$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3258/2020

SAVITA KAPILA, LEGAL HEIR OF
LATE SHRI MOHINDER PAUL KAPILA ..... Petitioner
Through: Mr. Siddharth Ranka and Mr. Mishal Johri, Advocates

versus

ASSISTANT COMMISSIONER OF
INCOME TAX, CIRCLE 43(1) DELHI ..... Respondent
Through: Mr. Zoheb Hossain, Sr. Standing Counsel for respondent.

Reserved on : 24th June, 2020
% Date of Decision: 16th July, 2020

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J:

1. Present writ petition had been filed seeking a direction to the respondent to quash the notice dated 31st March, 2019 issued to the deceased-assessee (father of the petitioner) under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act, 1961") and all the consequential proceedings emanating therefrom including orders dated 21st November, 2019 and 27th December, 2019 passed by the respondent.

FACTS

2. The relevant facts of the present case are that an information was received by the Assessing Officer that in Financial Year 2011-12, the assessee-Shri Mohinder Paul Kapila had cash deposits of Rupees Ten Lakhs (Rs. 10,00,000/-) in his bank account, time deposits of Rupees Eleven Lakhs Five Thousand Five Hundred Eighty Six (Rs. 11,05,586/-) and receipts of Rupees Twenty Five Thousand Four Hundred Fourteen (Rs. 25,414/-) as per Form 26AS. It was noticed that no return had been filed and the source of the aforesaid deposits and receipts remained unexplained and had escaped assessment. Accordingly, the case of Mr. Mohinder Paul Kapila was selected under Section 147/148 of the Act 1961, after recording of reasons and approval of PCIT-15, Delhi on 28th March, 2019.

3. However, late Shri Mohinder Paul Kapila (hereinafter referred to as "deceased-assessee") had already expired on 21st December, 2018. The deceased assessee is survived by two sons and two daughters.

4. Notice dated 31st March, 2019 under Section 148 of the Act 1961 for A.Y. 2012-2013 was issued, i.e. on the last date of limitation, in the name of deceased assessee Shri Mohinder Paul Kapila with PAN: ASXPK1666P and sent at his last known address known to the Income Tax Department i.e. Flat No. 286, 1st Floor, D Flats, Sector 9, Pkt-1, Dwarka, New Delhi 110075. The impugned notice could not and was never served upon Late Shri Mohinder Paul Kapila. Thereafter ACIT, Circle 43(1), Delhi (hereinafter referred to as "Assessing Officer") issued notices dated 22nd August, 2019, 27th August, 2019 & 18th September, 2019 to the deceased assessee. The said notices were also neither served upon the assessee nor

upon any of his legal heirs.

5. On 10th October, 2019, a show-cause notice was issued to the deceased Assessee to explain why penalty under Section 271(1)(b) of the Act 1961 should not be imposed for failure to comply with notice issued under Section 142(1) of the Act 1961.

6. Pursuant to another notice issued under Section 133(6) of the Act, 1961, to the banks of the deceased assessee, it was revealed to the Income Tax Department that the same address of Dwarka was mentioned in the KYC and further from the documents made available by the banks a telephone number was traced and the phone call was made to the present Petitioner i.e., Savita Kapila who for the first time informed that she is the daughter of the Assessee and that the Assessee had passed away on 21st December, 2018. Admittedly, for the first time the death certificate confirming the above was uploaded by the Petitioner on the E-Portal of the Income Tax Department on 15th October, 2019.

7. Assessing Officer passed an order dated 21st November, 2019, whereby penalty u/s. 271(1)(b) of the Act, 1961 was imposed upon deceased-assessee through legal heir for non-compliance of notices issued to the deceased assessee.

8. A final show-cause notice dated 25th November, 2019 was issued to the Assessee, through legal heir, directing to file the return and produce relevant documents by 28th November, 2019, failing which the AO shall pass the assessment order under Section 144 of the Act.

9. Proceedings were transferred to PAN (AWZPK7699E) of one of the legal heir of the deceased assessee-Ms. Savita Kapila [Petitioner] on 27th December, 2019 and on the same date the impugned assessment order was

passed in her name and PAN, whereby an addition of Rupees Twenty One Lakhs Thirty One Thousand (Rs. 21,31,000/-) was made and demand of Rupees Fourteen Lakhs Nineteen Thousand Sixty (Rs. 14,19,060/-) was raised.

ARGUMENTS ON BEHALF OF THE PETITIONER

10. Mr. Siddharth Ranka, learned counsel for the petitioner stated that the impugned orders passed in consequence to the impugned notice had been passed ignoring the settled position of law. He submitted that since the impugned notice under Section 148 of the Act, 1961 was issued subsequent to the death of the assessee, the statutory requirement of service under Section 148 of the Act, 1961 had not been fulfilled. In support of his submission, he relied upon the judgment of this Court in ***Braham Prakash v. ITO 2004 (9) TMI 49 (Delhi).*** The relevant portion of the said judgment is reproduced hereinbelow:-

> *".....These notices appear to have been issued in consequence of the order dt. 25th Feb., 2002 pursuant to a notice issued under Section 148 of the Act. But, we find that the notice under Section 148 was issued in the name of Sheesh Ram when he was no more. In other words, it was a notice issued to a dead person. Obviously, the notice could not have been served upon the deceased. Moreover, there is nothing on record to show that the notice under Section 148 was served on the petitioner either.*
>
> *.....As such, it is clear that notice under Section 148 was neither served on the original assessed nor on the deemed assessed. Therefore, the subsequent proceedings are bad in law as there is breach of the principles of natural justice as well as the mandatory provisions contained in Section 148. The principle of audi alterem partem ought to have been followed by the Revenue.*

On this ground, we quash the notice of demand.....”

11. He pointed out that notice under Section 148 of the Act, 1961 was not issued to the petitioner or any other legal representative of the deceased-assessee and the proceedings were simply transferred to the petitioner’s PAN vide letter dated 27th December, 2019 ignoring the fact that there were other legal heirs of the deceased-assessee too.

12. In any event, he submitted that the proceedings against the petitioner were barred by limitation by the said date i.e. 27th December, 2019 as per Section 149(1)(b) of the Act, 1961.

13. Learned counsel for the petitioner emphasized that Section 159 of the Act would not apply to the facts of the present case inasmuch as the said provision would be applicable in those situations wherein the proceedings had been initiated/pending against an assessee when he/she was alive and after their death their legal representatives had stepped into their shoes. In support of his submission, he relied upon the judgment of this Court in ***Vipin Walia v. ITO 2016 (2) TMI 524 (Delhi)***.

ARGUMENTS ON BEHALF OF THE RESPONDENT

14. *Per contra*, Mr. Zoheb Hussain, learned senior standing counsel for the respondent submitted that the present writ petition ought not to be entertained as it had been preferred after the completion of assessment proceedings and in accordance with the statutory provisions as well as settled law, the petitioner should be directed to agitate the issues raised herein before the Appellate Commissioner under Section 246A of the Act, 1961.

15. Learned senior standing counsel for the respondent submitted that under Section 159 of the Act, 1961 the legal representative is liable for the liabilities of the deceased-assessee and therefore it cannot be said that the present assessment proceedings are null and void merely because impugned notice under Section 148 of the Act dated 31st March, 2019 was issued by the assessing officer, completely unbeknownst of the fact that the assessee had died on 21st December, 2018.

16. He emphasized that the factum of the death of the assessee was communicated to the Revenue for the first time on 15th October, 2019 and not before the expiry of limitation period i.e. 31st March, 2019 and therefore, there was no way that the Revenue could have known about the death of the assessee. He pointed out that there was a different statutory authority under the Registration of Births and Deaths Act, 1969 which was responsible for maintaining the register of births and deaths and that the Revenue was not obliged under the law to *suo motu* maintain such record of 44.50 crore PAN card holders in the country. Therefore, it was incumbent upon the legal representatives of the late assessee to intimate about his death to the revenue.

17. Mr. Zoheb Hussain further submitted that the facts of the present case were distinguishable from the cases relied upon by the petitioner wherein Courts had quashed notices sent to non-existent entities, as in all such cases the information of such non-existence was available with the Assessing Officer prior to the issuance of notice. In support of his submission, he relied upon the decision in the case of ***Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited, (2019) 416 ITR 613 (SC)***, wherein the Supreme Court had rendered the proceedings null and void on the basis of

the following observation *"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"*.

18. He also relied upon the judgment of the High Court of Jharkhand in the case of ***Smt. Sudha Prasad v. Chief Commissioner of Income Tax, (2005) 275 ITR 135 (Jharkhand)*** wherein, according to him under similar circumstances, the Court had set aside the proceedings for *de novo* assessments instead of quashing the same, on account of Revenue's bona fide mistake since notice was issued to a dead person out of ignorance of assessee's death, which was not intimated to the Revenue.

19. He contended that the Revenue had acted bona fide at the time of issuance of notice under Section 148 of the Act as it had no knowledge of the death of the assessee. He relied upon the judgment of this Court in ***Skylight Hospitality LLP v. Assistant Commissioner of Income Tax, Circle-28(1), New Delhi, (2018) 405 ITR 296 (Delhi)*** to submit that even if there was any defect in the notice, it would be a bona fide curable defect under Section 292B of the Act, 1961.

20. He further submitted that the proviso to Section 292BB of the Act would be attracted to the present case and the petitioner would be prevented from questioning the validity of the notice since she had '*cooperated in any inquiry relating to.....reassessment'* by uploading the death certificate of the deceased-assessee.

REJOINDER ARGUMENTS ON BEHALF OF THE PETITIONER

21. In rejoinder, learned counsel for the petitioner laid emphasis upon the fact that there was no statutory obligation upon the legal heirs to intimate the death of the assessee to the respondent. He submitted that the assessing officer had no jurisdiction to initiate the re-assessment proceedings and the passing of subsequent orders would not render the jurisdictional challenge infructuous.

22. Mr. Siddharth Ranka also contended that the petitioner had merely uploaded the death certificate of the deceased-assessee online and had in fact neither filed a return on behalf of the deceased-assessee nor submitted to the jurisdiction of the assessing officer and had not even waived the requirement of Section 148 of the Act. Consequently, according to him, provisions of Section 292BB of the Act were not attracted to the present case. He relied upon the judgment of this Court in ***Rajender Kumar Sehgal v. ITO 2018 (12) TMI 697 (Delhi)***.

COURT'S REASONING

AN ALTERNATIVE STATUTORY REMEDY DOES NOT OPERATE AS A BAR TO MAINTAINABILITY OF A WRIT PETITION WHERE THE ORDER OR NOTICE OR PROCEEDINGS ARE WHOLLY WITHOUT JURISDICTION. IF THE ASSESSING OFFICER HAD NO JURISDICTION TO INITIATE ASSESSMENT PROCEEDING, THE MERE FACT THAT SUBSEQUENT ORDERS HAVE BEEN PASSED WOULD NOT RENDER THE CHALLENGE TO JURISDICTION INFRUCTUOUS.

23. It is well settled law that an alternative statutory remedy does not operate as a bar to maintainability of a writ petition in at least three

contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principles of natural justice or where the order or notice or proceedings are wholly without jurisdiction or the vires of an Act is challenged. [See ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, (1998)8 SCC 1***].

24. Further, the fact that an assessment order has been passed and it is open to challenge by way of an appeal, does not denude the petitioner of its right to challenge the notice for assessment if it is without jurisdiction. If the assumption of jurisdiction is wrong, the assessment order passed subsequently would have no legs to stand. If the notice goes, so does the order of assessment. It is trite law that if the Assessing Officer had no jurisdiction to initiate assessment proceeding, the mere fact that subsequent orders have been passed would not render the challenge to jurisdiction infructuous. In ***Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies District I Calcutta and Another, AIR 1961 SC 372*** the Supreme Court has held as under:-

> *"27. .....It is well settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences.*
>
> *28. Mr Sastri mentioned more than once the fact that the Company would have sufficient opportunity to raise this question*

viz. whether the Income Tax Officer had reason to believe that underassessment had resulted from non-disclosure of material facts, before the Income Tax Officer himself in the assessment proceedings and if unsuccessful there before the appellate officer or the Appellate Tribunal or in the High Court under Section 66(2) of the Indian Income Tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action. 29. In the present case the Company contends that the conditions precedent for the assumption of jurisdiction under Section 34 were not satisfied and come to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under Article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons....."

THE SINE QUA NON FOR ACQUIRING JURISDICTION TO REOPEN AN ASSESSMENT IS THAT NOTICE UNDER SECTION 148 SHOULD BE ISSUED TO A CORRECT PERSON AND NOT TO A DEAD PERSON. CONSEQUENTLY, THE JURISDICTIONAL REQUIREMENT UNDER SECTION 148 OF THE ACT, 1961 OF SERVICE OF NOTICE WAS NOT FULFILLED IN THE PRESENT INSTANCE.

25. In the present case the notice dated 31st March, 2019 under Section 148 of the Act, 1961 was issued to the deceased assessee after the date of his death [21st December, 2018] and thus inevitably the said notice could never have been served upon him. Consequently, the jurisdictional requirement under Section 148 of the Act, 1961 of service of notice was not fulfilled in the present instance.

26. In the opinion of this Court the issuance of a notice under Section 148 of the Act is the foundation for reopening of an assessment. Consequently,

the *sine qua non* for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. [See ***Sumit Balkrishna Gupta Vs. Asstt. Commissioner of Income Tax, Circle 16(2), Mumbai & Ors., (2019) 2 TMI 1209 – Bombay High Court***].

27. In ***Chandreshbhai Jayantibhai Patel Vs. The Income Tax Officer, 2019 (1) TMI 353 – Gujarat High Court*** has also held, *"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 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."* Consequently, in view of the above, a reopening notice under Section 148 of the Act, 1961 issued in the name of a deceased assessee is null and void.

ALSO, NO NOTICE UNDER SECTION 148 OF THE ACT, 1961 WAS EVER ISSUED UPON THE PETITIONER DURING THE PERIOD OF LIMITATION. CONSEQUENTLY, THE PROCEEDINGS AGAINST THE

PETITIONER ARE BARRED BY LIMITATION AS PER SECTION 149(1)(b) OF THE ACT, 1961.

28. Also, no notice under Section 148 of the Act, 1961 was ever issued to the petitioner during the period of limitation and simply proceedings were transferred to the PAN of the petitioner, who happens to be one of the four legal heirs of the deceased assessee vide letter dated 27th December, 2019. Therefore, the assumption of jurisdiction qua the Petitioner for the relevant assessment year is beyond the period prescribed and consequently, the proceedings against the petitioner are barred by limitation in accordance with Section 149(1)(b) of the Act, 1961.

29. In ***Smt. Sudha Prasad*** (supra) the petitioner had challenged the assessment order and demand notice only. Neither non-issuance of notice was challenged nor the issue of proceedings being barred by limitation was raised or decided. Consequently, the said judgment is inapplicable to the present case and is therefore, of no help to the revenue.

AS IN THE PRESENT CASE PROCEEDINGS WERE NOT INITIATED / PENDING AGAINST THE ASSESSEE WHEN HE WAS ALIVE AND AFTER HIS DEATH THE LEGAL REPRESENTATIVE DID NOT STEP INTO THE SHOES OF THE DECEASED ASSESSEE, SECTION 159 OF THE ACT, 1961 DOES NOT APPLY TO THE PRESENT CASE.

30. Section 159 of the Act, 1961 applies to a situation where proceedings are initiated / pending against the assessee when he is alive and after his death the legal representative steps into the shoes of the deceased assessee. Since that is not the present factual scenario, Section 159 of the Act, 1961 does not apply to the present case.

31. In ***Alamelu Veerappan Vs. The Income Tax Officer, Non Corporate Ward 2(2), Chennai, 2018 (6) TMI 760 – Madras High Court,*** it has been held by the Madras High Court, *"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."* In ***Rajender Kumar Sehgal*** (supra), a Coordinate bench of this Court has held, *"This court is of the opinion that the absence of any provision in the Act, to fasten revenue liability upon a deceased individual, in the absence of pending or previously instituted proceeding which is really what the present case is all about, renders fatal the effort of the revenue to impose the tax burden upon a legal representative."*

THERE IS NO STATUTORY REQUIREMENT IMPOSING AN OBLIGATION UPON LEGAL HEIRS TO INTIMATE THE DEATH OF THE ASSESSEE.

32. This Court is of the view that in the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the income tax department. After all, there may be cases where the legal representatives are estranged from the deceased assessee or the deceased assessee may have bequeathed his entire wealth to a charity. Consequently, whether PAN record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In ***Alamelu Veerappan*** (supra) it has been held *"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."

33. The judgment in ***Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited*** (supra) offers no assistance to the respondents. In ***Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited*** (supra) the Supreme Court was dealing with Section 170 of the Act, 1961 (succession to business otherwise than on death) wherein notice under Section 143(2) of the Act, 1961 was issued to non-existing company. In that case, Department by very nature of transaction was aware about the amalgamation. However, the said judgment nowhere states that there is an obligation upon the legal representative to inform the Income Tax Department about the death of the assessee or to surrender the PAN of the deceased assessee. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"35. In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B.*
>
> *xxxx xxxx xxxx xxxx*
>
> *39. 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 Enfotainment on 2 November 2017. The decision in Spice Enfotainment 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 Enfotainment.

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

SECTION 292B OF THE ACT, 1961 HAS BEEN HELD TO BE INAPPLICABLE VIZ-A-VIZ NOTICE ISSUED TO A DEAD PERSON IN ***RAJENDER KUMAR SEHGAL*** *(SUPRA),* ***CHANDRESHBHAI JAYANTIBHAI PATEL*** *(SUPRA) AND* ***ALAMELU VEERAPPAN*** *(SUPRA).*

35. This Court is of the opinion that issuance of notice upon a dead person and non-service of notice does not come under the ambit of mistake, defect or omission. Consequently, Section 292B of the Act, 1961 does not apply to the present case.

36. In ***Skylight Hospitality*** (supra) notice was issued to Skylight Hospitality Pvt. Ltd. instead of Skylight Hospitality LLP. In that factual context, this Court had observed, *"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 relied and dealt with by them."* The Supreme Court while dismissing the SLP had also observed *"In the peculiar facts of this*

case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292B of the Income Tax Act."

37. In any event, Section 292B of the Act, 1961 has been held to be inapplicable viz-a-viz notice issued to a dead person in ***Rajender Kumar Sehgal*** (supra), ***Chandreshbhai Jayantibhai Patel*** (supra) and ***Alamelu Veerappan*** (supra). In all the aforesaid cases, the judgment of ***Skylight Hospitality*** (supra) had been cited by the revenue.

*IN **RAJENDER KUMAR SEHGAL** (SUPRA) A COORDINATE BENCH OF THIS COURT HAS HELD THAT SECTION 292BB OF THE ACT, 1961 IS APPLICABLE TO AN ASSESSEE AND NOT TO A LEGAL REPRESENTATIVE.*

38. This Court is also of the view that Section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative. Further, in the present case one of the legal heirs of the deceased assessee, i.e. the petitioner, had neither cooperated in the assessment proceedings nor filed return or waived the requirement of Section 148 of the Act, 1961 or submitted to jurisdiction of the Assessing Officer. She had merely uploaded the death certificate of the deceased assessee. In ***Commissioner of Income Tax-VIII, Chennai Vs. Shri M. Hemanathan, 2016 (4) TMI 258 – Madras High Court*** it has been held *"In the case on hand, the assessee was dead. It was the assessee's son, who appeared and perhaps cooperated. Therefore, the primary condition for the invocation of Section 292BB is absent in the case on hand. Section 292BB is in place to take care of contingencies where an assessee is put on notice of the initiation of*

proceedings, but who takes advantage of defective notices or defective service of notice on him. It is trite to point out that the purpose of issue of notice is to make the noticee aware of the nature of the proceedings. Once the nature of the proceedings is made known and understood by the assessee, he should not be allowed to take advantage of certain procedural defects. That was the purpose behind the enactment of Section 292BB. It cannot be invoked in cases where the very initiation of proceedings is against a dead person. Hence, the second contention cannot also be upheld."

39. Even a Coordinate Bench of this Court in ***Rajender Kumar Sehgal*** (supra) has held *"If the original assessee had lived and later participated in the proceedings, then, by reason of Section 292BB, she would have been precluded from saying that no notice was factually served upon her. When the notice was issued in her name- when she was no longer of this world, it is inconceivable that she could have participated in the reassessment proceedings, (nor is that the revenue's case) to be estopped from contending that she did not receive it. The plain language of Section 292BB, in our opinion precludes its application, contrary to the revenue's argument."*

40. Consequently, the applicability of Section 292BB of the Act, 1961 has been held to be attracted to an assessee and not to legal representatives.

CONCLUSION

41. To conclude, the arguments advanced by the respondent are no longer *res integra* and have been consistently rejected by different High Courts including this jurisdictional Court. In view of consistent, uniform and

settled position of law, to accept the submissions of the respondent would amount to unsettling the 'settled law'. In fact, in ***Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited*** (supra), the Supreme Court speaking through Hon'ble (Dr.) Justice Dhananjaya Y. Chandrachud has succinctly observed as under:-

> *"40. We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable."*

42. Keeping in view the aforesaid, the present writ petition is allowed and the impugned notice dated 31st March, 2019 and all consequential orders/proceedings passed/initiated thereto including orders dated 21st November, 2019 and 27th December, 2019 are quashed.

MANMOHAN, J

SANJEEV NARULA, J

JULY 16, 2020
rn