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**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI  
&  
HON'BLE SHRI JUSTICE PRANAY VERMA  
ON THE 23<sup>rd</sup> OF NOVEMBER, 2023  
WRIT PETITION No. 9697 of 2022**

**BETWEEN:-**

**MEET LALWANI LEGAL HEIR OF LATE MRS AMITA  
LALWANI AGE 34 R/O 3 LALWANI COMPOUND SAKET  
MANISHPURI, INDORE (MADHYA PRADESH)**

**.....PETITIONER**

**(BY SHRI ADITYA GOYAL, ADVOCATE FOR THE PETITIONER )**

**AND**

- 1. INCOME TAX OFFICER WARD 2 (1) INDORE  
AAYKAR BHAWAN, OPP. WHITE CHURCH WHITE  
CHURCH ROAD, RESIDENCY AREA, INDORE  
(MADHYA PRADESH)**
- 2. PR. COMMISSINOER OF INCOME TAX. 1  
AAYAKAR BHAWAN, OPP. WHITE CHURCH,  
WHITE CHURCH ROAD. RESIDENCY AREA,  
INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY MS VEENA MANDLIK, ADVOCATE FOR THE RESPONDENTS)**

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Reserved on : 16.10.2023

Pronounced on : 23.11.2023  
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*This petition having been heard and reserved for orders coming on for  
pronouncement this day, Justice Sushrut Arvind Dharmadhikari passed  
the following:*

**ORDER**

Heard finally with the consent of parties.

The present petition under Article 226 of the Constitution of India challenges the notice under Section 148 of the Income Tax Act, 1961(referred to as 'the Act of 1961' hereinafter) for the assessment year 2018-19 dated 31.03.2022 passed in case No. ITBA/AST/S/148\_12021-22/1042404876(1) [Annexure P-3] as well as order u/S 148A(d) of the Act of 1961 dated 31.03.2022[Annexure P-4] for the assessment year 2018-19.

2. Brief facts of the case are that petitioner who was the legal heir of the original assessee received a notice DIN NO. 1041169255(1) dated 21.03.2022 from the respondent no.1 under Section 148A(b) of the Act of 1961 seeking reopening of assessment of the assessee as income chargeable to tax for the Assessment Year 2018-19 has escaped assessment within the meaning of Section 147 of the Act of 1961 and the petitioner is required to show cause as to why a notice u/S 148 of the Act of 1961 should not be issued. The petitioner filed a reply to the said notice through his Chartered Accountant informing that the original assessee Mrs. Amita Lalwani had expired on 07.07.2021 and also annexed a copy of the death certificate. Subsequently, notice u/S 148 of the Act of 1961 dated 31.03.2022 was issued again in the name of original assessee who is dead despite informing about her death alongwith her death certificate. In the said notice, it was stated that certain income of the deceased assessee had escaped assessment for the Assessment Year 2018-19 and the respondent proposed to re-assess the income for the said assessment year. The said notice was accompanied by an order under Clause (d) of Section 148A of the Act of 1961 where reference of petitioner as legal heir of the deceased assessee has been given. It has been mentioned in the order that assessee has made investment of Rs. 47,32,641/- to purchase two immovable properties during

the period under consideration. For verification of the above investment, the respondent has taken accord of the competent authority and issued show cause notice u/S 148A(b) of the Act of 1961. In response to the said show cause notice, the legal heir of the assessee has filed death certificate of the original assessee. However, the legal heir of the original assessee has not given sufficient explanation about the investment made to purchase the immovable property and also mentioned that since the original assessee has died, therefore, notice is issued to her son. In the absence of any justifiable explanation, regarding investment in the immovable properties, it has been held that assessee has not disclosed the income of Rs. 47,32,641 for the A.Y. 2018-19 which is also chargeable to tax and the same has escaped the assessment. Hence the present petition is filed.

3 . Learned counsel for the petitioner submitted that an essential condition to issue notice u/S 148 of the Act of 1961 is that the notice be issued to the person who is alive and the same cannot be issued to a dead person. Since issuance of notice u/S 148 of the Act of 1961 is the foundation for reopening of an assessment, then such notice should ought to have been issued in the name of correct person which is a condition precedent to the impugned notice being valid in law. In support of his contention, learned counsel for the petitioner has placed reliance on the judgment of High Court of Gujarat in the case of **Chandreshbhai Jayantibhai Patel Vs. The Income Tax Officer** reported in **(2019) 413 ITR 276** wherein it has been held as under:

*"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."*

4. In view of the above, reopening notice under Section 148 of the Act, 1961 issued in the name of a dead assessee is null and void being without jurisdiction.

5. It is further submitted that it is trite law that if the Assessing Officer had no jurisdiction to initiate assessment proceedings, the mere fact that subsequent orders may be passed would not render the challenge to jurisdiction infructuous. In support of this contention, learned counsel for the petitioner relied upon the judgment of Apex Court in the case of **Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies District I Calcutta and Another** reported in **AIR 1961 SC 372**. Relevant extracts are reproduced herein below:

*"It is well settled however that though the writ of prohibition or certiorary will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such*

*action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences.*

*Mr. Sastri mentioned more than once the fact that the company would have sufficient opportunity to raise this question, viz., whether the Income-tax Officer had reason to believe that under assessment had resulted from non-disclosure of material facts, before the Income-tax Officer himself in the assessment proceedings and, if unsuccessful there, before the appellate officer or the appellate tribunal or in the High Court under [section 66\(2\)](#) of the Indian Income-tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.*

*In the present case the company contends that the conditions precedent for the assumption of jurisdiction under [s. 34](#) were not satisfied and come to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under [Art. 226](#). When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons."*

6. It is also submitted that if respondents rely upon Section 159 of the Act of 1961, the same would be of no avail as the same applies only to a situation where proceedings are initiated/pending against the assessee when he/she is alive and after his/her death, proceedings are permitted to be continued as against the legal heirs. Learned counsel has placed reliance on the judgment passed by the Madras High Court in the case of **Alamelu Veerappan Vs. The**

**Income Tax Officer, Non Coporate Ward 2(2), Chennai** reported in **2018 SCC Online Mad** wherein it has been held as under:

*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.*

7. Moreover, the order issued under Section 148A(d) of the Act of 1961 only gives mere reference of the petitioner as legal heir of the deceased. However, the same was issued in the name of deceased assessee. In the order passed u/S 148A(d), it has been categorically mentioned that assessee has not explained about the investment made to purchase certain immovable property loses sight of the fact that being the legal heir, he was not bound to put forth explanation since the original assessee has died before initiation of proceedings. The order was issued without application of mind and without giving any reasons. Hence, writ of certiorari/or a writ of mandamus or writ or direction be issued to quash the notice dated 31.03.2022 under Section 148 of the Act of 1961 as well as the order dated 31.03.2022 under Section 148A(d) of the Act of 1961 and the respondents be directed to withdraw or cancel the aforesaid notice as well as order dated 31.03.2022.

8. Learned counsel for the respondent/Income Tax Department by placing reliance on the various judgments of the Apex Court as well as the High

Court submitted that petition against order u/S 148A(d)/Notice u/S 148 of the Act of 1961 for initiation of reassessment proceedings is not tenable as all such objection have to be raised before the Assessing Officer as it is not a final adjudication of the matter where no further statutory remedy against the adjudication order is available. [**Salil Gulati Vs. ACIT(2023(455 ITR 29 (SC) , Ajay Gupta Vs. ITO 454 ITR 794 (SC) (2023), Seema Gupta Vs ITO 455 ITR 504 2023(SC) , Anshul Jain Vs. PCIT Special Leave to Appeal(C) No. 14823/2022, Harinder Singh Bedi Vs. UOI(MP) W.P. NO. 22734/2022, and Amit Homes Pvt. Ltd. V/S DCIT W.P. NO. 15244/2023(M.P.)**]

9. She further submits that the question of going into the veracity and genuineness of material/evidence forming the opinion of the Assessing Officer suggesting that income of petitioner has escaped assessment ought not be gone into while exercising writ jurisdiction under Article 226 or Supervisory jurisdiction under Article 227 of the Constitution of India. On all these grounds the present petition deserves to be dismissed at the admission stage itself. However, petitioner would be at liberty to avail the statutory remedy under the Income Tax Act in accordance with law.

10. We have heard learned counsel for the parties and perused the record.

11. The issue which falls for consideration of this Court is as to whether the impugned notice under Section 148 of the Act of 1961 is issued in the name of dead person i.e. Mrs. Amita Lalwani is enforceable in law. The fact that Mrs. Amita Lalwani died on 07.07.2021 is not disputed. The notice issued in the name of the dead person is unenforceable in the eyes of law.

12. It has been observed by the Delhi High Court in the case of **Savita**

**Kapila Vs. Asstt. CIT reported in [2020]118taxmann.com46/273 Taxman 148/426 IRT 502/108 CCH 0049 DelHC]** as under:

*"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."*

*"Consequently, the legal heirs are under no statutory obligation to intimate the death of the assessee to the revenue."*

13. The Madras High Court in the case of *Alamelu Verappan(supra)* has observed as under:

*"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 to take steps to cancel the PAN registration."*

14. Similar view has been taken by the High Court of Mumbai in **Sumit Balkrishna Gupta Vs. Asstt. CIT[2019] 103 taxmann.com 188/262 Taxman 61/414 ITR 292/104 CCH 0379 MumHC]** wherein it has been observed as under:

*"7. The issue of a notice under Section 148 of the Act is a foundation for reopening of assessment. 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 a merely a procedural requirement but is a condition*



*precedent to the impugned notice being valid in law. Thus, a notice which has been issued in the name of the dead person is also not protected either by provisions of Section 292B or 292BB of the Act. This is so as the requirement of issuing a notice in the name of correct person is the foundational requirement to acquire jurisdiction to reopen the assessment. This is evident from Section 148 of the Act, which requires that before a proceeding can be taken up for reassessment, a notice must be served upon the assessee. The assessee on whom the notice must be sent must be a living person i.e. legal heir of the deceased assessee, for the same to be responded. This in fact is the intent and purpose of the Act. Therefore, Section 292B of the Act cannot be invoked to correct a foundational/substantial error as it is meant so as to meet the jurisdictional requirement."*

**15.** In view of the above and that various High Courts have observed that the notice issued to a dead person for reopening of assessment of a dead person is null and void, this Court holds that the notice and all consequential proceedings arising therefrom in the name of the deceased assessee are not sustainable.

**16.** Consequently, the impugned notice dated 31.03.2022 passed in case No. ITBA/AST/S/148\_2021-22/1042404876(1) as well as order u/S 148A(d) of the Act of 1961 dated 31.03.2022 for the assessment year 2018-19 are quashed and all actions in furtherance thereto are prohibited.

**17.** Petition is therefore allowed. No order as to cost.

**(S. A. DHARMADHIKARI)**  
**JUDGE**

**(PRANAY VERMA)**  
**JUDGE**

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