

IN THE INCOME TAX APPELLATE TRIBUNAL

KOLKATA BENCH 'A', KOLKATA

(Before Shri P. M. Jagtap, A.M. & Shri S.S. Viswanethra Ravi, J.M.)

ITA No. 1635/KOL/2014

Assessment Year : 2008-09

A.C.I.T. Cir-3, Asansol	Vs	Smt. Dulari Devi Hetamsaria, L/R of Shyam Sunder Hetamsaria, C/o. M/s. Pratick Automobiles PAN No. AASPH9787M
(APPELLANT)		(RESPONDENT)

Revenue by : Shri Sallong Yaden, Addl. CIT

Assessee by : Shri Partha Sarathi Paul, CA

Date of Hearing : 08.06.2017	Date of Pronouncement : 16.06.2017
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ORDER

Shri P.M.Jagtap, A.M.

This appeal is preferred by the revenue against the order of Id. CIT(A) Asansol dated 16.06.2014 on the following grounds:

- i. That, the Ld. CIT(A), Asansol has erred in law and on facts in allowing the disallowance of Rs. 61,67,200/- made by the Assessing Officer on account of introduction of fresh capital.*
- ii. That, the Ld. CIT(A), Asansol has erred in law and on facts in deleting the addition of Rs. 18,03,220/- made by the Assessing Officer on account of showroom maintenance expenses.*

2. We have heard the arguments of both the sides and also perused the relevant material on record. As submitted by the learned counsel for the assessee at the outset, the assessee has already expired way back in the year 2012 i.e. before the impugned order came to be passed by the Ld. CIT(A) on 10.06.2014. The impugned order passed by the Ld. CIT(A) thus is in the name of dead person and the same has been so passed because the intimation of death of assessee was not given to the Ld. CIT(A) as agreed even by the learned counsel for the assessee. In the case of CIT vs Dalumal Shyamumal (2005) 276 ITR 62, the decision of the Tribunal holding the assessment order passed by the AO against the dead person to be a nullity was upheld by the Hon'ble Madhya Pradesh High. It was further held by the Hon'ble Madhya Pradesh High Court that the Tribunal should have remanded the case to the AO to ensure the compliance of Section 159 of the Income Tax Act, 1961, after giving notice to the legal representative of the deceased assessee. Keeping in view the decision of Hon'ble Madhya Pradesh High Court in the case of CIT vs Dalumal Shyamumal (2005) 276 ITR 62 (supra) and having regard to the facts of the case, we set aside the impugned order passed by the Ld. CIT(A) in the name of the deceased assessee holding the same as nullity and remit the matter back to him with the direction to pass the fresh order disposing of the appeal of the assessee after complying with the requirement of section 159(2) of the Income Tax Act, 1961. The legal representative of the assessee is also directed to extend all the possible cooperation to the Ld. CIT(A) by

furnishing the relevant particulars and details required by him for the purpose of disposal of the appeal.

3. In the result, the appeal filed by the revenue is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 16th June, 2017

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-
(P.M.Jagtap)
ACCOUNTANT MEMBER

Dated: 16/06/2017
Biswajit

Copy of order forwarded to:

- 1 Smt. Dulari Devi Hetamsaria, L/R of Shyam Sunder Hetamsaria, C/o M/s. Pratick Automobiles, Ranchi
- 2 A.C.I.T. Circle -3, Asansol
- 3 The CIT(A) -
- 4 The CIT -
- 5 DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata