

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-A” BENCH, BANGALORE**

Before Shri Chandra Poojari, Accountant Member

ITA No.2468/Bang/2019: Asst.Year 2010-2011

Smt.Sujatha Sri K.N.Prafulla Kumar and Ms.K.N.Ranjitha, Legal Representatives of Late Sri.R.Nagendra Swamy, Kuderu Main Road, Kuderu Chamarajanagara. PAN : AJPPS2123Q.	Vs.	The Income Tax Officer Ward 1 Chamarajanagara.
(Appellant)		(Respondent)

Appellant by: Sri.V.Srinivasan, Advocate
Respondent by: Dr.Ganesh R.Ghale, Standing Council for DR

Date of Hearing : 25.02.2020	Date of Pronouncement : 27.4.2020
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ORDER

This appeal filed by the assessee is directed against the order of the CIT(A) dated 27.09.2019. The relevant assessment year is 2010-2011.

2. The assessee has raised following grounds: -

“1. The order of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT(A) is not justified in passing the appellate order in the name of the deceased appellant, even after it was brought to the notice that the appellant had passed away vide letters dated 08.06.2018 and 15.05.2019 of the authorized representative of the appellant and accordingly, the impugned order passed by the learned CIT(A) deserves to be cancelled.

3. Without prejudice to the above, the learned CIT(A) is not justified in upholding the addition of Rs.5,87,801/- in respect of Sundry Creditors on the ground that the appellant had not

filed confirmation of balance from these Sundry Creditors without appreciating that the appellant had filed statement of account from 2 creditors viz., M/s.Zuari Cements of Rs.1,42,649/- and M/s.Nagarjuna Fertilizers of Rs.33,930/- besides filing other evidence in respect of the balance creditors of Rs.4,11,222/- under the facts and in the circumstances of the appellant's case.

4. *The learned CIT(A) is not justified in upholding the addition of Rs.16,78,500/- being the alleged aggregate cash deposits made in the savings bank account of the appellant without appreciating that the details of these cash deposits were never made known to the appellant and that the appellant had filed his bank statements and explained the cash deposits made therein out of anterior withdrawals made from the same bank account under the facts and in the circumstances of the appellant's case.*

5. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

3. The facts of the case are that the assessee is a retail dealer in fertilizer, who filed return of income for the assessment year 2010-2011 on 24.09.2010, admitting total income at Rs.2,59,260. The assessment was completed u/s 143(3) of the I.T. Act determining total income at Rs.25,25,561, after making addition of Rs.22,66,301. The bifurcation of the addition is – (i) cash deposit was of Rs.16,78,500, and (ii) for non-furnishing the details of sundry creditors of Rs.5,87,801. The Assessing Officer passed order u/s 143(3) of the Act on 31.01.2013 resulting a demand of Rs.8,98,191. Aggrieved, the assessee went in appeal before the CIT(A), who confirmed the order of the Assessing Officer, by observing as under: -

“4. In the assessment order the AO has stated that, during the course of the assessment proceedings, the assessee was asked to furnish the confirmation from the creditors amounting to Rs. 5,87,801/-. The assessee has furnished statement copy from M/s.Zuari Industries Ltd and Nagarjuna Group for Rs. 1,42,649/- and 33,930/- respectively. It was not accepted since the copy of the statement did not contain date and seal or signature of the competent authority. The assessee could not furnish confirmation for the balance amount of Rs.4,11,222/-Hence, in the absence of proper confirmation of the above entire amount shown under Sundry Creditors is added back to the total income of the assessee. Further, as pre the ITS data the assessee has made cash deposit of Rs. 16,78,500/- to SB etc, during the course of hearing the assessee and his A/R was asked to furnish the details for the cash deposit, neither the assessee nor his AIR had produced any details or furnished any explanation, hence the entire transaction mentioned in the ITS data is brought to tax as unexplained cash credit u/s 68. Even during the course of appeal proceedings the appellant could not substantiate and furnish any evidence and therefore the addition made by the AO is hereby upheld.”

4. Against the above orders of the Income Tax Authorities, the assessee is in appeal before the Tribunal. At the outset, the learned AR submitted that despite intimating the CIT(A) that Sri.Nagendra Swamy, in whose case the appeal was filed before the CIT(A), expired on 16.10.2017, vide assessee's letter dated 12th April, 2018. However, the CIT(A) passed the impugned order on 27.09.2019, only in the name of Sri.Nagendra Swamy, without bringing on record the legal heirs on record. According to the learned AR, the order of the CIT(A) to be set aside with a direction to pass fresh order in the name of the legal heirs after bringing them on record.

5. The learned Departmental Representative did not raise any serious objection to the argument of the learned AR.

6. I have heard the rival submissions and perused the

material on record. In the present case, the assessee admittedly informed the CIT(A) vide letter dated 12th April, 2018 and also another letter dated 08th June, 2018, that Sri.R.Nagendra Swamy, expired and also enclosed the death certificate of Sri.R.Nagendra Swamy, to this effect. However, the CIT(A) passed the impugned order in the name of Sri.R.Nagendra Swamy only. At this point, I refer provisions of section 2(7) of the I.T.Act. From the reading of the above section, it is apparent that “assessee” means a person by whom any tax or any other sum of money is payable under this Act, and also includes even every person who is deemed to be an assessee under any provisions of the Income-tax Act. The person is defined in section 2, sub-section (31) which includes an individual. “Individual” means a single human being distinct from a group of human beings. Now the question arises whether the person who has already expired, can be regarded to be a human being so as to fall within the definition of “individual”. In the present case, the CIT(A) has passed the impugned order not in the name of the legal heirs, but in the name of an individual, who has already expired on 16.20.2017. Therefore, it cannot be said that the assessee, an individual is in existence in the name of Sri.R.Nagendra Swamy, in whose name the order was passed. In my opinion, an order passed in the name of a dead person, cannot be regarded as a valid order as he cannot be a person to be an assessee. In consequent thereof, it cannot be regarded to have been passed an order in the name of the assessee. Under sec.2(7) of the I.T.Act, his legal representatives being different

human beings from Sri.R.Nagendra Swamy and they are deemed to be the assessee in view of the provisions of section 159 of the I.T.Act. Section 159(1) of the I.T.Act stressed that when a person dies, his legal representatives shall be liable to pay any sum 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. Similarly, section 159(2) also empowers the Assessing Officer to take the proceedings against the legal representatives that he would have taken against the deceased had he survived. Section 159(2) nowhere authorizes the Assessing Officer to take the proceedings against the individual who has already expired, that is why the legal representatives, u/s 2(7) are regarded to be assessee. It emanates that the assessee in the case of a deceased person will be the person who are regarded as the legal heirs of the deceased as they can be regarded as a human being. In view of this, a person who has already expired cannot be regarded to be a human being as on the date when the order was passed. Only the legal heirs can be regarded as assessee in view of the provisions of section 2(7) of the I.T.Act. Section 159 also emphasizes that the order passed in the name of a dead person, is not a valid order. Accordingly, I set aside the order of the CIT(A), which is passed in the name of a dead person, and direct him to bring on record the name of legal heir and decide the issue afresh after affording a reasonable opportunity of being heard to the assessee (legal heir).

7. Since I have set aside order of the CIT(A) on the legal issue raised by the assessee, at this stage, I am refrain from

adjudicating other grounds raised by the assessee in respect of the additions made by the Assessing Officer and sustained by the CIT(A).

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 27th day of April, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore ; Dated : 27th April, 2020.
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(A)-Mysore.
4. The Pr.CIT-Mysore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore