

**आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ, कटक**

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH CUTTACK

**BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.192/CTK/2017

(निर्धारण वर्ष / Assessment Year :2012-2013)

Late Paramananda Behera, At-Town Planning Colony, PO & Dist-Dhenkanal	Vs.	ITO Bhubaneswar	Ward-3(4)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>ACCPB 5868 R</b>			
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)	

निर्धारिती की ओर से /Assessee by : Shri K.K.Bal  
राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR  
सुनवाई की तारीख / Date of Hearing : 28/11/2017  
घोषणा की तारीख/Date of Pronouncement 29/11/2017

**आदेश / O R D E R**

This is an appeal filed by the assessee against the order of the CIT(A)-2,Bhubaneswar, dated 31.01.2017.

2. Ground of 3 of the appeal raised by the assessee reads as under :-

3. *For that on the facts and circumstances of the case Ld. AO has erred in framing the assessment on a dead person without complying the provisions of sec.159(2) of the Income Tax Act. Therefore, the assessment having jurisdictional defect is not sustainable and liable to be quashed.*

3. I have heard rival submissions and perused the material available on record. I find in the instant case, the assessment order was passed on Late Paramananda Behera u/s.143(3) of the Act on 12.03.2015 and thereafter the CIT(A) passed the appellate order on 31.01.2017. I find that the AO in second para of the assessment order has observed as under :-

*“During the course of assessment proceedings, the A.R. of the assessee explained that the assessee was suffering from cancer since last three years and was under treatment in Apollo Hospital and in different other hospitals. Because of the prolonged illness, the assessee could not file*

*return of income for the asst. year 2012-13. The A.R also informed that the assessee ultimately expired on 31.01.2015. In support of this the A.R. submitted photocopy of death certificate and other documents regarding the treatment of the assessee.”*

4. It may be recalled that in the case of *Ellis C. Reid v. CIT* 5 ITC 100 the Bombay High Court had held that where a person died after the commencement of the assessment year but before his income of the previous year was assessed, his executor was not liable to pay the tax and that if the death occurred while assessment proceedings were pending, the proceedings could not be continued and the assessment could not be made after the person's death: This view of the Bombay High Court led the Legislature to introduce Section 24B in the 1922 Act in 1933. Section 24B corresponds to Section 159 of the present Act. The relevant part of Section 159 reads as under:-

*159. (1) 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.*

*(2) 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)-*

*(a) 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 the death of 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.*

*(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.*

A study of Sub-section (1) of Section 159 clearly shows that it is by a legal fiction created in the provision that the legal representative of a deceased person had been made 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. The legal representative of the deceased, as has been laid down in Sub-section (3) of Section 159 are, by such legal fiction, deemed to be the assesseees. Sub-section (2) of Section 159 lays down the conditions of applicability of the provisions of Section 159. Clause(a) of Sub-section (2) says that any proceedings 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 the death of the deceased. For the applicability of this clause the proceedings for making an assessment or for the purpose of levying any sum should have been taken against the deceased in his lifetime and these would be such proceedings which may be continued against the legal representative from the stage at which such proceedings stood on the date of the death of the deceased. Clause (b) of Sub-section (2) says that any proceedings which could have been taken against the deceased if he had survived may be taken against the legal representative. This clause obviously deals with the situation where the proceedings are contemplated to be taken against the estate of the deceased after his death. Since the legal representative of the deceased represents his estate such proceedings may be taken against them. The study of these provisions clearly brings us to hold that only those proceedings for making assessment or levying any sum may be taken against the deceased, so that they may be continued after his death, which have been taken in his lifetime. In his lifetime such proceedings would necessarily be taken against and in the

name of the deceased. However, if the deceased had died before any such proceedings could have been taken against him, the proceedings may be taken against the legal representative of the deceased under the provisions of Sub-clause (b) of Sub-section (2) of Section 159. It is clearly inferred that assessment under the Act can only be made against an individual assessee who must be a living person.

5. In the case of CIT v. Amarchand N. Shroff [1963] 48 ITR 59 the Supreme Court held that the individual has ordinarily to be a living person and there could be no assessment on a dead person. With regard to the legal fiction, as has been created Under Section 159 of the Act, their Lordships of the Supreme Court referring to their earlier decision in the case of Bengal Immunity Co. Ltd. v. State of Bihar (sic.) observed that legal fictions are only for a definite purpose for which they are created and should not be extended beyond that limited field. The same principle was reiterated by the Supreme Court in the case of First Addl. ITO v. Mrs. SuseelaSadanandan [1965] 57 ITR 168 where it was held that on the death of a person the Income-tax Officer has to proceed against the executor and/or legal representative of the deceased. The proposition laid down by the Supreme Court in the above cases was followed by the Calcutta High Court in the case of CIT v. Shantilal C. Mehta [1978] 113 ITR 79 where it was held that on the death of an assessee, his estate remains liable for payment of taxes accruing both before and after his death. After the death of the assessee, the assessment proceedings can only continue in the name of his legal representative. The Andhra

Pradesh High Court in the case of CIT v. C.V. Raghava Reddy [1984] 148 ITR 385 following the same principle held that Under Section 159 a proceeding could be continued against the legal representative of the deceased assessee only if it had been initiated when the assessee was alive. It is thus well settled that an assessment made on a dead person would, on the face of it, be a nullity in law.

6. In the instant case, the Departmental Representative could not bring any material before us to show that the impugned assessment order was passed after issuing any notice to the legal representative of the deceased individual. Therefore, in my considered view, the impugned assessment order dated 12.03.2015 is not sustainable and accordingly I cancel the same and allow the appeal of the assessee.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 29/11/2017.

**Sd/-  
(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**कटक Cuttack; दिनांक Dated 29/11/2017**

प्र.कु.मि/PKM, Senior Private Secretary

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Senior Private Secretary)**

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack