

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "H", MUMBAI**

BEFORE SHRI PRAMOD KUMAR (VP) AND SHRI RAM LAL NEGI (JM)

**ITA No. 4590/MUM/2013
Assessment Year: 2008-09**

Devendra S. Pandit, the Legal Heir of Late Smt. Kusum D. Pandit, C/o D.C. Bothra & Co. (CA), 297, Tardeo Road, Wille Mansion, 1 st Floor, Opp. Bank of India, Nana Chowk, Mumbai - 400007 PAN: AMYPP6516E	Vs.	The Commissioner of Income Tax (A)-31, Pratkshyakar Bhavan, C-10, R.N. 706, 7 th Floor, BKC, Bandra (East), Mumbai - 400051
(Appellant)		(Respondent)

Assessee by : Shri Raj Kumar Singh (AR)
Revenue by : Ms. Kavita (DR)

Date of Hearing: 09/12/2019
Date of Pronouncement: 21/01/2020

ORDER

PER RAM LAL NEGI, JM

The assessee has preferred the present appeal against the order dated 31.08.2012 passed by the Commissioner of Income Tax (Appeals)-31 (for short 'the CIT(A), Mumbai, pertaining to the assessment year 2008-09, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the penalty order passed by the AO u/s 271 (1) (c) of the Income Tax Act, 1961 (for short the 'Act').

2. In this case, the assessee filed nil return pertaining to the assessment year under consideration. However, the AO passed the assessment order dated 24.12.2010 u/s 143 (3) of the Act determining the total income at Rs. 59,14,870/- after making addition of Rs. 59,00,000/- u/s 69 of the Act and Rs. 24,867/- under the head 'income from other sources'. The assessee died on 27.02.2011. The legal heir of the deceased challenged the assessment order

before the CIT (A)-31, Mumbai, who after hearing the legal heir partly allowed the appeal, however, enhanced the income of the assessee as per the provisions of section 251 (2) of the Act. In the second appeal, the ITAT partly allowed the assessee's appeal vide order dated 28.12.2018. In the meantime, the AO initiated penalty proceedings u/s 271 (1) (c) of the Act and levied penalty amounting to Rs. 56,62,326/-.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

"1. That on facts & circumstances of the case and in law, order dated 25.03.2013 passed u/s 271 (1) (c) by ld. C.I.T. (Appeals)-31, Mumbai imposing the penalty at Rs. 56,62,326/- on the legal heir of the deceased assessee is unlawful order & void ab initio for the following stated reasons:-

a) No show cause notice u/s 274 r.w.s. 271 of the I.T. Act, 1961 has ever been issued by the ld. C.I.T. (Appeals) in the name of legal heir of the deceased assessee before passing the penalty order u/s 271 (1) (c), and

b) Show cause notices dated 31/08/2012 issued u/s 274 r.w.s. 271 by ld. C.I.T. (Appeals) in the name of deceased assessee, for imposing the penalty u/s 271 (1)(c), despite having intimation & documentary evidences about the death of assessee on records, are invalid notices hence no penalty u/s 271 (1) (c) ought to have been imposed on the legal heir of the deceased assessee.

2. That the ld. C.I.T. (Appeals) has erred in imposing the penalty u/s 271 (1) (c) at Rs. 56,62,326/-, without properly appreciating the bonafide & sufficient reasons duly supported with documentary evidences furnished on record.

3. That to the extent of penalty amount computed u/s 271 (1) (c) for the alleged tax sought to be evaded on long term capital gain income arised on sale of agricultural land which is exempt from levy of income tax is wrong on facts & bad in law.

4. *That even penalty imposed at Rs. 56,62,326/- being 100% of tax sought to be evaded is incorrect & has wrongly been calculated.*

5. *That appeal grounds no. 1 to appeal ground no. 4 are independent grounds & without prejudice to each other.”*

4. At the outset, the Ld. counsel for the assessee submitted that the impugned order dated 25.03.2013, passed by the AO u/s 271 (1) (c) of the Act is bad in law as the AO has issued notice u/s 274 read with section 271 of the Act, in the name of a dead person for initiating penalty proceedings. The Ld. counsel for the assessee invited our attention to the two notices dated 31.08.2012 and 18.09.2012 issued by the AO u/s 274 read with section 271 of the Act issued in the name of deceased Smt. Kusum Devendra Pandit, copies of which are available at page 18 and 20 of the paper book. The Ld. counsel further invited our attention to the certified copy of death certificate of Ms. Kusum Devendra Pandit issued by the Municipal Corporation of Greater Mumbai, Health Department, Govt. of Maharashtra, according to which Smt. Kusum Devendra Pandit died on 27.02.2011. In view of the aforesaid facts, the Ld. counsel submitted that since the AO had initiated proceedings against the deceased Kusum Devendra Pandit, the Ld. CIT (A) ought to have set aside the same and directed the AO to delete the penalty. The Ld. counsel further submitted that since, the impugned order is bad in law, the same is liable to be set aside. The Ld. counsel relied on the following decisions/judicial pronouncements to substantiate his contention:-

- i. *“ACIT vs. Vijay Kumar Aggarwal ITAS No. 1539/KOL/2017 (Kol Trib);*
- ii. *ACIT vs. Late Dr. M V Rao ITA (through LR) ITA No.5255/Del/2013 & CO No.48/Del/2014, AY 2007-08;*
- iii. *CIT vs. S. Gowri 417 ITR 0045 (Mad),*
- iv. *CIT vs. Kurban Hussain Ibrahimji Mithiborwala 1973 CTR 0454 (SC)*
- v. *Umashankar Mishra vs. CIT, 136 ITR 0330*
- vi. *Gajendra Kumar Banthia vs. Union of India (1996) 222 ITR 0632*
- vii. *Lal Chand Agarwal vs. CIT, (2015) 275 CTR All (0547)*
- viii. *P.N. Sasikumar & Ors. Vs. CIT, (1988) 170 ITR 0080*

- ix. *CIT and another vs. Micro Labs Ltd.)2012) 348 ITR 0075*
x. *CIT vs. Mani Kakar (2009) 178 taxman 0315*
xi. *ITO vs. Goel Sons Golden Estate Pvt. Ltd. (2016) 47 CCH 0359 (Del Trib)*”

5. On the other hand, the Ld. Departmental Representative (DR) supporting the order passed by the Ld. CIT (A) submitted that since the legal heirs of deceased contested the case of the assessee, no prejudice has been caused to the assessee. The Ld. counsel further submitted that there is no infirmity in the order passed by the Ld. CIT (A) to interfere with.

6. We have heard the rival submissions of the parties and gone through the material on record. As pointed out by the Ld. counsel for the assessee, the AO issued notice u/s 274 r.w.s. 271 of the Act in the name of the deceased assessee Kusum Devendra Pandit, however, passed the order imposing penalty in the name of her legal heir. AO has mentioned the name of the appellant as legal heir of Late Smt. Kusum Devendra Pandit in penalty order dated 25.03.2013. We further notice that even the Ld. CIT (A) has mentioned the name of the appellant as legal heir of Late Smt. Kusum Devendra Pandit. Under these circumstances, the crucial question, which arises, is whether the penalty order passed by the AO initiated by issuing notice u/s 274 r.w.s. 271 of the Act in the name of the deceased assessee is sustainable in law?

6 (a). As pointed out by the Ld. counsel, in the case of *ACIT vs. Vijay Kumar Agarwal* (supra), the D Bench of the Kolkata, ITAT has dealt with the similar issue and held that the penalty proceedings u/s 271AAB initiated by the AO against a dead person is *void ab initio* and the order passed is not sustainable. The observations of the Bench read as under:-

“4. We have heard the arguments of both the sides and also perused the relevant material available on record. The ld. counsel for the assessee before us has raised a preliminary issue that the penalty proceedings having been initiated by the Assessing Officer against a dead person, initiation itself was bad-in-law and the penalty imposed under section 271AAB is not sustainable. He has pointed out that the notice initiating penalty proceedings under section 271AAB was issued by the Assessing Officer on 13.10.2015 in the name of the assessee,

who had already expired on 29.04.2015. He has filed a copy of the relevant death certificate and contended that the penalty notice thus was issued by the Assessing Officer in the name of a dead person, which is not enforceable in law. Since this contention of the ld. Counsel for the assessee is duly supported by the decision of the Hon'ble Madras High Court in the case of Alamelu Veerapan-vs. ITO (2018) 95 taxmann.com 155 (Madras), we accept the same and hold that the penalty proceedings initiated by the Assessing Officer against a dead person was not enforceable in law and the penalty imposed under section 271AAB in pursuance of such invalid initiation is not sustainable. We accordingly uphold the impugned order of the ld. CIT (Appeals) although on a different ground and dismiss this appeal of the Revenue."

7. Admittedly, in the present case, the AO issued notice dated 31.08.2012 and 18.09.2012 u/s 274 read with section 271 of the Act in the name of deceased Smt. Kusum Devendra Pandit. Hence, in view of the decision of the Kolkata Bench of the Tribunal aforesaid and the other cases relied upon by the assessee, the proceedings initiated u/s 271 (1) (c) of the Act is not sustainable in law. We therefore, respectfully following the decision of the Kolkata Bench of the Tribunal, set aside the impugned order passed by the Ld. CIT (A) holding the same as *void ab initio* and not sustainable in law. Accordingly, we direct the AO to delete the penalty.

In the result, appeal filed by the assessee for assessment year 2008-2009 is allowed.

Order pronounced in the open court on 21st January, 2020.

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 21/01/2020

Alindra, PS

आदेश 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, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai