

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH: KOLKATA

Before: **Shri S.S. Viswanethra Ravi, Judicial Member and
Dr. A.L. Saini, Accountant Member**

I.T.A No.942/Kol/2017
(Assessment Year: 2009-10)

ACIT, Circle-29, Kolkata

Appellant

Vs

Shri Surendra Nath Jaidka
[PAN: ACWPJ 5359 D]

Respondent

&

C.O No.50/Kol/2018
(A/o. I.T.A No.942/Kol/2017)
(Assessment Year: 2009-10)

Late Surendra Nath Jaidka
[PAN: ACWPJ 5359 D]

Cross-Objector

Vs

ACIT, Circle-29, Kolkata

Appellant

For the Appellant : Shri Sankar Halder, JCIT, Sr.DR
For the Respondent : None.

Date of hearing : 29.03.2019
Date of pronouncement : 03.04.2019

ORDER

PER Shri S.S. Viswanethra Ravi, JM:

Both appeal and cross-objection above filed by the Revenue and assessee respectively against the common order dated 09.02.2017 passed by the Commissioner of Income Tax-8, Kolkata for the Assessment Year 2009-10.

2. At the time of hearing, it is noted that the notice issued by the Registry, ITAT returned with an endorsement "deceased". Therefore we proceed to hear the Id. DR.

3. First we shall take the appeal of Revenue in ITA No.942/Kol/2017.

4. Heard Id. DR and perused the materials available on record. It is noted that the appellant-Revenue filed present appeal against the deceased assessee, Shri Surendra Nath Jaidka. On perusal of the record, it is noted that the assessment order as well as the impugned order was passed by the CIT(A) in the name of legal heir i.e. Shri Gopal Krishna Jaidka. But however as discussed above, the appellant-Revenue instead of filing the appeal against the legal heir, preferred to file the appeal against the deceased assessee, Shri Surendra Nath Jaidka which is clearly evident in Form No.36. Therefore, in our opinion, the appeal against deceased person is not maintainable and therefore, we dismiss the appeal filed by the appellant-Revenue as not maintainable with a liberty to file appeal, thereby, appeal of the Revenue is dismissed.

5. Now, we shall take up C.O No.50/Kol/2018. We find that grounds raised in the Cross-objection are supportive of the impugned order of the CIT(A). In the aforementioned paragraphs, we dismissed the appeal filed by the Revenue as not maintainable in view of the defective Form 36, therefore, grounds in Cross-objection becomes academic requires no adjudication. Thus, the Cross-objection is dismissed as infructuous.

6. In the result, the appeal of the Revenue and C.O of the assessee are dismissed.

Order pronounced in the open court on 03.04.2019.

Sd/-
[Dr. A. L. Saini]
Accountant Member

Sd/-
[S.S. Viswanethra Ravi]
Judicial Member

Dated : 03.04.2019
Place : Kolkata
RS, Sr.PS

Copy of the order forwarded to:

1. Appellant –ACIT, Circle-29, Kolkata
2. Respondent – Shri Surendra Nath Jaidka, 77, S.P. Mukherjee Road, Kolkata – 700 026.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

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By order,
Assistant Registrar,
ITAT, Kolkata