



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.404 OF 2019

Rupa Shyamsundar Dhumatkar Petitioner

versus

Asst. Commissioner of Income Tax & Ors. ... Respondents

....

- Mr.Vipul Shah, Advocate for Petitioner.
- Mr.Sham Walve, Advocate for Respondent.

**CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.**

DATE : 05th APRIL, 2019.

P.C. :

1. Heard learned Counsel for the parties for final disposal of the Petition. This Petition is filed by the widow of Late Shri Shyamsundar Pundalik Dhumatkar. Late Shri Shyamsundar Dhumatkar was engaged in his individual business. He filed return of his income till the year 2007-2008. According to Petitioner, however, since thereafter he had no taxable income, he had stopped filing returns of income. The Assessing Officer issued a notice dated 27/03/2018 in the name of Late Shri

Nesarikar

Shyamsundar Dhumatkar under section 148 of the Income Tax Act, 1961 (for short the Act) reopening the assessment for the assessment year 2011-2012. Shri Shyamsundar Pundalik Dhumatkar expired on 14/10/2016. Thus, the notice dated 27/03/2018 was issued on a dead person. The Petitioner as a widow and legal heir of the deceased Shri Shyamsundar Dhumatkar brought these facts to the notice of the income tax department. Despite this, the Assessing Officer issued a notice under section 142(1) of the Act on 29/08/2018 and therefore the Petitioner has filed this Petition challenging the said notice dated 27/03/2018.

2. The facts are not seriously in dispute. The Petitioner had produced the death certificate of Shri Shyamsundar Dhumatkar before the Income Tax authorities, indicating that he died on 14/10/2016. Thus, the impugned notice of reopening of assessment was issued on a dead person. There are several judgments of different High Courts holding that the notice or reopening of assessment is invalid in law. A reference in this

respect can be made to a decision of Gujarat High Court in the case of *Chandreshbhai Jayantibhai Patel Vs The Income Tax Officer (Special Civil Application No.15172 of 2018, decided on 10/12/2018)*. As also the decision of Madras High Court in the case of *Alamelu Veerappan Vs. Income Tax Officer, Non-corporate Ward-2(2), Chennai, reported in (2018) 257 Taxman 72 (Madras)*. It is not necessary to refer to all the judgments on the point. Suffice it to say, as per the settled law, notice for reopening of assessment against a dead person is invalid.

3. In the result, the impugned notice is set aside. Petition is disposed of accordingly. Consequentially, the order of assessment dated 31/12/2018 also stands annulled.

(SARANG V. KOTWAL, J.)

(AKIL KURESHI, J.)