and receipts remained unexplained and had escaped assessment. Accordingly, the case of Mr. Mohinder Paul Kapila was selected under section 147/148 of the Act, 1961, after recording of reasons and approval of the Principal Commissioner of Income-tax-15, Delhi on March, 28 2019.

3. However, late Shri Mohinder Paul Kapila (hereinafter referred to as "deceased-assessee") had already expired on December 21, 2018. The deceased-assessee is survived by two sons and two daughters.

4. Notice dated March 31, 2019 under section 148 of the Act, 1961, for the assessment year 2012-13 was issued, i.e., on the last date of limitation, in the name of the deceased-assessee, Shri Mohinder Paul Kapila with PAN : ASXPK1666P and sent at his last known address known to the Income-tax Department, i.e., Flat No. 286, 1st Floor, D

Flats, Sector 9, Pkt-1, Dwarka, New Delhi 110075. The impugned notice could not and was never served upon Late Shri Mohinder Paul Kapila. Thereafter the Assistant Commissioner of Income-tax, Circle 43(1), Delhi (hereinafter referred to as "Assessing Officer") issued notices dated August 22, 2019, August 27, 2019 and September 18, 2019 to the deceased-assessee. The said notices were also neither served upon the assessee nor upon any of his legal heirs.

5. On October 10, 2019, a show-cause notice was issued to the deceased- assessee to explain why penalty under section 271(1)(b) of the Act, 1961, should not be imposed for failure to comply with notice issued under section 142(1) of the Act, 1961.

6. Pursuant to another notice issued under section 133(6) of the Act, 1961, to the banks of the deceased-assessee, it was revealed to the Income-tax Department that the same address of Dwarka was mentioned in the KYC and further from the documents made available by the banks a telephone number was traced and the phone call was made to the present petitioner, i.e., Savita Kapila who for the first time informed that she is the daughter of the assessee and that the assessee had passed away on December 21, 2018. Admittedly, for the first time the death certificate confirming the above was uploaded by the petitioner on the e-portal of the Income-tax Department on October 15, 2019.

7. The Assessing Officer passed an order dated November 21, 2019, whereby penalty under section 271(1)(b) of the Act, 1961, was imposed upon the deceased-assessee through legal heir for non-compliance of notices issued to the deceased-assessee.

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8. A final show-cause notice dated November 25, 2019 was issued to the assessee, through legal heir, directing to file the return and produce relevant documents by November 28, 2019, failing which the Assessing Officer shall pass the assessment order under section 144 of the Act.

9. Proceedings were transferred to PAN (AWZPK7699E) of one of the legal heirs of the deceased-assessee—Ms. Savita Kapila (petitioner) on December 27, 2019 and on the same date the impugned assessment order was passed in her name and permanent account number, whereby an addition of rupees twenty one lakhs thirty one thousand (Rs. 21,31,000) was made and demand of rupees fourteen

lakhs nineteen thousand and sixty (Rs. 14,19,060) was raised.”

9. The Honourable high court on the above concise facts has held that :-

“25. In the present case the notice dated March 31, 2019 under section 148 of the Act, 1961 was issued to the deceased-assessee after the date of his death (December 21, 2018) and thus inevitably the said notice could never have been served upon him. Consequently, the jurisdictional requirement under section 148 of the Act, 1961 of service of notice was not fulfilled in the present instance.

26. In the opinion of this court the issuance of a notice under section 148 of the Act is the foundation for reopening of an assessment. Consequently, 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 merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. (See Sumit Balkrishna Gupta v. Asst. CIT [2019] 414 ITR 292 (Bom) ; [2019] 2 TMI 1209-the Bombay High Court).

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27. In Chandreshbhai Jayantibhai Patel v. ITO [2019] 413 ITR 276 (Guj) ; [2019] (1) TMI 353-the Gujarat High Court has also held (page 290 of 413 ITR) : "the question that therefore arises for consideration is whether the notice under section 148 of the Act issued against the deceased-assessee can be said to be in conformity with or according to the intent and purposes of the Act. In this regard, it may be noted that a notice under section 148 of the Act is a jurisdictional notice, and existence of a valid notice under section 148 is a condition precedent for exercise of jurisdiction by the Assessing Officer to assess or reassess under section 147 of the Act. The want of valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects the validity of the proceedings for assessment or reassessment. A notice issued under section 148 of the Act against a dead person is invalid, unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection." Consequently, in view of the above, a reopening notice under section 148 of the Act, 1961 issued in the name of a deceased-assessee is null and void.

Also, no notice under section 148 of the Act, 1961 was ever issued upon the petitioner during the period of limitation. Consequently, the proceedings against the petitioner are barred by limitation as per section 149(1)(b) of the Act, 1961.

28. Also, no notice under section 148 of the Act, 1961 was ever issued to the petitioner during the period of limitation and simply proceedings were transferred to the permanent account number of the petitioner, who happens to be one of the four legal heirs of the deceased-assessee vide letter dated December 27, 2019. Therefore, the assumption of jurisdiction qua the petitioner for the relevant assessment year is beyond the period prescribed and consequently, the proceedings against the petitioner are barred by limitation in accordance with section 149(1)(b) of the Act, 1961.

29. In Smt. Sudha Prasad (supra) the petitioner had challenged the assessment order and demand notice only. Neither non-issuance of notice was challenged nor the issue of proceedings being barred by limitation was raised or decided. Consequently, the said judgment is inapplicable to the present case and is therefore, of no help to the Revenue.

29. As in the present case proceedings were not initiated/pending against the assessee when he was alive and after his death the legal representative did not step into the shoes of the deceased-assessee, section 159 of the Act, 1961 does not apply to the present case.

30. Section 159 of the Act, 1961 applies to a situation where proceedings are initiated/pending against the assessee when he is alive and after his death the legal representative steps into the shoes of the deceased-assessee.

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Since that is not the present factual scenario, section 159 of the Act, 1961 does not apply to the present case.

31. In *Alamelu Veerappan v. ITO* [2018] 12 ITR-OL 95 (Mad) ; [2018] (6) TMI 760—the Madras High Court, it has been held by the Madras High Court, "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". In *Rajender Kumar Sehgal* (supra), a Co-ordinate Bench of this court has held, (page 291 of 414 ITR) "This court is of the 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".

There is no statutory requirement imposing an obligation upon legal heirs to intimate the death of the assessee.

32. This court is of the view that in the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the Income-tax Department. After all, there may be cases where the legal representatives are estranged from the deceased- assessee or the deceased-assessee may have bequeathed his entire wealth to a charity. Consequently, whether PAN record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In *Alamelu Veerappan* (supra) it has been held "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".

33. The judgment in *Pr. CIT v. Maruti Suzuki India Ltd.* (supra) offers no assistance to the respondents. In *Pr. CIT v. Maruti Suzuki India Ltd.* (supra) the Supreme Court was dealing with section 170 of the Act, 1961 (succession to business otherwise than on death) wherein notice under section 143(2) of the Act, 1961 was issued to non-existing company. In that case, the Department by very nature of transaction was aware about the amalgamation. However, the said judgment nowhere states that there is an obligation upon the legal representative to inform the Income-tax Department about the death of the assessee or to surrender the permanent

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account number of the deceased assessee. The relevant portion of the said judgment is reproduced hereinbelow (page 635 of 416 ITR) :

"In this case, the notice under section 143(2) under which juris diction was assumed by the Assessing Officer was issued to a non- existent company. The assessment order



was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in section 292B . . .

In the present case, despite the fact that the Assessing Officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a Co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment on November 2, 2017. The decision in Spice Enfotainment has been followed in the case of the respondent while dismissing the special leave petition for the assessment year 2011-12. In doing so, this court has relied on the decision in Spice Enfotainment."

34. Consequently, the legal heirs are under no statutory obligation to intimate the death of the assessee to the Revenue.

Section 292B of the Act, 1961 has been held to be inapplicable, vis-a-vis, notice issued to a dead person in *Rajender Kumar Sehgal (supra)*, *Chandreshbhai Jayantibhai Patel (supra)* and *Alamelu Veerappan (supra)*.

35. This court is of the opinion that issuance of notice upon a dead person and non-service of notice does not come under the ambit of mistake, defect or omission. Consequently, section 292B of the Act, 1961 does not apply to the present case.

36. In *Sky Light Hospitality (supra)* notice was issued to Sky Light Hospitality Pvt. Ltd. instead of Sky Light Hospitality LLP. In that factual context, this court had observed, "Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated April 11, 2017. They had objected to the notice being issued in the name of the company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was relied and dealt with by them". The Supreme Court while dismissing the special leave petition had also observed "In the peculiar facts of this

case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under section 292B of the Income tax Act".

37. In any event, section 292B of the Act, 1961 has been held to be inapplicable, vis-a-vis, notice issued to a dead person in Rajender Kumar Sehgal (supra), Chandreshbhai Jayantibhai Patel (supra) and Alamelu Veerappan (supra). In all the aforesaid cases, the judgment of Sky Light Hospitality (supra) had been cited by the Revenue.

In Rajender Kumar Sehgal (supra) a Co-ordinate Bench of this court has held that section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative.

38. This court is also of the view that section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative. Further, in the present case one of the legal heirs of the deceased-assessee, i.e., the petitioner, had neither co-operated in the assessment proceedings nor filed return or waived the requirement of section 148 of the Act, 1961 or submitted to jurisdiction of the Assessing Officer. She had merely uploaded the death certificate of the deceased-assessee. In CIT v. M. Hemanathan [2016] 384 ITR 177 (Mad) ; [2016] (4) TMI 258-the Madras High Court it has been held (page 182 of 384 ITR) : "In the case on hand, the assessee was dead. It was the assessee's son, who appeared and perhaps co-operated. Therefore, the primary condition for the invocation of section 292BB is absent in the case on hand. Section 292BB is in place to take care of contingencies where an assessee is put on notice of the initiation of proceedings, but who takes advantage of defective notices or defective service of notice on him. It is trite to point out that the purpose of issue of notice is to make the noticee aware of the nature of the proceedings. Once the nature of the proceedings is made known and understood by the assessee, he should not be allowed to take advantage of certain procedural defects. That was the purpose behind the enactment of section 292BB. It cannot be invoked in cases where the very initiation of proceedings is against a dead person. Hence, the second contention cannot also be upheld".

39. Even a Co-ordinate Bench of this court in Rajender Kumar Sehgal (supra) has held (page 291 of 414 ITR) : "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

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section 292BB, in our opinion precludes its application, contrary to the Revenue's argument".

40. Consequently, the applicability of section 292BB of the Act, 1961 has been held to be attracted to an assessee and not to legal representatives.

#### Conclusion

41. To conclude, the arguments advanced by the respondent are no longer res integra and have been consistently rejected by different High Courts including this jurisdictional court. In view of consistent, uniform and settled position of law, to accept the submissions of the respondent would amount to unsettling the "settled law". In fact, in Pr. CIT v. Maruti Suzuki India Limited (supra), the Supreme Court speaking through hon'ble (Dr.) Justice Dhananjaya Y. Chandrachud has succinctly observed as under (page 638 of 416 ITR) :

"We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this court in relation to the respondent for the assessment year 2011-12 must, in our view be adopted in respect of the present appeal which relates to the assessment year 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable."

42. Keeping in view the aforesaid, the present writ petition is allowed and the impugned notice dated March 31, 2019 and all consequential orders/ proceedings passed/initiated thereto including orders dated November 21, 2019 and December 27, 2019 are quashed."

10. We find the facts in the present case before us are for better than the facts before the honourable Delhi High court as in that case proceedings were transferred in the name of legal heir and PAN of LH was used for making assessment. In the present case Notice as well as assessment orders

both for all these three years were passed in the name of the Deceased assessee.

11. In view of above facts and the decision of the Hon'ble jurisdictional High Court in 426 ITR 502, respectfully following the same, we quash the assessment orders passed in all these three appeals and allow Ground No. 1 and 2 of all the three appeals.
12. As we have quashed the assessment orders passed in all these three appeals, the other grounds, which were also not pressed by the learned AR are not required to be adjudicated as at present they do not survive.
13. In view of this, all the above three appeals of the assessee are allowed.

Order pronounced in the open court on : 28/12/2020.

**Sd/-**  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated : 28/12/2020

\*MEHTA\*

Copy forwarded to

1. Appellant;
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	22.12.2020.
Date on which the typed draft is placed before the dictating member	23.12.2020.
Date on which the typed draft is placed before the other member	28.12.2020.
Date on which the approved draft comes to the Sr. PS/ PS	28.12.2020.
Date on which the fair order is placed before the dictating member for pronouncement	28.12.2020.

Date on which the fair order comes back to the Sr. PS/ PS	28.12.2020.
Date on which the final order is uploaded on the website of ITAT	28.12.2020.
date on which the file goes to the Bench Clerk	28.12.2020.
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	