



IN THE HIGH COURT OF DELHI

WP(C) Nos. 5169/2003 & 6936/03

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Decided on : September 28, 2004.

BRAHAM PARKASH. ... .. Petitioner  
Through : Mr R. Santhanam with Mr PN Gupta  
Advocate.

Versus

Income Tax Officer .... Respondents  
Through Mr. Sanjiv Sabharwal  
Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE BADAR DURREZ AHMED

1. Whether the Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

B.C.PATEL, C.J. (ORAL)

One Sheesh Ram, the original claimant in certain land acquisition proceedings, along with Ram Swarup moved the Reference Court (Addl District Judge, Delhi) in LAC No. 134/90. It transpires that during the pendency of those proceedings, Sheesh Ram died on 3.8.1986. His seven legal heirs were brought on record in the proceedings before the Addl District Judge, Delhi who ultimately made an order on 25.1.1994, awarding compensation for the lands acquired at the rate of Rs. 76,550/- per bigha, solatium, along with other benefits.

The present petition is directed, inter alia, against the notice of demand under Section 156 of the Income-tax



Act, 1961 ( hereinafter for short "the Act") issued by t...  
Income Tax Department, a copy of which is produced at  
page 26 of the paperbook. The notice is in the name of  
Braham Parkash, legal heir of Sheesh Ram for the  
assessment year 1996-97 raising a demand of Rs.  
57,75,545/-. Thereafter, a notice, which is also impugned,  
under Section 221(1) of the Act was issued on 19.6.2003, a  
copy of which is at page 29, Annexure -2. It is addressed to  
Braham Parkash calling upon him to show cause as to why  
a penalty should not be imposed for nonpayment of the  
dues. These notices appear to have been issued in  
consequence of the order dated 25.2.2002 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.

On behalf of the Revenue, it is submitted that  
Section 148 of the Act mandates service of the notice on the  
assessee, however, in view of Section 2(7) read with Section  
159(2)(b) of the Act, the petitioner, being a legal  
representative of the deceased Sheesh Ram, would be  
deemed to be an assessee. When we put pointed question to



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the counsel for the Revenue whether any notice under Section 148 was served on the deemed assessee or not, nothing was placed before us to show that any notice was served even on the deemed assessee. As such, it is clear that notice under section 148 was neither served on the original assessee nor on the deemed assessee. 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, the notice dated 19.6.2003 as also the order of assessment dated 17.3.2003 and order of penalty. In other words, all proceedings, notices, orders pursuant to the said notice under section 148 are quashed and set aside. The writ petitions are accordingly allowed. No orders as to costs.

*Retain*  
Chief Justice.

*Badar Durrez Ahmed*  
Badar Durrez Ahmed, J.

September 28, 2004.  
~vsp.