

## Notice to be issued in name of legal heir in case of reopening of assessment of deceased person: HC

**Summary – The High Court of Bombay in a recent case of Sumit Balkrishna Gupta, (the Assessee) held that where Assessing Officer had issued notice under section 148 in name of deceased assessee to reopen his assessment, for acquiring jurisdiction to reopen an assessment, notice should be issued in name of living person, i.e., legal heir of deceased assessee and section 292B could not be invoked to correct a fundamental/substantial error**

### Facts

- The Assessing Officer issued a notice dated 29-3-2018 under section 148 in the name of the dead person, *i.e.*, the deceased assessee [B] to reopen his assessment for the assessment year 2011-12.
- The petitioner, who was the registered legal heir of 'B', challenged the impugned notice on the ground that it was without jurisdiction.
- The Assessing Officer by order dated 13-11-2018 rejected the petitioner's preliminary objection *inter alia* on the ground that the defect in the notice would stand rectified by virtue of section 292B.
- On writ:

### Held

- The issue of a notice under section 148 is a foundation for reopening of assessment. The *sine qua non* for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. Thus a notice which has been issued in the name of the dead person is also not protected either by provisions of section 292B or section 292BB. This is so as the requirement of issuing a notice in the name of correct person is the foundational requirement to acquire jurisdiction to reopen the assessment. This is evident from section 148, which requires that before a proceeding can be taken up for reassessment, a notice must be served upon the assessee. The assessee on whom the notice must be sent must be a living person, *i.e.*, legal heir of the deceased assessee, for the same to be responded. This in fact is the intent and purpose of the Act. Therefore, section 292B cannot be invoked to correct a foundational/substantial error as it is meant so as to meet the jurisdictional requirement. Therefore, both the impugned notice dated 29-3-2018 and the impugned order dated 13-11-2018 required to be quashed and set aside.