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

% **Decision delivered on: 25.05.2023**

+ **W.P.(C) 7267/2023 & CM Nos.28272-73/2023**

MAYA DEVI KHOWAL (LEGAL HEIR OF LATE
SH.MOHINDER KUMAR)

..... Petitioner

Through: Mr Amol Sinha, Mr Nitin Gulati, Mr
Ashok Sikka and Ms Reena Gandhi,
Adv.

versus

ASSISSTANT COMMISSIONER OF INCOME TAX CIRCLE
67(1), DELHI & ANR.

..... Respondents

Through: Mr Sunil Agarwal, Sr Standing
Counsel with Mr Shivansh B. Pandya,
Standing Counsel along with Mr
Utkarsh Tiwari, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.28272/2023

1. Allowed, subject to just exceptions.

W.P.(C) 7267/2023&CM No.28273/2023 [*Application filed on behalf of
the petitioner seeking interim relief*]

2. Issue notice.

2.1 Mr Sunil Agarwal, learned senior standing counsel, accepts notice on
behalf of the respondents/revenue.



3. Given the direction that we propose to issue, Mr Agarwal says that counter-affidavit need not be filed, and that he will argue the matter based on the record presently available with the Court.

3.1 Therefore, with the consent of learned counsel for the parties, the matter is taken up for hearing and final disposal, at this stage itself.

4. The petitioner, who is the legal heir and wife of the deceased-assessee i.e., one, Mr Mohinder Kumar has laid a challenge to the assessment order dated 29.03.2023 concerning Assessment Year (AY) 2018-19.

5. The short ground, on which the petitioner seeks to assail the aforementioned assessment order is, that despite information being given to the respondents/revenue that her husband i.e., Mr Mohinder Kumar had expired, the impugned assessment order was passed in the deceased assessee's name i.e., Mr Mohinder Kumar.

6. The record shows, that the petitioner's husband i.e., Mr Mohinder Kumar expired on 10.12.2017.

6.1 The record also indicates, that the petitioner obtained the surviving members' certificate from the concerned District Magistrate on 19.11.2018.

7. It is the petitioner's case, that a communication dated 04.04.2022 was addressed to the concerned authority, *inter alia*, bringing to its notice, that the petitioner's husband had expired on 10.12.2017.

8. It appears, that the petitioner had also uploaded the death certificate on the designated portal on 01.08.2022.

9. Although Mr Agarwal has brought to the fore the fact, that the petitioner did not take steps in time to inform the concerned authority that her husband had expired, in the fitness of things, we are of the opinion, that



the interests of both sides can be preserved by setting aside the impugned assessment order, with liberty to the Assessing Officer (AO) to pass a fresh order, after taking into account the response of the petitioner to the notice dated 17.03.2022 issued under Section 148A(b) of the Act.

10. We have moved towards this end, as the AO had, it appears, issued a notice dated 13.03.2023, *inter alia*, seeking the relevant documents, including the surviving members' certificate, in view of the fact that the petitioner's husband had expired.

11. Unfortunately, this information, it appears, did not reach the petitioner, as it was directed to the wrong and/or inchoate address.

12. Accordingly, as indicated above, the impugned assessment order dated 29.03.2023 is set aside.

13. As indicated above, the AO will have liberty to pass a fresh order, *albeit*, after taking into account, the defence put forth by the petitioner.

14. The petitioner is, thus, given liberty to file a reply to the notice dated 17.03.2022, issued under Section 148A(b) of the Act.

14.1 The reply will be filed within four weeks from the receipt of a copy of the judgment passed today.

15. The AO will also accord personal hearing to the petitioner and/or her authorized representative.

15.1 For this purpose, the AO will issue a notice to the petitioner, which will indicate the date and time of hearing.

16. Needless to add, the AO will pass a speaking order, a copy of which will be furnished to the petitioner.

17. The writ petition is disposed of in the aforesaid terms.



18. Consequently, pending application shall stand closed.
19. Parties will act based on the digitally signed copy of the order.

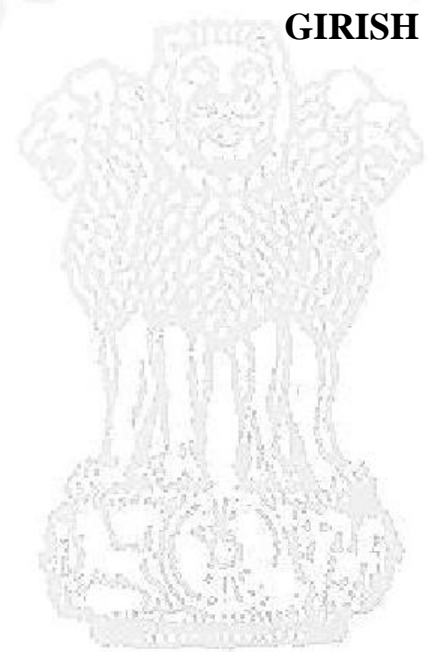
RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 25, 2023

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HIGH COURT OF DELHI



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