

आयकर अपीलिय अधिकरण “D” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM

आयकर अपील सं./ ITA No. 2568/Mum/2016

(निर्धारण बर्ष / Assessment Year 2011-12)

The Asst. Commissioner of Income Tax 5(2)(1), Room No. 571, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	M/s Late Darshanjit Singh [Legal Heri-Charandeeep Singh], 6th Floor, Deejay Apartment, 46, Bhulabhai Desai Road, Mumbai-400 004
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. AJFPS8784D		

प्रत्याक्षेप सं./ Cross Objection No. 24/Mum/2018

(Arising in ITA No. 2568/Mum/2016 for AY 2011-12)

M/s Late Darshanjit Singh [Legal Heri-Charandeeep Singh], 6th Floor, Deejay Apartment, 46, Bhulabhai Desai Road, Mumbai-400 004	Vs.	The Asst. Commissioner of Income Tax 5(2)(1), Room No. 571, 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by : Shri Ram Tiwari, DR

Assessee by : Shri Jitendra Singh, AR

Date of hearing: 24-05-2018 Date of pronouncement : 08-06-2018



आदेश / ORDER

PER MAHAVIR SINGH, JM:

These cross appeals are raised out the order of the order of Commissioner of Income Tax (Appeals)-10, Mumbai [in short CIT(A)], in appeal No. CIT(A)-10/DCIT-5(2)/98/2014-15 dated 24.12.2015. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle-5(2), Mumbai (in short 'DCIT') for the A.Y. 2011-12 vide order dated 21.03.2014 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. At the outset, the learned Counsel for the assessee stated that he has raised the issue regarding jurisdiction of assessment assumed by AO while passing assessment order under section 143(3) of the Act dated 24.03.2014 in the name of dead person. According to the learned Counsel the assessment order is bad in law and is to be quashed. The learned Counsel drew our attention to the grounds raised in the CO which reads as under: -

"1. The Ld. CIT(A) erred in confirming the action of the LA. A.O. in passing the assessment order dated 24.03.2014 in the name of deceased person. The Appellant, therefore, prays that the assessment order passed under section 143(3) of the Act is bad in law and the same may be quashed.

2. The Ld. CIT (A) failed to appreciate that Appellant has duly informed to the Ld. A.O. vide letter dated 28.01.2014 about the unfortunate death of Darshanjit Singh along with legal heir certificate. Hence, the assessment order passed by Ld. A.O. is against the provisions of law. The Appellant, therefore, prays that the order passed by Ld. CIT(A)



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upholding the assessment order passed under section 143(3) in the name of deceased persons is ab-initio-void. Hence, the same may be quashed."

3. Briefly stated facts are that the assessee expired on 12.11.2010. The legal heir of the assessee informed the AO during the course of assessment proceedings for AY 2008-09 on 09-12-2010. Despite the fact that this information was available with the AO even during the AY 2011-12, the year under consideration, the AO issued notice under section 143(3) and 142(1) on the deceased and thereafter framed the assessment on the assessee as if he is alive. During the course of assessment proceedings for this AY 2011-12 even the AO was informed about the death of the assessee vide letter dated 28-01-2014 by filling copy of legal heir certificate issued by the office of Collector and District Magistrate, Mumbai. The relevant information is available on record now. The information given by assessee to AO vide letter dated 28.01.2014 reads as under: -

"5) Copy of Legal Heir Certificate

Copy of Legal Heir Certificate received from Office of the Collector & District Magistrate Mumbai is attached herewith.

Refer ANNEXURE 'E' enclosed herewith."

4. The above facts clearly show that despite the fact that it was within the knowledge of the department that assessee has expired. When a query was put to the learned Sr. DR he only relied on the assessment order and the order of the CIT(A).

5. After hearing the rival contentions and going through the facts and circumstances of the case, we find that the assessee has expired on 12.11.2010 and it was within the information of the AO during the course of assessment proceedings for 2008-09 and even for the AY 2011-12 i.e.



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the year under consideration. It means the assessment order is passed on the dead person.

6. We find that the assessee Darshanjit Singh died on 12.11.2010 and assessment was framed on 24.03.2014, on a dead person and legal heirs are not brought on record by substituting in term of section 159 of the Act. Once this is the position, the assessment is to be made in the hands of late Darshanjit Singh although through legal heirs by adopting the procedure prescribed u/s. 159 of the Act. The AO has not gone into this aspect despite the fact that he was informed that assessee Late Darshanjit Singh has already expired on 12.11.2010 much before the start of the assessment proceedings. In term of the facts and circumstances, the assessment of the deceased person can be assessed by adopting the procedure prescribed u/s.159 of the Act. The revenue, if law permits, can take action on legal heirs to make the assessment after adopting the procedure prescribed u/s. 159 of the Act. Accordingly, this legal issue is deciding in favour of the assessee and the appeal of assessee is allowed.

7. Since, we have allowed the jurisdictional issue in favour of assessee, we need not go into merit as we have already quashed the assessment.

8. In the result, the Cross Objection of the assessee is allowed and appeal Revenue is dismissed.

Order pronounced in the open court on 08-06-2018.

आदेश की घोषणा खुले मे दिनांक 08.06.2018 को की गई ।

Sd/-
(G MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 08-06-2018
Sudip Sarkar /Sr.PS



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Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI