Reassessment Initiated Before Assessee's Death Can Continue Against Legal Heir Delhi HC

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Summary: The Delhi High Court, in the case of **Vijaya Garg Through Legal Heir Amit Garg Vs ITO**, held that reassessment proceedings validly initiated during an assessee's lifetime can be continued against the legal representative after the assessee's death in accordance with **Section 159 of the Income Tax Act, 1961**. The Court rejected the contention that the subsequent notice issued under Section 148A(b) in the name of the deceased assessee automatically rendered the entire proceedings void. The decisive consideration was that the original reassessment notice had been issued on 25 April 2021, when the assessee was alive, and that the subsequent proceedings represented a continuation of those already initiated.

The dispute concerned **Assessment Year 2015-16**. The deceased assessee, Smt. Vijaya Garg, had filed her return of income on 28 September 2015 declaring total income of **Rs. 10,00,960**. Her case was selected for limited scrutiny, and the returned income was accepted through an assessment order dated 11 May 2017 under Section 143(3). Subsequently, the Assessing Officer issued a reassessment notice on 25 April 2021 under the erstwhile Section 148, alleging escapement of income. The assessee died on 24 June 2021 during the COVID-19 period. Her legal heir, Amit Garg, challenged the notice before the Delhi High Court, which quashed it on 23 March 2022 following **Mon Mohan Kohli v. Assistant Commissioner of Income Tax & Anr., 2021 SCC OnLine Del 5250**.

Thereafter, pursuant to the Supreme Court's decision in **Union of India v. Ashish Agarwal, (2022) SCC OnLine SC 543**, the Revenue treated the original notice issued under the erstwhile Section 148 as a show-cause notice under Section 148A(b). The Assessing Officer furnished information through a notice dated 1 June 2022. The legal heir informed the Department that the assessee had already died and contended that proceedings against a deceased person were legally unsustainable. Nevertheless, the Assessing Officer passed an order dated 28 July 2022 under Section 148A(d), describing the assessee as **"Vijaya Garg through Legal Heir Sh. Amit Garg"**, and subsequently issued a notice dated 29 July 2022 under Section 148 in the same description.

The petitioner challenged these proceedings on the ground that the notice dated 1 June 2022 was addressed to a deceased person. It was argued that issuing a valid notice to the correct living person was a mandatory

jurisdictional requirement and that non-compliance rendered the proceedings void ab initio. Reliance was placed on **Sangeeta Vig v. ITO, Ward 28(5), (2022) SCC OnLine Del 1776**, wherein the Delhi High Court had held that a notice under Section 148A(b) issued in the name of a deceased assessee was invalid. The petitioner therefore sought quashing of the notice, the order passed under Section 148A(d), and the consequential reassessment notice.

The High Court rejected the petitioner's argument after examining the effect of the Supreme Court's judgment in **Ashish Agarwal**. The Court observed that reassessment notices issued under the erstwhile Section 148 between 1 April 2021 and 30 June 2021 were required to be treated as show-cause notices under Section 148A(b). Consequently, the notice dated 1 June 2022 was part of the proceedings originating from the notice dated 25 April 2021. Since the original notice had been issued while Vijaya Garg was alive, the subsequent proceedings could not be treated as proceedings initiated for the first time against a deceased assessee.

The Court placed particular reliance on **Section 159(2)(a)**, which provides that proceedings initiated against a person before death are deemed to have been initiated against the legal representative and may continue from the stage at which they stood on the date of death. Referring to **Shabina Abraham & Others v. Collector of Central Excise and Customs, (2015) 10 SCC 770**, the Court explained that Section 159 creates a statutory fiction permitting continuation of assessment proceedings against the legal representative. The representative's liability is ordinarily restricted to the estate of the deceased capable of meeting the tax liability, subject to the statutory conditions and exceptions.

The Court distinguished **Sangeeta Vig** on its facts. In that case, the initial reassessment notice had itself been issued after the assessee's death. In the present matter, however, the initial notice was issued before death, and the Assessing Officer subsequently corrected the addressee to identify the deceased assessee through her legal heir. The Court held that this course was consistent with Section 159 and that the reassessment proceedings could lawfully continue against Amit Garg as the legal representative.

Accordingly, the Delhi High Court **disposed of the writ petition without quashing the reassessment proceedings**. The Court expressly clarified that all rights and contentions of the parties concerning the merits remained open, except the legal question regarding continuation of assessment proceedings against the legal representative, which stood determined. The ruling establishes the distinction between proceedings originally initiated against an already deceased assessee and proceedings initiated during the assessee's lifetime that subsequently continue against the legal representative under Section 159.

Cases Discussed

1. **Shabina Abraham & Others v. Collector of Central Excise and Customs, (2015) 10 SCC 770, Supreme Court, decided on 29 July 2015**. The Delhi High Court relied on the Supreme Court's explanation of the statutory deeming fiction under Section 159(2) and the limitation of legal representative liability to the deceased's estate. Read judgment on TaxGuru.
2. **Mon Mohan Kohli v. Assistant Commissioner of Income Tax & Anr., 2021 SCC OnLine Del 5250, Delhi High Court**. The earlier reassessment notice was quashed by the Delhi High Court following this decision concerning notices issued under the erstwhile reassessment provisions.
3. **Union of India v. Ashish Agarwal, (2022) SCC OnLine SC 543; (2022) 444 ITR 1 (SC)**, Supreme Court, decided on 4 May 2022. The Supreme Court directed that specified reassessment notices issued under the erstwhile Section 148 between 1 April and 30 June 2021 be treated as show-cause notices under Section 148A(b).
4. Sangeeta Vig v. ITO, Ward 28(5), (2022) SCC OnLine Del 1776, Delhi High Court. The petitioner relied upon this decision concerning notices issued to deceased assessees. The Court distinguished it because the original notice in that case was issued after the assessee's death.

FULL TEXT OF THE JUDGMENT/ORDER OF DELHI HIGH COURT

CM APPL. 42283/2022

Exemption allowed, subject to all just exceptions.

Accordingly, this application is disposed of.

W.P.(C) 13821/2022 & CM APPL. 42282/2022(for interim stay)

1. The present writ petition has been filed by Sh. Amit Garg, being the legal heir of the deceased assessee Smt. Vijaya Garg, seeking quashing of the impugned notice dated 1st June, 2022, furnishing material and information as per Section 148A(b) of the Income Tax Act, 1961, (the 'Act'), and consequent order dated 28th July, 2022, passed under Section 148A(d) of the Act, and notice dated 29th July, 2022, under Section 148 of the Act for the assessment year 2015-16.

2. Briefly stated the facts giving rise to the present controversy are that the deceased assessee filed her Return of Income on 28th September, 2015, declaring a total income of Rs.10,00,960/- for the Assessment Year ('AY') 2015-16. The assessee's case was selected for limited scrutiny assessment and the returned income was accepted vide assessment order dated 11th May, 2017, passed under Section 143(3) of the Act.

3. Thereafter, the assessee was issued a notice dated 25th April, 2021 during her lifetime, under the unamended Section 148 of the Act, alleging that income for the relevant assessment year has escaped assessment. In the meanwhile, the assessee, Smt. Vijaya Garg passed away on 24th June, 2021, during COVID-19 period. The legal heir of the assessee, Sh. Amit Garg, filed a writ petition bearing W.P. (C) No. 4654 of 2022, before this Court, wherein this Court vide order dated 23rd March, 2022, quashed the notice dated 25th April, 2021, issued under the erstwhile Section 148 of the Act, holding it to be null and void following the judgment of this Court in ***Mon Mohan Kohli v. Assistant Commissioner of Income Tax & Anr., 2021 SCC OnLine Del 5250***.

4. Subsequently, the Respondent in pursuance of the directions given by the Supreme Court in the case of ***Union of India v. Ashish Agarwal, (2022) SCC Online SC 543***, construed the initial notice dated 25th April, 2021, to be a Show Cause Notice ('SCN') in terms of Section 148A(b) of the Act, and in continuation issued a notice dated 1st June, 2022, furnishing information in accordance with the order of the Supreme Court in ***Ashish Agarwal*** (Supra). A reply dated 25th April, 2022 was filed to the said notice through a Chartered Accountant ('CA'), informing the AO that the assessee had since passed away on 24th June, 2021 and also replied on the merits of the issue, and that no proceedings can be continued against a dead assessee.

5. The AO thereafter, passed an order dated 28th July, 2022, taking note of the death of the assessee and amended the addressee to read as *'Vijaya Garg through Legal Heir Sh. Amit Garg, F-52, East of Kailash-110065, Delhi, India'* opining that the legal heir, Sh. Amit Garg is liable to comply with the present proceedings and consequently issued a notice dated 29th July, 2022, as well in the name of *'Vijaya Garg through Legal Heir Sh. Amit Garg, F-52, East of Kailash-110065, Delhi, India'* under Section 148 of the Act.

6. Learned Counsel appearing on behalf of the Petitioner, Sh. Amit Garg i.e. the legal heir of the assessee, contends that the notice dated 01st June, 2022, furnishing the information, issued in the name of the dead assessee is invalid. He contends it is a *sine qua non* that the notice has to be issued in the name of correct and alive person, failing which, the entire proceeding is vitiated as void-ab-initio, being issued in the name of dead assessee. He sought to place reliance on the decision of this Court in ***Sangeeta Vig v. ITO, Ward 28(5), (2022) SCC Online Del 1776***, to state that the notice issued under Section 148A(b) of the Act, in the name of a dead assesseee is null and void.

7. Abhishek Maratha, learned Counsel for the Revenue appears on advance notice.

7.1. We have heard the learned Counsel for the parties. The contention raised by the assessee that the notice dated 1st June, 2022, furnishing information has been issued in the name of the dead assessee and thus, consequent proceedings are void, does not persuade us.

The Supreme Court disposed of the case of ***Ashish Agarwal*** (Supra), with the direction that the notice(s) issued under erstwhile Section 148 of the Act, between 01st April, 2021 and 30th June, 2021, are to be construed as SCN under Section 148A(b) of the Act. Therefore, the present proceedings are in continuation of earlier notice dated 25th April, 2021 i.e., at the time when the assessee was alive.

7.2. The Petitioner herein Mr. Amit Garg is admittedly the legal heir of the assessee and upon being apprised of the death of the assessee, the Assessing Officer (AO) has passed the order dated 28th July, 2022, under Section 148A(d) of the Act and notice dated 29th July, 2022, under Section 148 of the Act, in the name of *'Vijaya Garg through Legal Heir Sh. Amit Garg'* and has thus taken steps as mandated by Section 159 of the Act to continue the assessment proceedings against the legal representative of the assessee. The relevant extract of Section 159(2)(a) of the Act is reproduced hereinunder: –

"159. ….

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provision 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;
……"

(Emphasis supplied)

7.3. Since the present assessment proceedings are in continuation of the initial notice dated 25th April, 2021, issued to the deceased assessee during her lifetime, the same can be continued against the legal representative from the stage at which it stood on the date of the death of the deceased so as to collect the tax from the estate of the deceased person. The Supreme Court in the case***Shabina Abraham & Others v. Collector of Central Excise and Customs, (2015) 10 SCC 770*** has concisely explained the said provision as under:

"*16. It will be noticed that under Section 159(2), for the purpose of making any assessment, any proceeding taken against the deceased*

before his death is by deeming fiction deemed to have been taken against his 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. Further, the legal representative under subsection (3) of Section 159 is again by deeming fiction deemed to be an assessee himself. However, the liability of such representative is limited only to the extent to which the estate left by the deceased is capable of meeting the tax liability subject to the contingencies mentioned in sub-sections (4) and (5) of Section 159."

8. Therefore, in light of the aforesaid provision, since, the initial notice dated 25th April, 2022, was issued at the time when the assessee was alive (the present proceedings are in continuation) and thus, the AO has rightfully amended the details of the addressee in its consequent order under Section 148A(d) and notice under Section 148 of the Act.

9. Further, the reliance placed by the assessee on the decision of this Court in ***Sangeeta Vig***(Supra) in misplaced since in that case the initial notice under the erstwhile Section 148 of the Act, was issued at a time when the assessee was dead. However, in the present case, as noted above, the assessee was alive at the time of the issuance of initial notice under erstwhile Section 148 of the Act.

10. Accordingly, the writ petition is disposed off.

11. This Court clarifies that all rights and contentions of the parties on the merits of the issue are left open except the legal issue of continuation of the assessment proceedings against the legal representative as determined in these proceedings.
