



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

**ITA 467/2004**

**SHAHID ATIQ** ..... Petitioner  
Through : **Mr. Prakash Kumar, Adv.**

**versus**

**COMMISSIONER OF INCOME TAX** ..... Respondent  
Through : **Mr. R.D. Jolly, Adv.**

**CORAM:**  
**HON'BLE MR. JUSTICE T.S. THAKUR**  
**HON'BLE MR. JUSTICE B.N. CHATURVEDI**

**ORDER**

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**22.11.2005**

The assessee late S.H. Atiquer Rehman had filed returns for the assessment years 1992-93 and 1993-94 declaring an income of Rs.65,000/- for the assessment year 1992-93 and Rs.72,580/- for the assessment year 1993-94. The returns were processed under Section 143 (1A) of the Income Tax Act. Shri S.H. Atiquer Rehman passed away on 9<sup>th</sup> February, 1997. A notice under Section 148 was issued to the appellant Sh. Shahid Atiq, son of the deceased assessee on 26<sup>th</sup> March, 1997 which was served upon him on 27<sup>th</sup> March, 1997 proposing to reopen the assessment for both the assessment years mentioned earlier. The appellant, it is common ground appeared before the Assessing Officer through Sh. R. Balasubramanian, Chartered Accountant and furnished



the requisite explanations which were taken into consideration and a reassessment order made by the Assessing Officer for both the assessment years determining the taxable income of the deceased assessee at Rs.2,25,550/- for the assessment year 1992-93 and Rs.2,30,630/- for the assessment year 1993-94.

Aggrieved by the said orders the appellant preferred appeals before the Commissioner of Income Tax (Appeals) inter alia contending that since a notice had not been issued to other legal heirs left behind by the deceased-assessee namely his widow, sons and daughter the orders of reassessment made by the Assessing Officer were illegal and unsustainable. The Commissioner found favour with that contention and allowed the appeals. The reassessment orders were on that reasoning annulled by the Commissioner. The Revenue assailed the said orders before the Tribunal who relying upon the decisions of the Supreme Court in CIT Vs. Jai Prakash Singh; CIT (1996) 219 ITR 737, Estate of Late Rangalal Jajodia Vs. CIT, Madra; 79 ITR 505 and A.K.M. Govinda Swamy Chettiar & Ors. Vs. ITO; 244 ITR 559 held that non service of notice upon all the LRs of the deceased assessee was an irregularity which was curable and not an illegality sufficient for annulling the assessment or reassessment proceedings.

We have heard Mr. Prakash Kumar learned counsel for the



appellant and Mr. Jolly appearing for the respondent. The material facts are not in dispute before us. That returns for the assessment under question had been filed by the deceased-assessee S.H. Atiquer Rehman and dully processed is not in dispute. It is also not disputed that after the death of the deceased assessee the Assessing Officer had issued a notice under Section 148 proposing to reopen the assessments and served the same upon the appellant who happens to be one of the LRs left behind by the deceased assessee. It is also common ground that the appellant had pursuant to the service of notice upon him appeared before the Assessing Officer and provided the requisite explanations with the help of his Chartered Accountant. The plea regarding non service of notices upon other LRs was not at any stage advanced before the Assessing Officer. The same was urged by the appellant for the first time in appeal before the Commissioner of Income Tax who had permitted an additional ground to be urged at that stage. The Tribunal has in our view correctly need that the matter stands authoritatively concluded by the judgment of the Supreme Court in CIT Vs. Jai Prakash Singh. The apex Court has in the said case noticed a similar argument and held that non issue of notices to other LRs of the deceased assessee was not sufficient to avoid the assessment or reassessment orders made by the Assessing Officer. In the light of the said decision the Commissioner was indeed in error in upsetting the reassessment



orders passed by the Assessing Officer.

Mr. Prakash Kumar strenuously argued that non service of notices upon other LRs amounted to a clear violation of the principles of natural justice qua the said LRs, inasmuch as no assessment order could be validly made without first serving a notice upon the LRs who are themselves assesseees within the meaning of Section 159 (3) of the Income Tax Act. A similar contention has been repelled by the Supreme Court in CIT Vs. Jai Prakash Singh; CIT (1996) 219 ITR 739 in the following words :

".....It is true that the returns were signed only by Jai Prakash Singh and not by the other nine legal representatives, but it should also be remembered that when notices under Sections 142(1) and 143(2) were issued to Jai Prakash Singh, he appeared through his authorised representative and produced the relevant books and account on the basis of which assessments were made. Jai Prakash Singh did not raise an objection before the Income Tax Officer that unless and until notices to all the other legal representatives are sent, assessment orders cannot be made. He raised this question for the first time in the appeals preferred by him before the Appellate Assistant Commissioner and thereafter before the Tribunal. It appears rather curious that Jai Prakash Singh who had voluntarily filed the returns of income should raise this issue; no other legal representative of B.N. Singh has come forward with such a plea. We do not wish to go into the question whether Jai Prakash Singh should at all have been allowed to so turn round and raise this plea in appeal, for the reason that the said issue is not before us in these appeals.

We are of the opinion that the High Court was not right in holding in the above circumstances that the assessment orders made are null and void. They are not. At the worst, they are defective proceedings - or irregular



proceedings - as has been rightly held by the Appellate Assistant Commissioner and the Tribunal.....”

“.....The principle that emerges from the above decision is 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.....”

That apart the contention that the order of reassessment is bad on account of non service of a notice or violation of principles of natural justice may be open to a party who has suffered on account of any such irregularity. That contention may not be open to the appellant before us who had admittedly received a notice and appeared before the Assessing Officer and participated in the reassessment proceedings.

In the light of what has been stated above no substantial question of law arises for our consideration. The appeal fails and is accordingly dismissed.

  
T.S. THAKUR, J

  
B.N. CHATURVEDI, J

NOVEMBER 22, 2005

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