

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. MEENA, ACCOUNTANT MEMBER**

ITA No's.1630 & 1631/AHD/2017

Assessment Year: 2008-09

Pruthvirajsingh Abhesingh Thakor, L/H of Abhesingh Jaisingh Thakor Sondamitha, At.: Takarma Olpad- 394540. Surat. [PAN: AFXPT 4778 E] (Appellant)	Vs.	The Income Tax Officer, Ward-2(2)(1), Surat. (Respondent)
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Assessee by	Shri Rasesh Shah – CA
Department by	Shri R.P.Rastogi – Sr.DR

Date of Hearing	15.07.2019
Date of Pronouncement	15.07.2019

ORDER

PER H.S. SIDHU, JM

These two appeals are filed by the assessee against the separate impugned orders passed by the Ld. CIT(A)-1, Surat dated 12.05.2017 pertaining to assessment year 2008-09 u/s.271F of the Income Tax Act and u/s.271(1)(b) of the Income Tax Act, 1961 respectively.

2. Grounds raised by the assessee in ITA No.1630/Ahd/2017 read as under:

- “1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in levying penalty of Rs.5,000/- u/s.271F of the I.T. Act, 1961.
2. It is therefore prayed that the above penalty levied by the assessing officer and confirmed by the CIT(A) may please be deleted.”

3. Grounds raised by the assessee in ITA No.1631/Ahd/2017 read as under:

- “1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in levying penalty of Rs.10,000/- u/s.271(1)(b) of the I.T. Act, 1961.
2. It is therefore prayed that the above penalty levied by the assessing officer and confirmed by the CIT(A) may please be deleted.”

4. At the time of hearing, the Id.Counsel for the assessee stated that the Assessing Officer (AO) has imposed the penalties in dispute in response to the assessment order u/s.144 r.w.s 147 of the Income Tax Act dated 28.01.2016.

5. Aggrieved by the order of the AO the assessee filed appeal before the Id.First Appellate Authority who vide impugned order dated 12.05.2017 uphold the penalties order in dispute.

6. Aggrieved by the order of Id.CIT(A) the assessee filed an appeal before the Tribunal. The assessee raised various grounds before the Tribunal and

argued legal ground challenging the assessment order on the ground that issue and service of notice in the name of dead person. The ITAT vide its order dated 11.09.2017 in assessee's own case, ITAT Ahmedabad 'D' Bench in ITA No.1044/Ahd/2017 for A.Y. 2008-09 quashed the assessment order framed by the Assessing Officer u/s.144 r.w.s 147 of the Income Tax Act dated 28.01.2016. He stated that in view of the ITAT order dated 11.09.2017 in which the ITAT has quashed the assessment in dispute on which the penalty in dispute has been levied. The penalty in dispute is not sustainable and may be cancelled. He also filed a copy of order of ITAT dated 11.09.2017 quashed by the ITAT 'D' Bench. Ahmedabad in the case of assessee in ITA No.1044/Ahd/2014 for A.Y. 2008-09 dated 11.09.2017. The relevant portion of the same is reproduced as under:

"11. We find that "Ld.AO" issued notice u/s.148 of the Act on 25/03/2015 in the name of assessee on account of information possessed by him about deposit of cash of Rs.13,14,800/- during the F.Y. 2007-08 in the bank account of assessee held with Ban of Baroda, Surat. Repetitive notices were issued u/s.142(1) of the Act calling for information including notice u/s.148 of the Act but none appeared before the assessing authority. At this stage of proceeding this fact is not denied by the lower authorities as well as Departmental Representative that the assessee Abhesinh J. Thakor, expired on 26/04/2010. Death certificate is on page 41 of the paper book, issued by Sondamitha Gram Panchayat Taluka dated 03/05/2010. One more undisputed facts is that no proof was shown to the assessee nor placed on record to show the evidence of service of various notices including the alleged notice u/s. 148 of the act even though all the notices were sent through speed post in the name of assessee, It is surprising that how come the postal authorities served them even though assessee was dead at that movement of time. Learned counsel during the course of hearing has contended that legal representative cannot be expected or forced to intimate the death of assessee, when there was no

proceeding pending before the income tax authorities and also assessee has never been assessed to tax in his life time.

12. Now the moot question before us is to examine as to whether the assessing officer was having jurisdiction to frame assessment and whether the notices u/s.148 of the Act issued in the name of assessee who already expired around 5 years before the date of issue of notice u/s.148 of the Act was valid?

13. To adjudicate this issue we find that Hon'ble Jurisdictional High Court of Ahmedabad in the case of CIT Vs Suresh Chandra Jaiswal (Supra) has dealt similar issue wherein notices u/s.148 of the Act was issued to the assessee who was already dead on the date of Issue of notice and notice was not served upon the legal representative of deceased but it was served upon the accountant. In such circumstances defect in such notice was not curable and such notice was not valid. Appeal was decided in favour of assessee relying on the decision of Divisional Bench of High Court, Ahmedabad in case of CIT v/s. Shital Prasad Kharag Prasad (2006) 280 ITR 541.

14. Similar issue also came up before Tribunal in the case of Rasidlal v/s ITO (Supra) wherein Hon'ble Court quashed the notice u/s.148 of the Act which was issued against dead person Hon'ble Court holding the issue in favour of the assessee observing as follows:

7. In the present case,, admittedly, the reassessment proceedings have been initiated against the dead person and that too after a long delay, therefore, even if Section 159 of the Act is attracted, that case also, the notice was required to be issued against and in the name of the heirs of deceased assessee. Under the circumstances, in the facts and circumstances of the case, Section 159 of the Act shall not be of any assistance to the Revenue. 8. Now so far as reliance placed upon a decision of Delhi High Court in the case of Shahid Aliq, L/H of / Late S.H Atiqer Rehman v. Commissioner of Income Tax [Supra] by the Revenue is concerned, on facts, the same shall not be applicable to the facts of the case on hand, In the case before the Delhi High Court, a notice was issued to one of the legal representatives of the deceased-2ssessee and he participated in the reassessment proceedings, and thereafter, it was contended on behalf of the assessee/heirs of the deceased that non-service of notices upon other legal representatives amounted to a clear violation of the principles, of natural justice qua said legal representatives, inasmuch as m assessment order could be validly made without first serving a notice upon the other legal representatives who are themselves assesses within the meaning of Section 159 [3] of the IT Act The aforesaid issue came to be negated by the High Court,, relying upon a decision of the Apex Court in case of OT vs. Jai Prakash Singh [1996] 132 CTR (SC) 262,

9. Similarly, decision of Madhya Pradesh High Court in the case of *Smt.Kaushalyabai v. Commissioner of Income-Tax*, reported In [Supra] also shall not be applicable to the facts of the case on hand, in the case before the Madhya Pradesh High Court, the High Court did not decide the said question as in view of the fact that heirs of the deceased assessee participated in the reassessment proceedings, and therefore, the Division Bench was of the opinion that the said question has become academic. Under the circumstances, the said decision shall, not be applicable to the facts of the case of hand.

10. In view of the above and for the reasons aforesaid, the present petition succeeds. The impugned notice dated, 29th March 2016 issued under Section 148 of the Income-tax Act, 1961 by the Officer, Ward 1(3)(6), Surat is hereby quashed and set aside.

15. Similar view was also taken by Hon'ble High Court of Delhi in the case of *Vipin Valia v/s ITO (Supra)* holding that "Section 159(2) of the Act makes a specific reference to a reassessment proceeding under Section 147 of the Act While Section 159(2)(a) of the Act talks of a proceeding already taken against an Assessee "before his death". Section 159(2)(b) of the Act envisages any proceeding which could have been taken against the deceased if he had survived. It permits such a proceeding to be taken against the LRs of the deceased Assessee even if it had not taken while the Assessee was alive, (para 11) What was sought to be done by the ITO was to initiate proceedings under Section 147 of the Act against the deceased Assessee for AY 2008-09. The limitation for issuance of the notice under Section 147/148 of the Act was 31st March 2015, On 27th March 2015, when the notice was issued to the Assessee was already dead. If the Department intended to proceed under Section 147 of the Act, it could have done so prior to 31st March 2015 by issuing a notice to the LRs of the deceased. Beyond that date it could not have proceeded in the matter even by issuing notice to the LRs of the Assessee, (para 12) Consequently the Court has no hesitation in holding that the actions of the Revenue in this case in persisting with the proceedings under Section 147/148 of the Act against the Petitioner were wholly misconceived both on facts as well as on merits. Accordingly, the Impugned notice dated 27th March 2015 and all proceedings consequent thereto are hereby quashed, (para 18)

16. Respectfully following the judgment of Jurisdictional High Court, Ahmedabad and High Court of Delhi holding similar issue thereby quashing the proceeding initiated u/s.148 of the Act, in the case of assessee who died before the date of issue of notice and examining the facts of the instant appeal wherein notice was issued to the assessee on 25/03/2015 who expired on 26/04/2010 clearly shows that the issue of notice u/s.148 was not valid and the assessment proceedings u/s.144 r.w.s 147 of the Act were void ab initio. We accordingly set aside the finding of "Ld.CIT(A)" and quash the notice u/s.148 of the Act as well

as the assessment framed u/s.144 r.w.s. 147 of the Act dated 28.01.2016. In the result ground not 1 and 2 of this appeal are allowed."

7. Keeping in view of the aforesaid order by the ITAT in which the ITAT has quashed the assessment framed by the Assessing Officer u/s.144 r.w.s 147 of the Income Tax act dated 28.01.2016 on which the penalty in dispute has been imposed, in our considered view, the penalties in dispute are not sustainable in the eye of Law and we cancelled the impugned orders passed by the Id.CIT(A) and cancelled the penalties u/s.271F of the Income Tax Act and u/s.271(1)(b) of the Income Tax Act and accepted the both appeal of the Assessee.

8. In the result, both the appeals of the Assessee are allowed.

Order pronounced on 15-07-2019.

Sd/-
(O.P. MEENA)
ACCOUNTANT MEMBER

Dated: 15/07/2019

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

"GANGADHARA RAO.S"

Copy forwarded to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR

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Asst. Registrar,
ITAT, Surat