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

Date of Decision: 22.09.2021

+ **W.P.(C) 17/2021**

ATTARKALI

..... Petitioner

Through: Mr.Nitesh Banka, Adv.

versus

INCOME TAX OFFICER

..... Respondent

Through: Mr.Abhishek Maratha, Sr.
Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The petition has been heard by way of video conferencing.

1. This petition has been filed by the petitioner challenging the notice dated 30.03.2019 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') in the name of Sh. Maharaj Singh, deceased husband of the petitioner.
2. The petitioner asserts that Late Sh.Maharaj Singh expired on 26.07.2014 and therefore, the impugned notice, having been issued in the name of a dead person, is invalid.
3. The petitioner in support of her submission has also placed on record the death certificate of Late Sh.Maharaj Singh.



4. Notice of this petition was issued to the respondent on 04.01.2021. Further time to file the counter affidavit was granted to the respondent vide orders dated 10.05.2021 and 04.08.2021. However, the counter affidavit has not been filed till date.

5. The learned counsel for the petitioner places reliance on the judgment dated 16.07.2020 of this Court in *Savita Kapila vs. Assistant Commissioner of Income Tax, Circle 43(1) Delhi*, W.P.(C) No.3258/2020 in support of the submission that notice having been issued in favour of a dead person is invalid and is in fact non est.

6. On the other hand, the learned counsel for the respondent places reliance on sub-Section 3 of Section 159 of the Act to submit that for the purposes of the Act, a legal representative of the deceased assessee is deemed to be an assessee and therefore, the notice is valid and can be proceeded against the legal heirs of Late Sh.Maharaj Singh.

7. We find no merit in the submission made by the learned counsel for the respondent.

8. In *Savita Kapila* (supra), this Court has held that the *sine qua non* for acquiring jurisdiction to reopen an assessment is that notice under Section 148 of the Act should be issued to a correct person and not to a dead person. This Court further held that Section 159 of the Act applies to a situation where the proceedings are initiated/pending against the assessee when he is alive.



9. Section 159(3) of the Act can come to the aid of the respondent only if the notice is issued in the name of the legal representative of the deceased as an assessee.

10. In the present case, notice is admittedly issued only in the name of the deceased person and not in the name of the legal representatives and therefore, no reliance can be placed by the respondent on Section 159(3) of the Act.

11. Accordingly, the impugned notice dated 30.03.2019 is quashed and set aside. All proceedings consequent to the impugned notice are also set aside.

12. The petition is allowed in the above terms. There shall be no order as to costs.

13. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

NAVIN CHAWLA, J

MANMOHAN, J

SEPTEMBER 22, 2021/rv/U.