

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15172 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE DR.JUSTICE A. P. THAKER

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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CHANDRESHBHAI JAYANTIBHAI PATEL

Versus

THE INCOME TAX OFFICER

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Appearance:

MR CHINTAN DAVE, ADVOCATE for M/s HLP ASSOCIATES LLP(9263) for the PETITIONER

MRS MAUNA M BHATT(174) for the RESPONDENT

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CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI

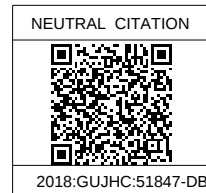
and

HONOURABLE DR.JUSTICE A. P. THAKER

Date : 10/12/2018

ORAL JUDGMENT

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)



1. Rule. Mrs. Mauna Bhatt, learned senior standing counsel waives service of notice of rule on behalf of the respondent.

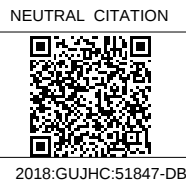
2. Having regard to the controversy involved in the present case which lies in a very narrow compass, with the consent of the learned advocates for the parties, the matter was taken up for final hearing.

3. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner challenges the notice dated 28.03.2018 issued by the respondent under section 148 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

4. The facts stated briefly are that the petitioner is the son of late Shri Jayantilal Harilal Patel, who passed away on 24.06.2015. By the impugned notice dated 28.03.2018 issued in the name of late Shri Jayantilal Harilal Patel, the respondent seeks to reopen the assessment for assessment year 2011-12.

4.1 In response to the said notice, the petitioner vide communication dated 27.04.2018, which was duly received by the office of the respondent on 01.05.2018, objected to the initiation of reassessment of proceedings and informed that his father Shri Jayantilal Harilal Patel had passed away on 24.06.2015 and accordingly, urged the respondent to drop the reassessment proceedings. A copy of the petitioner’s father’s death certificate was also enclosed along with the said communication.

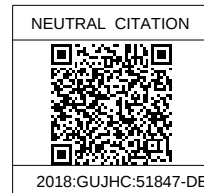
4.2 Though the respondent authority was duly informed



about the death of the petitioner's father, he proceeded with the reassessment proceedings and issued a notice dated 10.07.2018 under section 142(1) of the Act, which was addressed to the deceased father of the petitioner, calling upon him to produce the relevant details.

4.3 The petitioner once again addressed a communication dated 02.08.2018 objecting to the initiation of reassessment proceedings and relying upon the precedents in his favour wherein it has been held that proceedings against a dead person are null and void. Thereafter, the respondent issued yet another notice dated 03.08.2018 under section 142(1) of the Act calling for further details. The petitioner responded to the said notice by an email communication dated 10.08.2018 reiterating that his father had passed away three years ago and objected to the initiation of reassessment proceedings. Vide order dated 14.08.2018. the respondent disposed of the objection raised by the petitioner, observing that in the absence of knowledge about the death of petitioner's father, it cannot be said that the notice of reassessment is bad in law and that the reassessment proceedings may be carried out in the name of the legal heirs of late father of the petitioner. Being aggrieved, the petitioner has filed the present petition.

5. Mr. Chintan Dave, learned advocate for the petitioner submitted that the issuance of a valid notice is the foundation for the validity of the assessment. It was contended that the defect in procedure will normally not amount to lack of jurisdiction, however, the notice prescribed under section 148 of the Act for the purpose of initiation of reassessment proceedings is not a mere procedural requirement, but is a



condition precedent to the validity of the assessment. If no notice is issued or if the notice issued is shown to be invalid, the proceedings initiated would be invalid and void. The notice issued in the name of a dead person is not a valid notice and in the absence of issuance of a valid notice, the proceedings initiated under section 147 of the Act cannot be said to be valid.

5.1 It was further submitted that in this case, the notice has been issued to a dead person and hence, such notice is null and void. To initiate proceedings under section 147 of the Act, issuance of notice under section 148 of the Act to the heirs and legal representatives of the deceased is mandatory, in the absence of which the proceedings cannot be continued by issuance of notices under section 142(1) of the Act against the heirs. Reliance was placed upon the decision of this court in ***Rasid Lala v. Income Tax Officer, Ward-1(3)(6)***, (2017) 77 *Taxman.com* 39 (Guj.), wherein the notice under section 148 of the Act was issued to the assessee long after he had passed away. The heir of the deceased informed the Assessing Officer that the assessee has passed away and, therefore, the notice under section 148 of the Act is invalid, despite which the heir was told to file the return of income in compliance of the said notice. The court held that the notice issued in the name of a dead person was not valid and that despite being informed about the death of the original assessee, the assessee, instead of taking corrective measures as provided under section 292B of the Act and issuing fresh notice to the heirs of the deceased, continued with the reassessment proceedings against the dead person. The court further held that section 159 of the Act would not be applicable to the facts of that



case, and that, even if section 159 is attracted, the notice was required to be issued in the name of the heirs of the deceased assessee. Mr. Dave submitted that the aforesaid decision would be squarely applicable to the facts of the present case and that the impugned notice dated 28.03.2018 issued under section 148 of the Act having been issued against a dead person as well as the subsequent notices issued pursuant thereto, are invalid and are, therefore, required to be quashed and set aside.

5.2 The learned advocate for the petitioner also placed reliance upon the decision of the Madras High Court in the case of **Alamelu Veerappan v. Income Tax Officer, Non-corporate Ward-2(2), Chennai**, (2018) 257 Taxman 72 (Madras), wherein the court held thus:

“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.

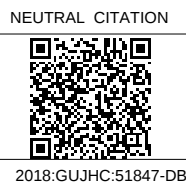
18. In such circumstances, the question would be as to whether [Section 159](#) of the Act would get attracted. The answer to this question would be in the negative, as the proceedings under [Section 159](#) of the Act can be invoked only if the proceedings have already been initiated when the assessee 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."

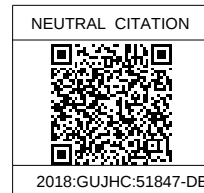
5.3 It was, accordingly, urged that the petition deserves to be allowed by granting the reliefs as prayed for.

6. Vehemently opposing the petition, Mrs. Mauna Bhatt, learned Senior Standing Counsel for the respondent submitted that in this case, the assessee did not file return of income. When the assessee passed away, the department not being



aware of his death, issued the notice under section 148 of the Act in his name, which was duly received by the petitioner who is the heir and legal representative of the deceased and hence, there is due service of such notice. Reference was made to sub-section (7) of section 2 of the Act, which defines “assessee”, to submit that the same includes every person who is deemed to be an assessee under any provision of the Act. Referring to section 159 of the Act, it was pointed out that by virtue of sub-section (3) thereof, the legal representative of the deceased shall, for the purposes of the Act, be deemed to be an assessee. It was submitted that in view of sub-section (2) of section 159, for the purpose of making an assessment including reassessment under section 147 of the Act 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) thereof, any proceeding taken against the deceased shall be deemed to have been taken against the legal representative, and therefore, the proceedings undertaken against the petitioner are legal and valid. It was submitted that therefore, under section 159(2)(b) of the Act, the legal heir steps into the shoes of the assessee and the proceeding can be continued against him.

6.1 Reference was made to the decision of the Supreme Court in the case of ***Girijanandini Devi v. Bijendra Narain Choudhary***, AIR 1967 SC 1124, for the proposition that death of the person liable to render an account for property received by him does not affect the liability of his estate. It was submitted that therefore, even after his death, deceased Jayantibhai does not cease to be an assessee and consequently, the legal representative is responsible for filing



the return of income and answering to the notice. It was submitted that the Madras High Court in the case of ***Alamelu Veerappan v. Income Tax Officer, Non-corporate Ward-2(2), Chennai*** (supra), on which reliance has been placed on behalf of the petitioner, does not refer to section 292B of the Act and, therefore, the said decision would be not applicable to the facts of the present case. It was submitted that in this case, the petitioner had knowledge of the proceedings and has responded to the same as legal representative of the deceased and, therefore, the procedural defect which is otherwise curable may be permitted to be cured.

6.2 Reference was made to section 2(29) of the Act, which says that “legal representative” has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908.

6.3 The learned counsel further invited the attention of the court to the provisions of section 292B of the Act, which *inter alia* provide that no notice, summons or other proceeding, issued or taken in pursuance of any of the provisions of the Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons or other proceeding if such notice, summons or other proceeding is, in substance and effect, in conformity with or according to the intent and purpose of the Act. It was submitted that in the light of the provisions of section 292B of the Act, the defect in the notice by issuing the same to a dead person would not render the notice invalid, inasmuch as it is a purely procedural lapse.

6.4 Reliance was placed upon the decision of the Delhi High Court in the case of ***Sky Light Hospitality LLP v. Assistant Commissioner of Income Tax***, (2018) 405 ITR 296 (Delhi), wherein the court has held thus:

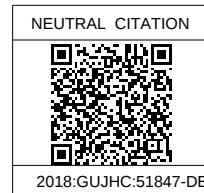
“17. In the context of the present writ petition, the aforesaid ratio is a complete answer to the contention raised on validity of the notice under section 147/148 of the Act as it was addressed to the erstwhile company and not to the limited liability partnership. There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. 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 replied and dealt with by them. The fact that notice was addressed to M/s Sky Light Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused.”

6.5 It was pointed out that the above decision of the Delhi High Court came to be challenged before the Supreme Court in *Sky Light Hospitality LLP v. Assistant Commissioner of Income Tax*, [2018] 92 Taxman.com 93 (SC), which dismissed the special leave petition holding that the wrong name given in the notice was merely a clerical error which could be corrected under section 292B of the Act.

6.6 Reliance was also placed upon the decision of the Supreme Court in the case of ***Commissioner of Income Tax, Shillong v. Jai Prakash Singh***, [1996] 219 ITR 737, wherein the assessee did not file returns for three assessment years



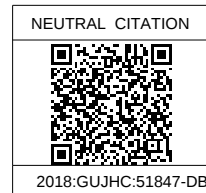
and died in April 1967, leaving behind him, in all, ten legal heirs. The eldest son Jai Prakash Singh filed the returns for the three assessment years. Such returns were signed by him alone and not by the other legal representatives. Scrutiny assessment came to be carried out by the Income Tax Officer, during the course of which, notices under section 142(1) of the Act came to be issued to Jai Prakash to appear and produce documents, accounts and other material, who complied with the same and did not raise any objection that notices must be issued to the other legal representatives of the deceased. Assessment orders were made in the name of all the ten legal representatives who were described as legal representatives of the deceased. Appeals were filed by Jai Prakash contending that the assessments were illegal and invalid as no notice had been issued to all the legal representatives of deceased. The court placed reliance upon a decision of the Bombay High Court in ***Maharaja of Patiala v. Commissioner of Income Tax (Central), Bombay, (1943) 11 ITR 201***, for the proposition that an assessment made without strictly complying with section 24-B (section 159 in the present Act) is not void or illegal and that any infractions in that behalf can be waived by the assessee. The court also placed reliance upon its earlier decision in ***Estate of Late Rangalal Jajodia v. Commissioner of Income Tax, Madras, (1971) 79 ITR 505***, for the proposition that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where such liability is created by distinct substantive provisions (charging sections). Any such omission or defect may render the order made irregular – depending upon the nature of the provision not complied with, but certainly not void or illegal. Following



the said decisions, the court held that in the facts and circumstances of the case, the orders of assessment made by the Income Tax Officer without notice to all the legal representatives are not null and void in law, but are merely irregular/defective proceedings which can be set right by remitting the matters to the Income Tax Officer for making fresh assessments with notice to all legal representatives.

6.7 Reliance was placed upon the decision of this court in the case of ***Commissioner of Income Tax v. Sumantbhai C. Munshaw***, (1981) 128 ITR 142, wherein though the notice was issued to the deceased person, the proceeding was continued against the legal representative who participated in the proceeding and also filed return of income without raising any objection as to the validity of the assessment proceedings. The legal representative had, therefore, submitted to the jurisdiction of the Assessing Officer. The court held that if the legal representative is present before the taxing authority in some capacity or voluntarily appears in the proceeding without service of notice or upon service of notice not addressed to him but to the deceased assessee and does not object to the continuance of the proceeding against the dead person and is heard by the Income Tax Officer in regard to the tax liability of the deceased and invites an assessment on merits, such a legal representative must be taken to have exercised the option of abandoning the technical plea that the proceeding has not been continued against him, although in substance and reality, it has been so continued.

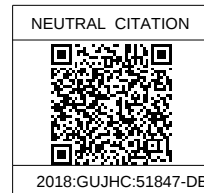
6.8 The learned counsel submitted that issuance of notice in the name of the deceased being a procedural defect, can be



cured under section 292B of the Act and that on account of such technical defect, the notice is not void. Moreover, the petitioner having responded to the notice under section 148 of the Act, the Assessing Officer is justified in continuing the proceedings against him. It was, accordingly, urged that the petition being devoid of merits, deserve to be dismissed.

7. In the backdrop of the rival submissions, the facts as emerging from the record of the case may be adverted to. The impugned notice dated 28.03.2018 is issued to Shri Jayantilal Harilal Patel, father of the petitioner, seeking to reopen the assessment for assessment year 2011-12 under section 148 of the Income Tax Act, 1961. By a letter dated 27.04.2018 addressed to the Income Tax Officer, the petitioner informed him that his father Shri Jayantilal Harilal Patel has passed away on 24.06.2015, enclosing therewith a death certificate and further being his son and in his capacity as legal heir, requested him to drop the proceedings. Thereafter, another notice dated 10.07.2018 came to be issued under sub-section (1) of section 142 of the Act to Shri Jayantilal Harilal Patel calling upon him to furnish the details mentioned therein. In the annexure to the said notice, the assessee was called upon to show cause as to why penalty proceedings under section 217F of the Act should not be initiated in his case as he had not furnished return of income in response to the notice under section 148 and stating that this may be treated as a notice under section 142(1) read with section 129 of the Income Tax Act, 1961.

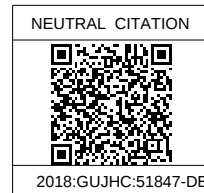
8. The petitioner addressed a letter dated 02.08.2018 to the Income Tax Officer objecting to the notices issued under



section 148 as well as under section 142(1) of the Act and drew his attention to the earlier letter dated 27.04.2018 informing him about the death of his father and requesting him to drop the proceedings. The attention of the Income Tax Officer was further invited to the provisions of section 159 of the Act, to submit that the proceedings are required to be initiated against a legal representative and not against the deceased and, therefore, the notices issued to the dead person are invalid. Reliance was placed upon the decision of this court in **Jaydeep Kumar Dhirajlal Thakkar v. Income Tax Officer**, (2018) 401 ITR 302 (Guj.) and **Vipin Walia v. Income Tax Officer**, (2016) 381 ITR 19 (Delhi).

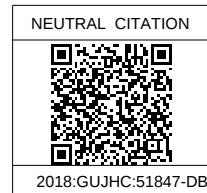
9. Thereafter, by a notice dated 03.08.2018 issued under section 142(1) of the Act, the respondent called upon the petitioner as legal heir of deceased Shri Jayantilal Harilal Patel to furnish the documents mentioned therein. In the annexure thereto, the petitioner is called upon to show cause as to why penalty proceedings under section 217F of the Act should not be initiated in his case as he had not furnished return of income in response to the notice under section 148 of the Act and stating that this may be treated as notice under section 142(1) read with section 129 of the Income Tax Act, 1961.

10. By an order dated 14.08.2018, the respondent disposed of the objections raised by the petitioner stating that the notice under section 148 of the Act was issued in the name of the deceased as the department was not aware of the death of the assessee. It is only when the legal heir Shri Chandreshbhai Jayantilal Patel (the petitioner herein) filed a letter dated 27.04.2018 along with a copy of the assessee's death



certificate, that this fact came to the notice of that office. It is stated that since the assessee's son – legal heir had received the notice (stated to have been received through the neighbour) and participated in the proceedings; the defect in issue of the notice is automatically cured. Reliance was placed upon the decision of the Madhya Pradesh High Court in the case of **Kausalyabai v. Commissioner of Income Tax, 238 ITR 1008 (MP)**, wherein after the death of the assessee, the notice was issued in the name of a person who was dead. The court observed that the widow of such person participated in the assessment proceedings and hence, the defect in the notice stood automatically cured. It is further stated in the order disposing of the objections that even if the notice dated 28.03.2018 is issued defectively in the name of the deceased assessee, then also, as per the provisions of section 292B of the Act, the same cannot be held to be invalid.

11. Insofar as the contention raised by the petitioner based on section 159 of the Act is concerned, the Assessing Officer observed that in this case, the assessee (the petitioner) had introduced himself as a son of the deceased assessee and as legal heir and has produced death certificate in response to the notice issued under section 148 of the Act. Therefore, as the legal heir, upon being served with the notice under section 148, has participated in the proceedings, the reassessment proceedings initiated are legal and valid. Reliance has been placed upon the decision of the Madras High Court in the case of **V. Ramanathan v. Commissioner of Income Tax, (1963) 49 ITR 881 (Madras)**. It is further stated therein that it is not in dispute that Shri Chandreshbhai J. Patel is the legal heir of the deceased assessee; therefore, the proceedings



initiated against the legal representative/legal heir are valid and legal.

12. In the backdrop of the aforesaid facts, it is an admitted position that the notice under section 148 of the Act was issued to a dead person. The petitioner being the heir and legal representative of the deceased, upon receipt of the notice, immediately raised objection against the validity of the impugned notice and did not submit to the jurisdiction of the Assessing Officer by filing a return of income, but kept on objecting to the continuation of the assessment proceedings pursuant to the impugned notice. The Assessing Officer, however, instead of taking corrective steps under section 292B of the Act and issuing notice to the heirs and legal representatives, insisted on continuing with the proceedings pursuant to the impugned notice which was issued in the name of a dead person. Since strong reliance has been placed by the learned counsel for the respondent on the provisions of section 2(7) and 2(29) read with sections 159 and 292B of the Act, reference may be made to the said provisions, which read as under:

"Section 2(7) "assessee" means a person by whom any tax or any other sum of money is payable under this Act, and includes -

(a) every person in respect of whom any proceeding under the Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person;

(b) every person who is deemed to be an assessee under any provision of this Act;

(c) every person who is deemed to be an assessee in default under any provision of this Act;

“Section 2(29) "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908;”

*“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 subsection (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 undercharged, 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.

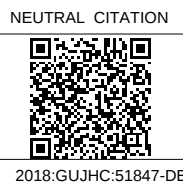
(5) The provisions of sub-section (2) of section 161, section 162 and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(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."

"292B. Return of income, etc., not to be invalid on certain grounds. - No return of income, assessment, notice, summons or other proceeding furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

13. Thus, the expression "assessee" includes every person who is deemed to be an assessee under any provision of the Act. Sub-section (3) of section 159 of the Act, postulates that the legal representative of the deceased shall, for the purposes of the Act, be deemed to be an assessee. Sub-section (2) of section 159 of the Act says that 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), –

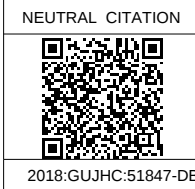
- (a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the



- 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 the Act shall apply accordingly.

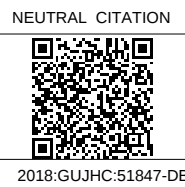
14. Thus, clause (a) of sub-section (2) of section 159 of the Act provides for the eventuality where a proceeding has already been initiated against the deceased before his death, in which case such proceeding shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased. In the present case, the proceeding under section 147 of the Act had not been initiated against the deceased before his death, and hence, clause (a) would not be applicable in the facts of this case.

15. Clause (b) of sub-section (2) of section 159 of the Act provides that any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative. The present case would, therefore, fall within the ambit of section 159(2)(b) of the Act and, hence, the proceeding can be taken against the legal representative. Now, it cannot be gainsaid that a proceeding under section 147 of the Act of reopening the assessment is initiated by issuance of notice under section 148 of the Act, and as a necessary corollary, therefore, for taking a proceeding under that section against the legal representative, necessary notice under section 148 of the Act would be required to be issued to



him. In the present case, the impugned notice under section 148 of the Act has been issued against the deceased assessee. In the opinion of this court, since this is not a case falling under clause (a) of sub-section (2) of section 159 of the Act, the proceeding pursuant to the notice under section 148 of the Act issued to the dead person, cannot be continued against the legal representative.

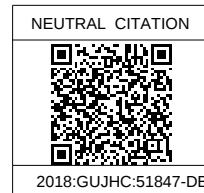
16. On behalf of the revenue, it has been contended that issuance of the notice to the dead assessee is merely a technical defect which could be corrected under section 292B of the Act. Reliance has been placed on the above referred decisions of the Supreme Court as well as the High Courts for contending that the proceedings would not be null and void merely because the notice has been issued against a dead person as the legal representative had received the notice and has objected to the validity of the notice and further continuation of the proceedings. In the opinion of this court, here lies the distinction between those cases and the present case. In the relied upon cases, the legal representative, in response to the impugned notice, filed return of income and participated in the proceeding and then raised an objection to the validity of the proceeding and, therefore, the court held that this was a case of waiver and that a technical defect can be waived; whereas in this case, right from the inception the petitioner has objected to the validity of the notice and thereafter to the continuation of the proceeding and has at no point of time participated in the proceeding by filing the income tax return in response to the notice issued under section 148 of the Act. Had the petitioner responded to the notice by filing return of income, he could have been said to



have participated in the proceedings, however, merely because the petitioner has informed the Assessing Officer about the death of the assessee and asked him to drop the proceedings, it cannot, by any stretch of imagination, be construed as the petitioner having participated in the proceedings.

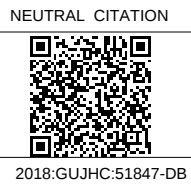
17. Insofar as reliance placed upon section 292B of the Act is concerned, the said section, *inter alia*, provides that no notice issued in pursuance of any of the provisions of the Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice if such notice, summons is in substance and effect in conformity with or according to the intent and purpose of the Act.

18. 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 a 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. Therefore, where the legal representative does not waive his right to a



notice under section 148 of the Act, it cannot be said that the notice issued against the dead person is in conformity with or according to the intent and purpose of the Act which requires issuance of notice to the assessee, whereupon the Assessing Officer assumes jurisdiction under section 147 of the Act and consequently, the provisions of section 292B of the Act would not be attracted. In the opinion of this court, the decision of this court in the case of **Rasid Lala v. Income Tax Officer, Ward-1(3)(6)** (supra) would be squarely applicable to the facts of the present case. Therefore, in view of the provisions of section 159(2)(b) of the Act, it is permissible for the Assessing Officer to issue a fresh notice under section 148 of the Act against the legal representative, provided that the same is not barred by limitation; he, however, cannot continue the proceedings on the basis of an invalid notice issued under section 148 of the Act to the dead assessee.

19. In the facts of the present case, as noticed hereinabove, the notice under section 148 of the Act, which is a jurisdictional notice, has been issued to a dead person. Upon receipt of such notice, the legal representative has raised an objection to the validity of such notice and has not complied with the same. The legal representative not having waived the requirement of notice under section 148 of the Act and not having submitted to the jurisdiction of the Assessing Officer pursuant to the impugned notice, the provisions of section 292B of the Act would not be attracted and hence, the notice under section 148 of the Act has to be treated as invalid. In the absence of a valid notice, the Assessing Officer has no authority to assume the jurisdiction under section 147 of the Act and, hence, continuation of the proceeding under section



147 of the Act pursuant to such invalid notice, is without authority of law. The impugned notice as well as the proceedings taken pursuant thereto, therefore, cannot be sustained.

20. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned notice dated 28.03.2018 issued by the respondent under section 148 of the Income Tax Act, 1961 as well as all proceedings pursuant thereto, are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(HARSHA DEVANI, J)

(A. P. THAKER, J)

B.U. PARMAR