

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 22441 of 2019****With****R/SPECIAL CIVIL APPLICATION NO. 22444 of 2019****With****R/SPECIAL CIVIL APPLICATION NO. 22474 of 2019****With****R/SPECIAL CIVIL APPLICATION NO. 22475 of 2019****With****R/SPECIAL CIVIL APPLICATION NO. 22476 of 2019****With****R/SPECIAL CIVIL APPLICATION NO. 22477 of 2019****With****R/SPECIAL CIVIL APPLICATION NO. 22478 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MR. JUSTICE ILESH J. VORA****Sd/-****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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LATE BHUPENDRA BHIKHALAL DESAI (SINCE DECD.) THROUGH LEGAL
HEIR RAJU BHUPENDRA DESAI

Versus

THE INCOME TAX OFFICER WARD 1(2)(1)

Appearance:

MR DARSHAN R PATEL for the Petitioner(s) No. 1

MR. M.R.BHATT, SR.ADVOCATE with MRS MAUNA M BHATT for the
Respondent(s) No. 1

CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 08/03/2021

COMMON ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

ROHINTON FALI NARIMAN, J. – “Nothing is certain except death and taxes.” Thus spake Benjamin Franklin in his letter of 13.11.1789 to Jean Baptiste Leroy. To tax the dead is a contradiction in terms. Tax laws are made by the living to tax the living. What survives the dead person is what is left behind in the form of such person's property. [see *Shabina Abraham and others vs. Collector of Central Excise and Customs, (2015) 10 SCC 770*]

1. We are tempted to preface our judgment with the afore-noted observations of the Supreme Court as in the case on hand also the Revenue wants to proceed against the legal heir of the deceased by issuing a notice under Section 153C of the Income Tax Act, 1961 (for short, 'the Act 1961'). Such notice is issued to a dead person.

2. Since the issues raised in all the captioned writ-applications are the same and the assessee is also the same, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

3. For the sake of convenience, the Special Civil Application No.22441 of 2019 is treated as the lead matter.

4. By this writ-application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs :

“(A) Issue a writ of certiorari and/or a writ of mandamus and/or any other writ, direction or order to quash and set aside the impugned notice dated 29.03.2019 under Section 153C annexed at Annexure-A and with preliminary order dated 16.10.2019 annexed hereto at Annexure-C for proceeding and completing re-assessment proceedings.

(B) Pending admission, hearing and disposal of this petition, ad-interim relief be granted and the respondent be ordered to restrain from enforcing compliance of the impugned notice dated 29.03.2019 under Section 153C annexed at Annexure-A and/or taking any steps in this regard including ex-parte order or implementation of preliminary order dated 16.10.2019 annexed at Annexure-C.

(C) Award the cost of this petition.

(D) Grant such other and further reliefs as this Hon'ble Court deems fit.”

5. For the relevant Assessment Year, the return of income was filed by the writ-applicant on 6th January 2012 under Section 139 of the Act 1961. The writ-applicant (original assessee) passed away on 23rd April 2017. It is pertinent to note that for the Assessment Year 2017-18, the return was filed

under Section 139 of the Act 1961 on 31st March 2018. The verification in the ITR-V is by Sushilaben Desai, the wife of deceased Bhupendrabhai Desai. The permanent account number stated in the verification is also that of the deceased Bhupendrabhai Desai. Same is the case for the Assessment Year 2018-19, wherein the return was filed on 31st August 2018 and for the Assessment Year 2019-20, the return was filed on 9th September 2019.

6. A notice under Section 153C of the Act 1961, dated 29th March 2019 came to be issued in the name of Bhupendrabhai Bhikhalal Desai. After a period of seven months from the date of the notice under Section 153C of the Act 1961, the son of the deceased, namely, Rajubhai Bhupendrabhai Desai, gave a reply dated 9th October 2019, informing the department for the first time that his father passed away way back on 23rd April 2017 and that the notice was issued to a dead person and, therefore, the proceedings be dropped.

7. The department, vide reply dated 16th October 2019, communicated the following to the legal heir of late Bhupendrabhai Bhikhalal Desai as under :

“To,

*Late Bhupendra Babubhai Desai
C/o Legal Heir Raju B.Desai/Sushilaben Desai
Prop. Times Pharma
18, Bhimnath Society
Shahibaug, Ahmedabad 380004.*

*Sub : Rejection of objection raised vide letter dtd.
09.10.2019 with regard to the proceedings u/s. 153C*

of the Income-tax Act, 1961 for AY 2011-12 to 2017-18.

Please refer to the above.

2. In connection to the above it is conveyed that the objection raised by you that the notice u/s. 153C was served to the deceased person is not valid and is liable to be set aside, is not acceptable with regard to the following reasons :

a. The objection has to be raised within the 30 days from the date of receipt of the notice under question as per section 124(3)(c) of the I.T. Act, 1961 i.e. notice was issued and served electronically on 29.03.2019 and the same was sent by post on 29.03.2019 as well and accordingly, the due date for filing objection was 28.04.2019.

b. The department had not been informed of the demise of your father. (if so, please provide the copy of the same).

c. No any legal heir have been registered yet with this PAN hold by your late father.

d. No application for PAN surrender have been submitted to the department.

e. Your father expired on 23.04.2017. However, as per income-tax records ITRs for A.Y. 2017-18, 2018-19 and 2019-20 were filed and the declared income as well viz :

<i>A.Y.</i>	<i>Date of filing ITR</i>	<i>Gross Total Income Disclosed</i>
<i>2017-18</i>	<i>31.03.2018</i>	<i>8,48,725/-</i>
<i>2018-19</i>	<i>31.08.2018</i>	<i>5,18,748/-</i>
<i>2019-20</i>	<i>09.09.2019</i>	<i>4,14,956/-</i>

The above returns were filed with the Name : BHUPENDRA BHIKHALAL DESAI. There was no any sign of late Bhupendra Bhikhalal Desai nor any name of the legal heir was mentioned. (Copy enclosed). Further it is also observed that you have claimed for deduction under chapter VIA for A.Y. 2018-19 of Rs.2,002/- and Rs.50,000/- for A.Y. 2019-20 (80TTB – Interest on deposits in case of Resident senior citizen. 50000).

3. In view of the above, the objection raised by you is hereby rejected for the above mentioned A.Ys. Further, it is requested to comply with the notices issued on 16.10.2019 by the office of the undersigned.”

8. Thereafter, on 16th December 2017, a show-cause notice was issued for the proposed addition and also for the order to be passed under Section 144 of the Act for the Assessment Year 2011-12. The notice reads thus :

<i>PAN : ACUPD6710G</i>	<i>Dated : 06/12/2019</i>	<i>Letter No : ITBA/AST/F/17/2019-20/ 1021811599(1)</i>
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Sir/Madam/M/ s,

Subject : Show cause for proposed addition and for the order to be passed u/s. 144 of the Act for A.Y. 2011-12 reg.

PAN : ACUPD6710G

Please refer to the above.

2. Your case was selected for the scrutiny by issuing notice u/s.153C vide notice dtd. 19.03.2019 asking you to furnish return of income. Further notice dtd. 16.10.2019 was issued asking to submit certain details. However, both of these notices were not complied with. Considering your non-compliance nature you are show cause why ex-parte order u/s. 144 of the I.T. Act, 1961 should not be made based on the material available on records.

3. On perusal of your ROI it is observed that you have claimed TDS credit of Rs.2,41,735/- and offered income from business and profession at Rs.3,10,169/-. However, as per your 26AS you have received receipts of Rs.59,62,362/- during the year under consideration. Therefore, you are to show cause why amount of Rs.59,62,362/- (as per 26AS) should not be considered your income and difference of Rs.56,52,193/- (inclusive of the amount of undisclosed TDS of Rs.2,41,735/-) be added to your income.

4. As per the data available with this office, coupled with the response received against the notice u/s. 133(6) issued to Nutan Nagrik Sahakari Bank and Bank of India, it is

noticed that you had made term deposit of Rs.31,70,781/- and earned interest of Rs.919/- in the Nutan Nagrik Sahakari Bank, Gheekantha Branch, Ahmedabad during the year under consideration. Further, in Bank of India, Ahmedabad Main Branch, Bhadra, you had Rs.24,48,959/- as your credit entries during the entire period i.e. FY 2010-11. All these term deposit and other credit transactions are still unexplained from your side. Accordingly, you are to show cause why the said amounts should not be added to your total income as per law by passing an ex-parte order.

5. Your submission shall be corroborated with the complete set evidences and this notice shall be considered your last opportunity. Please submit the details/explanation along with the complete set of evidence on or before 11/12/2019 at 01:00 P.M. Please note that failing to furnish/submit the details or explanation case will be decided as per materials available on record and the said amount will be added to the total income.”

9. In such circumstances referred to above, the writ-applicant is here before this Court with the present writ-application.

10. Mr.Darshan Patel, the learned counsel appearing for the writ-applicant would submit that Shri Bhupendrabhai Desai having passed away way back on 28th April 2017, a notice under Section 153C of the Act could not have been issued in the year 2019 for the Assessment Year 2011-12 against a dead person. Mr.Patel would submit that the notice served for the purpose of re-assessment to a dead person is an invalid notice and the

proceedings pursuant thereto would be *void-ab-initio*. In such circumstances referred to above, Mr.Patel prays that there being merit in his writ-application, the same be allowed and the impugned notice dated 29th March 2019 as well as the preliminary order (Annexure-C) dated 16th October 2019 be quashed and set-aside.

11. On the other hand, this writ-application has been vehemently opposed by Mr.M.R.Bhatt, the learned senior counsel appearing for the Revenue. Mr.Bhatt would submit that it is no longer *res integra* that 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. However, according to Mr.Bhatt, such proposition of law as applicable to a notice under Section 148 of the Act will not apply to a case where the impugned notice is under Section 153C of the Act. According to Mr.Bhatt, the legal heir of late Bhupendrabhai Desai was obliged in law to inform about the death of his father to the department at the earliest. Mr.Bhatt would submit that it is very strange that three income tax returns, thereafter, came to be filed in the name of deceased Bhupendrabhai Desai, wherein the verification in the ITR form is at the instance of Sushilaben, wife of the deceased, and that too, quoting the PAN number of the deceased Bhupendrabhai Desai.

12. In the aforesaid context, Mr.Bhatt invited the attention of this Court to Section 139A(5)(d) of the Act, which reads as under:

“5. *Every person shall, ---*

(d) Intimate the Assessing Officer any change in his address or in the name and nature of his business on the basis of which the permanent account number was allotted to him.”

13. Mr.Bhatt, thereafter, invited the attention of this Court to Section 140 of the Act. Section 140 provides as to the verification of the return. Section 140(a) of the Act reads thus :

“140. The return under Section 115WD or Section 139 shall be verified--

(a) in the case of an individual,---

(i) by the individual himself; or

(ii) where he is absent from India, by the individual himself or by some person duly authorised by him on his behalf; or

(iii) where he is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf; and

(iv) where, for any other reason it is not possible for the individual to verify the return, by any person duly authorised by him in this behalf.

Provided that in a case referred to in sub-clause (ii) or sub-clause (iv), the person verifying the return holds a valid power of attorney from the individual to do so, which shall be attached to the return.”

14. According to Mr.Bhatt, Sushilaben could not have verified the returns as she does not fall within any of the categories as prescribed in clause (a)(i) to (iv) respectively of Section 140 of the Act.

15. Mr.Bhatt, thereafter, invited the attention of this Court to Section 153C of the Act. Section 153C(1) of the Act reads thus :

“153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,--

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that

Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A :”

16. According to Mr.Bhatt, Section 153C talks about “other person”. The term “person” has been defined under Section 2(31) of the Act, which reads thus :

“2(31) “person” includes--

- (i) an Individual;*
- (ii) a Hindu Undivided Family;*
- (iii) a Company;*
- (iv) a Firm;*
- (v) an association of persons or a body of individuals, whether incorporated or not;*
- (vi) a local authority; and*
- (vii) every artificial juridical person not falling within any of the preceding sub-clauses.*

Explanation.-- For the purposes of this clause, an association of persons or body of individuals or a local authority or an artificial juridical persons shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;"

17. The endeavour on the part of Mr.Bhatt is to make good his submission that the legal heir of late Bhupendrabhai Desai would fall within the ambit of "body of individuals" and, therefore, it cannot be said that the notice under Section 153C is invalid. The impugned notice could be said to be valid against the legal heir of late Bhupendrabhai Desai.

18. In the last, Mr.Bhatt invited the attention of this Court to Section 124(3)(c) of the Act, which reads thus :

"124. Jurisdiction of Assessing Officers.--

(1) xxxx xxxx

(2) xxxx xxxx

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer---

(a) xxxx xxxx

(b) xxxx xxxx

(c) where an action has been taken under Section 132 or Section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of Section 153A or sub-section (2) of Section 153C or after the completion of the assessment, whichever is earlier.”

19. Relying on the aforesaid provision, Mr.Bhatt would submit that the legal heir of late Bhupendrabhai Desai cannot call in question the jurisdiction of the Assessing Officer in issuing the notice under Section 153C of the Act as the action could be said to have been taken under Section 132 of the Act after the expiry of period of one month from the date of the notice under Section 153C of the Act.

20. Mr.Bhatt, in support of his aforesaid submissions, has placed reliance on a decision of the Supreme Court in the case of Principal Commissioner of Income-tax, Mumbai vs. I-Ven Interactive Ltd., reported in (2019) 110 taxmann.com 332 (SC).

ANALYSIS :

21. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is, whether the proceedings initiated by the Assessing Officer pursuant to the notice issued under Section 153C of the Act to a dead person are sustainable in law.

22. A Coordinate Bench of this Court, in the case of Chandreshbhai Jayantibhai Patel vs. Income Tax Officer, (2019) 101 taxmann.com 362 (Gujarat), had the occasion to consider an identical issue but in context with Section 148 of the Act. We should look into the observations made by the Coordinate Bench in the judgment, which read thus :

“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 re-computation 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 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 re-computation 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 herein above, 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.”

23. The following principles are discernible from the above referred judgment of this Court :

i. The issuance of the notice to a dead assessee is not a mere technical defect which can be corrected under Section 292B of the Act. The issuance of the notice to a dead assessee and the consequent proceedings pursuant thereto would be without jurisdiction and, therefore, null and void.

ii. 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 re-assessment. 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.

24. We are of the view that the same principle as referred to above would apply even to a notice issued to a dead assessee under Section 153C of the Act. It is not in dispute that the legal heir of late Bhupendrabhai Desai had not participated in the proceedings. All that the legal heir of late Bhupendrabhai Desai did was to inform the Assessing Officer about the death of his father and requested to drop the proceedings. It is true that although the father passed away in the year 2017, yet the legal heir did not inform the department upto October 2019. However, at the same time, we should not overlook the fact that even after coming to know about the demise of late Bhupendrabhai, the department could have issued a valid notice to the legal heir as the period of limitation of 21 months had not expired. We fail to understand what prevented the department from issuing a valid notice to the legal heir within the prescribed time period.

25. In the aforesaid context, we may refer to a recent pronouncement of the Supreme Court in the case of Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki India Limited, (2019) 107 taxmann.com 375 (SC). The ratio of this decision of the Supreme Court is that during the pendency of the

assessment proceedings if the assessee company gets amalgamated with another company, it would lose its existence and the assessment order passed subsequently in the name of the said non-existing entity would be without jurisdiction and liable to be set-aside.

26. In the facts of the case before the Supreme Court, although the Assessing Officer was informed of the amalgamated company having ceased to exist as a result of the approved scheme of amalgamation, yet the jurisdictional notice was issued only in its name. The Supreme Court took the view that the basis on which the jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. We quote the relevant observations thus :

“32. On behalf of the Revenue, reliance has been placed on the decision of this Court in Commissioner of Income Tax, Shillong v Jai Prakash Singh³⁸ (“Jai Prakash Singh”). That was a case where the assessee did not file a return for three assessment years and died in the meantime. His son who was one of the legal representatives filed returns upon which the assessing officer issued notices under Section 142 (1) and Section 143 (2). These were complied with and no objections were raised to the assessment proceedings. The assessment order mentioned the names of all the legal representatives and the assessment was made in the status of an individual. In appeal, it was contended that the assessment proceedings were void as all the legal representatives were not given notice. In this backdrop, a

two judge Bench of this Court held that the assessment proceedings were not null and void, and at the worst, that they were defective. In this context, reliance was placed on the decision of the Federal Court in Chaturam v CIT³⁹ holding that the jurisdiction to assess and the liability to pay tax are not conditional on the validity of the notice : the liability to pay tax is founded in the charging sections and not in the machinery provisions to determine the amount of tax. Reliance was also placed on the decision in Maharaja of Patiala v CIT (1943) 11 ITR 202 (Bom.) (“Maharaja of Patiala”). That was a case where two notices were issued after the death of the assessee in his name, requiring him to make a return of income. The notices were served upon the successor Maharaja and the assessment order was passed describing the assessee as “His Highness...late Maharaja of Patiala”. The successor appealed against the assessment contending that since the notices were sent in the name of the Maharaja of Patiala and not to him as the legal representative of the Maharaja of Patiala, the assessments were illegal. The Bombay High Court held that the successor Maharaja was a legal representative of the deceased and while it would have been better to so describe him in the notice, the notice was not bad merely because it omitted to state that it was served in that capacity. Following these two decisions, this Court in Jai Prakash Singh held 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 the liability is created by a distinct substantive provision. The omission or defect may render the order irregular but not void or illegal. Jai Prakash

Singh and the two decisions that it placed reliance upon were evidently based upon the specific facts. Jai Prakash Singh involved a situation where the return of income had been filed by one of the legal representatives to whom notices were issued under Section 142(1) and 143(2). No objection was raised by the legal representative who had filed the return that a notice should also to be served to other legal representatives of the deceased assessee. No objection was raised before the assessing officer. Similarly, the decision in Maharaja of Patiala was a case where the notice had been served on the legal representative, the successor Maharaja and the Bombay High Court held that it was not void merely because it omitted to state that it was served in that capacity.

33. *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 Enfortainment on 2 November 2017. The decision in Spice Enfortainment has been followed in the case of the respondent while dismissing the Special Leave Petition for*

AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainment.”

27. A lot has been argued by Mr.M.R.Bhatt, the learned senior counsel appearing for the Revenue, by submitting that the department was not intimated about the death of the assessee and the legal heirs failed to take any steps to cancel the PAN registration in the name of the assessee and, therefore, no fault could be found with the department.

28. In the aforesaid context, we may refer to a decision of the Madras High Court in the case of Alamelu Veerappan vs. Income Tax Officer, Non-corporate Ward-2(2), Chennai, wherein the Madras High Court held as under :

“14. The issue, which falls for consideration, is as to whether the impugned notice under Section 148 of the Act issued in the name of the dead person - the said Mr.S.Veerappan is enforceable in law and the subsidiary issue being as to whether the petitioner, being the wife of the said Mr.S.Veerappan, can be compelled to participate in the proceedings and respond to the impugned notice. The fact that the said Mr.S.Veerappan died on 26.1.2010 is not in dispute. If this fact is not disputed, then the notice issued in the name of the dead person is unenforceable in the eye of law.

15. The Department seeks to justify their stand by contending that they were not intimated about the death of

the assessee, that the legal heirs did not take any steps to cancel the PAN registration in the name of the assessee and that therefore, the Department was justified in directing the petitioner to cooperate in the proceedings pursuant to the impugned notice.

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.

21. All the above reasons are fully supported by the decision in the case of Vipin Walia. In that case, the notice dated 27.3.2015 was issued under Section 148 of the Act to

the assessee, who died on 14.3.2015. The validity of the said notice was put to challenge. The Income Tax Officer took a stand that since the intimation of death of the assessee on 14.3.2015 was not received by her, the notice was issued on a dead person. However, the fact regarding the death of the assessee could not be disputed by the Department. The Department continued the proceedings under Section 147/148 of the Act and at that stage, the son of the deceased approached the High Court of Delhi. The High Court of Delhi pointed out that what was sought to be done by the Income Tax Officer was to initiate proceedings under Section 147 of the Act against the deceased assessee for the assessment year 2008-09, for which, the limitation for issuance of notice under Section 147/148 of the Act was 31.3.2015 and on 02.7.2015 when the notice was issued, the assessee was already dead and if the Department intended to proceed under Section 147 of the Act, it could have done so prior to 31.3.2015 by issuing the notice to the legal heirs of the deceased and beyond that date, it could not have proceeded in the matter even by issuing notice to the legal representatives of the assessee. The decision in Vipin Walia fully supports the case of the petitioner herein.

22. The decision in the case of Vipin Walia was followed in the decision of the High Court of Gujarat in the case of Rasid Lala, in which, the re-assessment proceedings were initiated against the dead person, that too, after a long delay. The Court pointed out that even if the provisions of Section 159 of the Act are attracted, in that case also, the notice was required to be issued against and in the name of

the heirs of the deceased assessee and under the said circumstances, Section 159 of the Act shall not be of any assistance to the Revenue.

23. *In the decision of the Delhi High Court in the case of Spice Entertainment Ltd., one of the questions, which fell for consideration, is as to whether such framing of assessment against a non existing entity or a dead person could be brought within the ambit of Section 292B of the Act and after referring to the decisions on the point including the decision of the Allahabad High Court in the case of Sri Nath Suresh Chand Ram Naresh Vs. CIT [reported in (2006) 280 ITR 396], it has been held that the provisions of Section 292B of the Act are not applicable and that framing of assessment against a non existing entity/person goes to the root of the matter, which is not a procedural irregularity, but a jurisdictional defect, as there cannot be any assessment against a dead person.*

24. *The learned Senior Standing Counsel for the Revenue has sought to distinguish the decision in the case of Spice Entertainment Ltd., by referring to Sky Light Hospitality LLP.*

25. *On a perusal of the factual position therein, the Court came to the conclusion that the defect was curable because it was held that the notice was not addressed to the correct name and that the PAN mentioned was also incorrect. The factual background was taken into consideration and the Court held that errors and mistakes cannot and should not*

nullify the proceedings, which are otherwise valid and that no prejudice had been caused, as this being the mandate of Section 292B of the Act. The decision in the case of Sky Light Hospitality LLP is clearly distinguishable on facts and it does not support the case of the Revenue.”

29. Ultimately, in view of the aforesaid, the only proposition of law that is applicable in the present litigation is that a notice, be it under Section 148 of the Act or Section 153C of the Act, issued to a dead person, is unenforceable in law. If such is the legal position, the Revenue cannot contend that as they had no knowledge about the death of the assessee, they are entitled to plead that the notice is not defective.

30. We shall now deal with the argument canvassed by Mr.Bhatt as regards Section 2(31) of the Act, which defines the term “person”. The argument of Mr.Bhatt is that the legal heir of late Bhupendrabhai Desai would fall within the ambit of “person” as defined under Section 2(31) of the Act and “person” includes a body of individuals. We may only observe that this definition of the term “person” referred to above does not include the legal representatives of persons who are since deceased.

31. In the aforesaid context, we may refer to and rely upon a decision of the Supreme Court in the case of Shabina Abraham (supra). In Shabina Abraham (supra), the question before the Supreme Court was, whether an assessment proceeding under the Central Excises and Salt Act, 1944, can continue against the legal representatives/estate of a sole proprietor/manufacturer after he is dead.

32. A similar argument was canvassed by the learned counsel appearing for the Revenue by placing reliance on the definition of the term “person” under the General Clauses Act, 1897. We quote the relevant observations of the Supreme Court thus :

“Learned counsel for the Revenue also relied upon the definition of a “person” under the General Clauses Act, 1897. Section 3(42) of the said Act defines “person as under:-

“(42) “Person” shall include any company or association or body of individuals whether incorporated or not.”

*It will be noticed that this definition does not take us any further as it does not include legal representatives of persons who are since deceased. Equally, Section 6 of the Central Excises Act, which prescribes a procedure for registration of certain persons who are engaged in the process of production or manufacture of any specified goods mentioned in the schedule to the said Act does not throw any light on the question at hand as it says nothing about how a dead person’s assessment is to continue after his death in respect of excise duty that may have escaped assessment. Also, the judgments cited on behalf of revenue, namely, *Yeshwantrao v. The Commissioner of Wealth Tax, Bangalore, AIR 1967 SC 135 at pages 140, 141 para 18:**

(1966) Suppl. SCR 419 at 429 A-B, C.A. Abraham v. The Income-Tax Officer, Kottayam & Another, AIR 1961 SC 609 at 612 para 6: (1961) 2 SCR 765 at page 771, The State of Tamil Nadu v. M.K. Kandaswami & Others, AIR 1975 SC 1871 (para 26): (1975) 4 SCC 745 (para 26), Commissioner of Sales Tax, Delhi & Others v. Shri Krishna Engineering Co. & Others, (2005) 2 SCC 695, page 702, 703 paras 19 to 23, all enunciate principles dealing with tax evasion in the context of construing provisions which are designed to prevent tax evasion. The question at hand is very different – it only deals with whether the Central Excises and Salt Act contains the necessary provisions to continue assessment proceedings against a dead man in respect of excise duty payable by him after his death, which is a question which has no relation to the construction of provisions designed to prevent tax evasion.”

33. We also deem it appropriate to quote the observations made by the Supreme Court in paragraph 18, which reads thus :

“18. It will be seen that the definition of “assessee” contained in Section 4(3)(a) of the Central Excises and Salt Act is similar to the definition of assessee contained in the Income Tax Act, 1922. Under that Act, as we have already seen, an assessee means “a person by whom income tax is payable.” Under the Central Excises and Salt Act, an assessee means “the person who is liable to pay the duty of excise under this Act”. The present tense being used, it is clear that the person referred to can only be a living person as was held in Ellis C.Reid, AIR 1931 Bom 333. Further, the

only extension of the definition of “assessee” under the Central Excises and Salt Act is that it would also include an assessee’s agent, which has nothing to do with the facts of the present case. It is well settled that a “means and includes” definition is exhaustive in nature and that there is no scope to read anything further into the said definition.”

34. The Supreme Court, in a plethora of judgments, has taken the view that if the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the State, seeking to recover the tax, cannot bring the citizen within the letter of the law, the citizen is free, however, apparently within the spirit of law the case might otherwise appear to be. The Supreme Court, in *CST vs. Modi Sugar Mills Ltd.*, AIR 1961 SC 1047, observed thus :

“In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency.”

35. In view of the aforesaid discussion, we are left with no other option but to allow the present writ-application and hold that the impugned notice being invalid, the further proceedings pursuant thereto are not tenable in law.

36. In the result, this writ-application succeeds and is hereby allowed. The impugned notice as well as the order (Annexure-C) are hereby quashed and set-aside. The connected writ-applications also succeed on the same line and the impugned respective notices and the orders are hereby quashed and set-aside.

(J. B. PARDIWALA, J.)

(ILESH J. VORA, J.)

/MOINUDDIN