



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 25728 OF 2023 (T-IT)

BETWEEN:

SMT. SOWMYA S.,
AGED ABOUT 40 YEARS,
LEGAL REPRESENTATIVE OF DECEASED
SMT. ASHWATHKATE PRABHUSHAMAPPA SANDHYA,
RESIDING AT NO. 1234/A/01,
26A MAIN ROAD, 4TH BLOCK,
JAYANAGAR, BANGALORE-560 041.

...PETITIONER

(BY SRI. SANDEEPANI NEGLUR, ADVOCATE FOR
SRI. SANDEEP HUILGOL, ADVOCATE)

AND:

1. INCOME TAX OFFICER,
WARD 7 (2) (1), BANGALORE,
BMTc BUILDING, 80 FEET ROAD,
6TH BLOCK, KORAMANGALA,
BENGALURU-560 095.
2. PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX,
KARNATAKA AND GOA,
BCR BUILDING, PRO SECTION,
GROUND FLOOR, QUEENS ROAD,
VASANTH NAGAR, BENGALURU,
KARNATAKA-560 001.





3. STATE BANK OF INDIA,
JAYANAGAR 5TH BLOCK BRANCH,
NO. 35/18, 11TH MAIN,
5TH BLOCK, JAYANAGAR,
NEAR RAGHAVENDRASWAMY,
BANGALORE-560 041,
REPRESENTED HEREIN BY ITS MANAGER.

...RESPONDENTS

(BY SRI. DILIP M., JUNIOR STANDING COUNSEL A/W
SRI. RAVI RAJ Y. V., SENIOR STANDING COUNSEL
FOR R1 AND R2;
VIDE ORDER DATED 24.01.2024, NOTICE TO R3 IS
DISPENSED WITH)

THIS WP IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE
ASSESSMENT ORDER DATED 18/03/2023 BEARING DIN AND
ORDER NO. ITBA/AST/S/147/2022-23/1050937437(1) PASSED
BY R1 UNDER SECTION 147 READ WITH SECTION 144 OF THE
INCOME-TAX ACT, 1961 (ANNEXURE-A1) AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY
HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has called in question the validity of
the assessment order passed under Section 147 read with
Section 144 of the Income Tax Act, 1961 (for short 'the
Act') at Annexure-'A1', validity of computation sheet at



Annexure-'A2', demand notice at Annexures-'A3' and B. The petitioner has also called in question the validity of the penalty order at Annexure-'C1', computation sheet at Annexure-'C2', the order passed under Section 148A(d) of the Act at Annexure-'E1' and the notice issued under Section 148 of the Act at Annexure-'E2'. The petitioner has also sought for direction for de-freezing of accounts as a consequential relief.

2. The admitted facts being that the petitioner has stated to have died on 21.05.2022 as evidenced by the Death Certificate. It is not in dispute that as on the date of issuance of notice under Section 148A(b) of the Act and the order at Annexure-'E1' passed under Section 148A (d) of the Act as well as the notice under Section 148 of the Act dated 31.03.2022, the petitioner was alive. It is during the proceedings for assessment, subsequent to the notice issued under Section 148 of the Act, the petitioner has passed away on 21.05.2022. The assessment order at Annexure-'A1' is passed against a dead person.



3. It is further not in dispute that the proceedings have progressed ex-parte. In light of the assessee being dead as on the date of passing the assessment order under Section 147 read with Section 144 of the Act, the order against the dead person amounts to nullity and accordingly, requires to be set aside.

4. The procedure prescribed when the assessee dies during pendency of the proceedings is in terms of Section 159(2)(a) of the Act which provision reads as hereunder:

"Section 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 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."*



5. In light of the same when the assessee dies during pendency of the proceedings, proceedings are to be continued through the legal representatives of the deceased. Accordingly, the order at Annexure-'A1' as well as computation sheet at Annexure-'A2', demand notice at Annexure-'A3', demand proceedings at Annexure-'B' and penalty proceedings at Annexures-'C1' and 'C2' are set aside.

6. Consequent to allowing the writ petition and setting aside of the assessment order, the order of freezing the bank account as evidenced at Annexure-'K' is set aside. Matter is remitted to the stage post to the notice issued under Section 148 of the Act. Revenue to take steps in accordance with Section 159(2)(a) of the Act.

7. Upon such steps being taken, the petitioner is at liberty to file their reply to the notice issued under Section 148 of the Act.



8. Accordingly, petition is ***disposed off***. All other contentions are kept open.

**Sd/-
JUDGE**

MCR