

Gowthaman S vs Income Tax Officer

ID: F2J-C-2189 **Court:** Madras High Court
Case: WP No. 39793 of 2025 **Date:** 2025-10-27

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Madras High Court Gowthaman S vs Income Tax Officer on 27 October, 2025 Author: C.Saravanan Bench: C. Saravanan WP No. 39793 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-10-2025

CORAM

THE HONOURABLE MR JUSTICE C. SARAVANAN

WP No. 39793 of 2025 and W.M.P.Nos.44707 & 44709 of 2025

Gowthaman S Legal heir of Late.K. Selvarasu, Kootampalli, Perur Post, Kattumannar koil Taluka, Cuddalore 608 707.

Petitioner(s)

Vs

1. Income Tax Officer, Ward 2 1st Floor Cuddalore Income Tax office, Soorappa Naicken Chavadi, Cuddalore, Tamil nadu 607002
- 2.The Assessment Unit Income Tax Department, Faceless Assessment, New Delhi.

Respondent(s)

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm)

WP No. 39793 of 2025

PRAYER Writ Petition filed under Article 226 of the Constitution of India, praying

to issue a Writ of Certiorari, to call for the records of the first respondent in DIN

and Notice. No ITBA/AST/F/148A/2023-24 /1063747953(1) dated 31/03/2024

(PAN- DZDPS8164N/2020-21) and the consequential assessment order under

Section 147 in DIN ITBA/AST/S/147/2024-25/1073363923(1) dated

17/02/2025 and the consequential notice of demand raised under Section 156 of

the Income Tax Act,1961 in DIN and Notice No ITBA/AST/S/156/2024-

25/1073364264(1) dated 17.02.2025 issued by the second respondent, quash the

same as void and illegal and without jurisdiction since being issued after the

demise of my father Late Selvarasu in PAN- DZDPS8164N/2020-21.

For Petitioner(s): Mr.V.Sundareswaran

For Respondent(s): Mrs. S. Premalatha Senior Standing Counsel

ORDER

With the consent of the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents, this writ petition is being disposed of.

2. In this writ petition, the petitioner, Legal Heir of Late.Mr.K.Selvarasu, has challenged the proceedings initiated by the respondents. Specifically, the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025 petitioner has challenged the impugned order dated 31.03.2024 passed under Section 148A(d) of the Income Tax Act, the Assessment Order dated 17.02.2025, and the Notice of Demand issued under Section 156 of the Income Tax Act, 1961.

3. The specific case of the petitioner is that the impugned orders and the notice under Section 156 have been passed and issued against a person, who died on 04.01.2024.

4. Specifically, the learned counsel for the petitioner submits that the proceedings ought to have been initiated only by issuing notice under Section 148A(b) of the Income Tax Act to the deceased assessee during his lifetime or, alternatively, to his legal representatives such as the petitioner after the death of deceased assessee.

5. It is submitted that in the present case, a notice under Section 148A(b) was issued on 31.03.2024, i.e., after the death of the assessee, namely, <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025 Selvarasu, who died on 04.01.2024. Therefore, the impugned order dated 31.03.2024 passed under Section 148A(d), the Assessment Order dated 17.02.2025 passed under Section 147 read with Sections 144 read with Section 144B of the Income Tax Act, 1961, and the consequential Notice of Demand under Section 156 dated 17.02.2025 are liable to be interfered with.

6. The learned counsel for the petitioner has drawn the attention of this Court to the limitation prescribed under Section 149 of the Income Tax Act, 1961, as in force during the period in dispute. It is submitted that a notice under Section 148 cannot be issued at this distant point of time as more than three years have lapsed since then, as admittedly, the amount of tax that has allegedly escaped in the hands of the deceased assessee is below Rs.50 lakhs.

7. In so far as Section 159 of the Income Tax Act, 1961 is concerned, the learned counsel for the petitioner places reliance on the decision of the Hon'ble Division Bench of the Delhi High Court, wherein a distinction has been made between Sections 159(2) (a) and 159(2)(b). It is submitted that once the assessee <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025 dies, a notice must necessarily be issued to the legal heirs, and no assessment can be completed by merely relying on Section 159(2) of the Act.

8. A reference was also made to the following passage from the Division Bench of the Delhi High Court in Vipin Walia vs. Income Tax Officer, in [2016] 382 ITR 19 (Delhi):

“Section 159(2) of the Act makes a specific reference to a reassessment proceeding under Section 147 of the Act. While Section 159(2)(a) of the Act talks of a proceeding already taken against an assessee “before his death”. Section 159(2)(b) of the Act envisages any proceeding which could have been taken against the deceased if he had survived. It permits such a proceeding to be taken against the legal representatives of the deceased assessee even if it had not taken while the assessee was alive. Section 159(2)(b) is relevant as far as the present case is concerned.”

9. It is submitted that the above decision has also been followed by this Court in W.P.No.30060 of 2017 dated 07.06.2018, in Alamelu vs. Veerappan, reported in (2018) 12 ITR-OL 95(Mad). Specifically, a reference was made to <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025 the following paragraphs from the said decision:

“The decision in the case of Vipin Walia was followed in the decision of the High Court of Gujarat in the case of Rasid Lala, in which, the reassessment proceedings were initiated against the dead person, that too, after a long delay. The court pointed out that even if the provisions of section 159 of the Act are attracted, in that case also, the notice was required to be issued against and in the name of the heirs of the deceased assessee and under the said circumstances, section 159 of the Act shall not be of any assistance to the Revenue.”

10. That apart, the learned counsel for the petitioner has also placed reliance on the following three decisions: (1) Rajender Kumar Sehgal Vs. Income Tax Officer (DB), (2019) 414 ITR 286(Delhi).

(2) Rupa Shyamsundar Dhumatkar Vs. Assistant Commissioner of Income Tax and others, [2020] 420 ITR 256 (Bom).

(3) Vanitha Gopal Shetty Vs. The Assistant Commissioner of Income Tax, Circle – 26(1), made in W.P.No.19840/2019(T-IT) dated 05.07.2021.(Karnataka) <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025

11. Arguing further, the learned counsel for the petitioner would place reliance on the decision of the Karnataka High Court referred to supra as Serial No. 3 to the above paragraph. A reference was made to the following passages:

“21. As regards the contention of learned counsel- Sri.E.I.Sanmathi, seeking for remanding of the matter back for fresh consideration by the Assessing Authority by permitting de novo proceedings with respect to the same assessment year by rectifying the formal defect in notices issued, by placing reliance on the judgments referred in paragraph No.5 above, it ought to be noticed that no doubt in all the 3 orders relied upon by Sri.Sanmathi, learned counsel (Judgment dated

12.02.2018 passed in ITA No.100042/2017; Judgment dated 03.09.2019 passed in ITA No.877/2018 and the judgment in the case of St.Sudha Prasad v. Chief Commissioner of Income Tax- MANU/JH/0194/2003 : 275 ITR Page 135), the Court had permitted de novo proceedings to be initiated for the same assessment year against the legal representatives. However, what does not come out from the facts in the aforesaid cases is the consideration of the point of limitation vis-a-vis the proposed proceedings against the legal representatives. If the case was that proceedings were initiated against the deceased <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025 assessee and subsequently on coming to know the details regarding the legal representatives, fresh notice is issued and such notice is challenged by the legal representatives as being invalid as against them, consideration would have been different. If the notice to the said legal representatives at the second instance were issued within the time prescribed under Section 149, such fact would be of relevance wherein a contention is raised regarding the absence of jurisdiction to initiate proceedings vis-a-vis legal representative as has been considered above. The Court in none of the above judgments has recorded a finding as to whether issuance of notice to the deceased in contravention of Section 159(2)(b) could be saved which point was not raised nor considered in the said judgments and accordingly, the Court not having expressed a view as regards to the power to initiate proceeding against the legal representatives, such judgments are of no avail.

22. The other circumstance that is required to be noticed is that the legal representatives in the present case were not issued with any notice regarding proceedings under Section 148 and it is only under Section 142 notice was issued to the legal representatives which fact is also taken note of while refusing to reserve liberty to the authority by remanding the matter to the Assessing Authority to initiate proceedings. It <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025 must also be noted that exercise of power under Article 226 is not made out in the present case as granting of any relief would be contrary to the statutory period available to initiate proceedings against the legal representatives in terms of Section 159(2)(b) read with Section 149(1)(b) as discussed above.

23. The position of law regarding invalidity of the notice vitiating the proceedings pursuant thereto being settled as noticed from the judgment in the case of Kurban Hussain (supra) and in light of the discussions made above and in the absence of any notice under Section 148 in terms of Section 149(1)(b) of the Act, the assessment order passed in the names of the petitioners enclosed at Annexure-E for the assessment year 2011-12 passed under Section 144 read with Section 147 of the Act is set aside. Consequent to setting aside of assessment order, demand notice, recovery notice and show cause notice issued pursuant thereto vide Annexures-F1, F2 and G respectively are also set aside.”

12. The learned Senior Standing Counsel for the respondents, on the other hand, submits that Section 149 of the Income Tax Act, 1961, makes it clear that proceedings have to be initiated either within a period of 3 years or 10 years <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025 depending upon the amount involved in the proceedings under Section 148.

13. It is submitted that the petitioner, as a legal representative of the deceased assessee, namely Late Mr.Selvarasu, has not given any intimation to the Department that the deceased assessee died on 04.01.2024.

14. It is further submitted that after responding to the notice dated 31.03.2024 issued under Section 148A(d) of the Income Tax Act, the petitioner participated in the proceedings, which thereafter culminated in the order dated 31.03.2024 under Section 148A(d) of the Income Tax Act, 1961.

15. It is submitted that the assessment order passed on 17.02.2025 under Section 147 read with Section 144 read with Section 144B of the Income Tax Act, 1961, is within the period of limitation prescribed under Section 153 of the Act. As per the proviso to Section 153(2) of the Income Tax Act, 1961, the assessment order has to be passed within a period of twelve (12) months from the date of notice issued under Section 146 of the Income Tax Act, 1961. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025

16. It is submitted that since the order dated 31.03.2024 was passed under Section 148A(d) of the Act, the issuance of notice under Section 148 of the Act has in force with effect from 01.04.2021. Therefore, the assessment order cannot be said to be passed beyond the period of limitation.

17. It is further submitted that the Department is not required to issue any notice in a specific language as contemplated under Section 159(2) of the Income Tax Act, 1961.

18. By way of rejoinder, the learned counsel for the petitioner places reliance on the order dated 02.08.2025, whereby the respondent has dropped the penalty proceedings initiated under Section 270A of the Income Tax Act, 1961.

19. Specifically, the learned counsel for the petitioner would draw attention to the following passage from the assessment order:

“In light of the above, I am satisfied that although the procedural initiation of penalty under Section 270A was in line with the additions made in the assessment, the legal requirement for valid initiation does not stand fulfilled as the assessee was not alive on the date of issuance of the show cause notice or the assessment order. As <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025 such, penalty proceedings initiated posthumously cannot be sustained in law, and continuation of the same against the legal heir without valid initiation during the lifetime of the assessee would be void ab initio.”

20. The learned Senior Standing counsel for the respondents would submit that the decision of this Court in *Alamelu vs. Veerappan* referred to supra is distinguishable on facts as there, intimations that the deceased had died were given and that the reopening was made long after such intimation was received regarding the death of the deceased.

21. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

22. The mandate of Section 159(1) of the Income Tax Act, 1961 makes clear that when a person dies, his legal representative is liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased. Section 159 reproduced above falls under Chapter XV- Liability in Special Cases. As per Section 159(2)(b) of the Income Tax Act, 1961, any proceeding which could have been taken against <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025 the deceased if he had survived, may be taken against the legal representative, 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).

23. This stands further fortified by Section 159(2)(c) of the Income Tax Act, 1961.

24. Section 159(1) and Section 159(2) of the Income Tax Act, 1961 are reproduced below:

Section 159(1) Section 159(2)

Where a person dies, his legal For the purpose of making an

representative shall be liable to pay assessment (including an assessment, any sum which the deceased would reassessment or recomputation under have been liable to pay if he had not section 147) of the income of the died, in the like manner and to the deceased and for the purpose of same extent as the deceased. 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 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025 Section 159(1) Section 159(2) 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; (b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and (c) all the provisions of this Act shall apply accordingly.

25. Further, Sub-Section (3) to Section 159 of the Income Tax Act, 1961, also makes it clear that the legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

26. Sub Section (4) makes it clear that every legal representative shall be personally liable for any tax payable by him in his capacity as legal <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025 representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

27. Sub Section (5) makes it clear that the provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

28. Sub Section (6) makes it clear that the liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability.

29. Section 159 reproduced above falls under Chapter XV — Liability in Special Cases. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025

30. Thus, there is no doubt that proceedings have been initiated in accordance with Section 159(2)(b) of the Income Tax Act, 1961.

31. Therefore, it is not open for the petitioner to state that the assessment proceedings were initiated after the death of the deceased on 04.1.2024 without notice to the petitioner or other legal representatives. In fact, there are no records to indicate that after the deceased assessee died on 04.1.2024, the petitioner took steps to inform the Income Tax Department about the death of the deceased assessee.

32. Even if such an intimation was given, the assessment has to be made in the name of the deceased assessee and the liability, if any, is to be fastened on the legal representatives.

33. Therefore, it is not open for a legal representative to allege that the proceedings initiated under Section 147 was beyond the period of limitation under Section 149 of the Income Tax Act or that the assessment impugned, dated 17.02.2025, was beyond the period of limitation under Section 153(2) of the Income Tax Act, 1961. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025

34. At best, the petitioner can state that the deceased assessee was not liable to any tax as the petitioner or other legal heirs have not inherited any estate of the deceased and therefore the conclusions arrived in the impugned orders were incorrect. At best, an opportunity to explain the case can be granted to the petitioner, since there was a failure on the part of the petitioner or other legal representatives to inform the Department that the deceased passed away on 04.1.2024.

35. The challenge to the very jurisdiction of the respondents to either issue the notice under Section 148A(b) on 31.03.2024 or the consequential order dated 31.3.2024 under Section 148A(d) of the Income Tax Act and the Assessment Order dated 17.2.2025 is therefore liable to be rejected.

36. At this stage, the learned counsel for the petitioner submits that the petitioner may be given an opportunity to explain the case afresh as the petitioner was unaware of the proceedings that came to be initiated, including the issuance of the notice dated 31.03.2024 under Section 148A(d) of the Income Tax Act, 1961. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025

37. The request of the learned counsel for the petitioner made at this stage is reasonable. Therefore, the impugned orders are quashed, and the case is remitted back to the 1st respondent to pass a fresh order on merits alone. The issue relating to jurisdiction or the limitation procedure is not open to be canvassed in the remand.

38. This writ petition stands disposed of with the above observations. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27-10-2025 kak Index:Yes/No Speaking/Non-speaking order Neutral Citation:Yes/No To 1.Income Tax Officer, Ward 2 1st Floor Cuddalore Income Tax office, Soorappa Naicken Chavadi, Cuddalore Tamil nadu 607002 2.The Assessment Unit Income Tax Department Faceless Assessment, New Delhi. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm) WP No. 39793 of 2025 C.SARAVANAN, J. kak WP No. 39793 of 2025 27-10-2025 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 10/11/2025 02:16:14 pm)