

**(1993) 09 GAU CK 0014**

**Gauhati High Court**

**Case No:** IT Reference No. 2 of 1988

Md. Zafrulla, Legal  
Representative of Md. Rafiulla

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision:** Sept. 8, 1993

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 6
- Income Tax Act, 1961 - Section 159, 256(1)

**Citation:** (1994) 72 TAXMAN 231

**Hon'ble Judges:** R.K. Manisana Singh, J; M. Sharma, J

**Bench:** Division Bench

**Advocate:** S.C. Tibrewal and J.P. Sharma, for the Appellant; D.K. Talukdar and B.J. Talukdar, for the Respondent

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### **Judgement**

Mrs. Manisana, J.

The Tribunal, Guwahati Bench, has referred the following questions at the instance of the assessee, u/s 256(1) of the income tax Act, 1961 ("the Act"):

- " 1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in setting aside the order dated 14-12-1982 passed on appeal by the CIT(A) with the direction to the Assessing Officer to remove the defect by issuing notice to all the legal representatives of the deceased and bringing them on record?
2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that non-issue of notices to the legal representatives of the deceased assessee Md. Rafiulla did not invalidate the assessment order passed by the Inspecting Assistant Commissioner of income tax and that it was at best a defect which was liable to be corrected and it was not a case fit for cancellation of the assessment?"

Facts leading to this reference may, briefly, be stated. For the assessment year 1974-75, the Assessing Officer concluded the hearing of the assessment on 11-2-1980. The assessee Md. Rafiulla expired on 27-2-1980. On 6-3-1980, a letter of the assessee's Advocate, dated 29-2-1980, informing the death of the assessee was delivered to the office of the Assessing Officer. The assessment order was made on 13-3-1980 without notice to the legal heir or legal representative of the assessee. It was contended before the Assessing Officer that no assessment could be made without issuing notice to the legal representative of the assessee. The contention was rejected by the Assessing Officer. Being aggrieved by the order of the Assessing Officer, the legal representative of the deceased assessee filed an appeal before the Commissioner. The Commissioner accepted the contention and annulled the assessment. The order of the Commissioner was appealed to the Tribunal, Guwahati Bench. The Tribunal allowed the appeal and the order of the Commissioner was set aside with an observation that the Assessing Officer may remove the defect by issuing notice to all the legal representatives of the deceased and bring them on record. Hence, this reference.

2. Sub-section (1) of section 159 of the Act provides that where a person dies, his legal representative shall be 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. Sub-section (2) of section 159 provides, inter alia, that for the purpose of making an assessment of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative, any proceeding taken against the 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 death of the deceased. Under sub-section (3) of section 159, the legal representative of the deceased shall, for the purpose of the Act, be deemed to be an assessee.

3. In view of section 159, in a proceeding taken against the deceased before his death, a notice is required to be issued to the legal representative to have his say before making the assessment order, for, the legal representative is an assessee by operation of law from the stage of death. The question which, therefore, arises for consideration is whether the assessment order made without notice to the legal representative is null and void where death of the assessee occurs between conclusion of the hearing and making of the assessment. The Act does not provide abatement of assessment proceeding under the Act like abatement of suit under the Code of Civil Procedure. However, under Order 22, rule 6 of the Code of Civil Procedure, if death occurs between the conclusion of hearing and pronouncement of judgment, judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place. Principle underlying rule 6 is founded on public policy, for, time taken by an authority or Court for doing a thing which is incumbent on it shall not cause prejudice to the parties. We are of the view that the general principle

underlying rule 6 should be extended in a proceeding under the income tax Act on the ground of policy of law. The view taken by us finds support from the decisions in Abdul Rahman v. CIT [1961] ILR Mysore 118; and [Joseph Joseph Vs. Agricultural Income Tax Officer,](#). The Mysore High Court has held that principles underlying rule 6 shall apply to such a case. The Kerala High Court has, after considering the case of Mysore High Court, referred to above and a decision of the Supreme Court in [Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property,](#), in which the principle underlying rule 6 was applied to a proceeding under the Administration of Evacuee Property Ordinance, 1949, held that principles underlying rule 6 shall be applicable to a proceeding u/s 24(3) of the Kerala Agricultural income tax Act, 1950.

4. The learned counsel referred us to a decision of this Court in [Jai Prakash Singh \(Legal Representative of Estate of Late B. N. Singh\) Vs. Commissioner of Income Tax, Assam,](#). In that case the proceeding of assessment did not commence during the life time of the assessee. After the death of the assessee one of his legal representatives filed return and on that basis assessment was completed. Therefore, the fact in that case differs from the case on hand and, therefore, it will not be applicable to the present case. For the foregoing reasons, the questions are answered in the affirmative, that is, against the assessee and in favour of the revenue.