

Notice in name of dead person invalid; informing about death not to be construed as participating in proceedings

Summary – The High Court of Gujarat in a recent case of Chandreshbhai jayantibhai Patel, (the Assessee) held that where original assessee died and thereafter Assessing Officer issued notice under section 148 in his name to reopen assessment and petitioner being heir and legal representative of deceased raised an objection that assessee had already expired and, therefore, notice in his name was not valid, merely because petitioner had informed Assessing Officer about death of assessee and asked him to drop proceedings, it could not be construed that petitioner had participated in proceedings and, therefore, provisions of section 292B would not be attracted and notice under section 148 was to be treated as invalid

Facts

- The petitioner was the son of late JHP, who passed away on 24-6-2015. A reassessment notice was issued by the Income-tax Officer in the name of late JHP, to reopen the assessment for assessment year 2011-12.
- In response to the said notice, the petitioner being heir and legal representative of the original assessee objected to the initiation of reassessment proceedings and informed that his father JHP had passed away on 24-6-2015 and accordingly, urged the Income-tax Officer to drop the reassessment proceedings. A copy of the petitioner's father's death certificate was also enclosed along with the said communication.
- Though the Income-tax Officer was duly informed about the death of the petitioner's father, he proceeded with the reassessment proceedings and issued a notice under section 142(1), which was addressed to the deceased father of the petitioner, calling upon him to produce the relevant details. The petitioner once again addressed a communication objecting to the initiation of reassessment proceedings and relying upon the precedents in his favour wherein it was held that proceedings against a dead person are *null and void*.
- 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 could not be said that the notice of reassessment was bad in law and that the reassessment proceedings could be carried out in the name of the legal heirs of late father of the petitioner.
- In instant appeal the petitioner submitted that the notice issued in the name of a dead person was not a valid notice and in the absence of issuance of a valid notice, the proceedings initiated under section 147 could not be said to be valid.

Held

- It is an admitted position that the notice under section 148 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 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 respondent on the provisions of section 2(7) and 2(29) read with sections 159 and 292B, reference may be made to the said provisions.

- As per section 2(7), 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, 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 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.
- Thus, clause (a) of sub-section (2) of section 159 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 had not been initiated against the deceased before his death, and hence, clause (a) would not be applicable in the facts of this case.
- Clause (b) of sub-section (2) of section 159 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) and, hence, the proceeding can be taken against the legal representative. Now, it cannot be gainsaid that a proceeding under section 147 of reopening the assessment is initiated by issuance of notice under section 148, and as a necessary corollary, therefore, for taking a proceeding under that section against the legal representative, necessary notice under section 148 would be required to be issued to him. In the present case, the impugned notice under section 148 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, the proceeding pursuant to the notice under section 148 issued to the dead person, cannot be continued against the legal representative.
- 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. 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, 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. 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.

- Insofar as reliance placed upon section 292B 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.
- Therefore, the question that arises for consideration is whether the notice under section 148 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 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. 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 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, 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 and consequently, the provisions of section 292B would not be attracted. Therefore, in view of the provisions of section 159(2)(b), it is permissible for the Assessing Officer to issue a fresh notice under section 148 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 to the dead assessee.
- In the facts of the present case, as noticed herein above, the notice under section 148, 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 and not having submitted to the jurisdiction of the Assessing Officer pursuant to the impugned notice, the provisions of section 292B would not be attracted and hence, the notice under section 148 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 and, hence, continuation of the proceeding under section 147 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.

- For the foregoing reasons, the impugned notice issued by the respondent under section 148 as well as all proceedings pursuant thereto, are hereby quashed and set aside.