

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'F', NEW DELHI**

**BEFORE MS SUSHMA CHOWLA, VICE PRESIDENT
AND
SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.7645/Del/2019
Assessment Year: 2011-12

Sangeeta Himmatramka (Legal Heir of Late Sh Rajeev Himmatramka), C-58, Upper Ground Floor, Rohit Kunj, Pitampura, New Delhi – 110 034. PAN : AAAPH 9487 L (APPELLANT)	Vs.	ACIT, Circle-46(1) New Delhi (RESPONDENT)
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Assessee by	Shri Suresh Gupta, C.A.
Revenue by	Shri Amit Jain, Sr. D.R.

Date of hearing:	29/09/2020
Date of Pronouncement:	15/10/2020

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 13.08.2019 of the Commissioner of Income Tax (A)-16, New Delhi relating to Assessment Year 2011-12.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is an individual who electronically filed his original return of income for A.Y 2011-12 on 04.09.2011 declaring total income at Rs.48,61,596/-. Initially the assessment was framed u/s 143(3) vide order dated 28.03.2014. Subsequently, information was received by the AO from Investigation Wing that the assessee has taken accommodation entries during A.Y. 2011-12. On the basis of the aforesaid information so received, the case was taken up for scrutiny u/s 147 and accordingly notice u/s 148 dated 31.03.2018 was issued and served via affixture. Thereafter, the assessment was framed u/s 144/147 vide order dated 16.12.2018 and the total income was determined at Rs.1,51,11,600/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 13.08.2019 (in Appeal No.10393/2018-19) dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds of appeal:

1. *“The impugned assessment is invalid and without jurisdiction as the said assessment is completed without complying with legal requirements of the provisions of section 147/148 of the Income Tax Act therefore such assessment is void ab initio and liable to be quashed.*
2. *The Ld CIT(A) on the facts and circumstances of the case has erred in upholding the validity of impugned assessment order passed u/s 144/147 of the Act on the ground the impugned proceedings has been initiated in the name of deceased assessee instead of the legal heir of the deceased*

assessee and the information regarding demise of the assessee has already been given to then AO during original assessment proceedings.

3. *The Ld. CIT(A) has erred both in law and circumstances of the case in upholding the reassessment proceedings initiated u/s 147 of the IT Act ignoring the contention of appellant that the proceedings have been initiated by the AO without application of independent mind on the material, if any, provided by the Inv. Wing of the department. In view of the above defects in the compliances the resultant reassessment proceedings are required to be set aside.*
4. *The Ld. CIT(A) has erred both in law and in facts of the case in upholding the impugned reassessment proceedings ignoring the fact that the sanction u/s 151 of IT Act as provided with the copy of the reason recorded shows mechanical satisfaction by the Pr CIT, Delhi-16, New Delhi.*
5. *The Ld. CIT(A) has erred both in law and circumstances of the case in upholding the reassessment proceedings u/s 147 of the IT Act which is not properly initiated and therefore need be quashed as the appellants case is covered by proviso to section 147 of the IT Act and that being the case the AO has failed to give a finding as which material facts the appellant failed to disclose fully and truly during original proceedings and in the absence of any such finding, the initiation of reassessment proceedings and the impugned assessment order both are bad in law because such proceedings are as a result of change of mind by the successor incumbent on the same set of facts.*
6. *The Ld. CIT(A) has erred both in law and circumstances of the cases in upholding the addition of Rs. 1,02,50,000/- u/s 68 of the IT Act received from three different parties ignoring the fact that deceased assessee has received only Rs.45,00,000/- out of Rs. 1,02,50,000/- and that to from only one party. The addition of Rs. 1,02,50,000/- was sustained without bringing on record any material or evidence in support of the above addition and the AO has failed to make out a case of addition in absence of any details provided in the assessment order.*

7. *The Ld. CIT(A) has erred both in law and circumstances of the cases in reliance on the material to take view adverse to the appellant without confronting the same and therefore action of the AO is in contravention of the principals of natural justice.*
8. *The appellant craves leave to add, delete, modify/ amend the above grounds of appeal with the permission of the Hon'ble appellant authority."*

4. Before us, at the outset, Learned AR submitted that though the assessee has raised various grounds but the crux of the matter is that assessee is challenging the jurisdiction of reassessment and on merits, the addition made. On the issue of the validity of assessment proceedings, Learned AR reiterated the submission made before the lower authorities and submitted that the assessment framed by AO is invalid and without jurisdiction as it has been completed without complying the legal requirements of provision of section 147/148 of the Act and therefore, the assessment *is void ab initio*. He further submitted that the impugned proceedings have been initiated in the name of the deceased assessee instead of the legal heir of the deceased assessee. He submitted that Shri Rajeev Himmatramka, the assessee, expired on 28.11.2011 and the regular assessment proceedings for A.Y. 2011-12 in his case was initiated after his death and was completed u/s 143(3) of the Act on 28.03.2014. He further submitted that during the course of assessment proceedings, the fact of the death of Shri Rajeev Himmatramka was given by the Counsel of the assessee to the AO through various letters submitted during the assessment proceedings. He

further submitted that the reassessment proceedings for A.Y. 2011-12 was initiated u/s 147/148 in the name of the deceased person and during the reassessment proceedings also, the intimation of death of Shri Rajeev Himmatramka along with the death certificate was submitted to the Assessing Officer. In support of the aforesaid contentions, the Learned AR has placed on record the affidavit of Smt. Sangeeta Himmatramka, wife of late Shri Rajeev Himmatramka. He further submitted that the intimation to the AO about the death of Shri Rajeev Himmatramka during the original assessment proceedings and the reassessment proceedings is not disputed by the Revenue as is also evident from the letter of ACIT, Circle – 46(1) dated 16.09.2020 which is placed on record by the Revenue. He placing reliance on the decision of Savita Kapila, (Legal Heir of late Shri Mohinder Paul Kapila) vs. ACIT (2020) 426 ITR 502 (Del) and other decisions submitted that notice u/s 148 has to be issued in the name of correct person and notice issued to a deceased person is not valid. He submitted that Hon'ble Delhi High Court in the case of Savita Kapila (supra) has held that notice issued to the deceased person is not valid and is not a curable defect by section 292BB. He submitted that Hon'ble Delhi High Court has further held that there is no legal requirement for the legal representative to report death of the assessee to the income tax authorities. He therefore, submitted that in view of the decision of Hon'ble Delhi High Court in the case of Savita Kapila (supra), the jurisdictional requirement u/s 148 of the Act of the service of

notice has not been fulfilled and therefore, the assessment order passed u/s 147 r.w.s 148 be held to be void. Learned DR on the other hand supported the order of lower authorities.

5. We have heard the rival submissions and perused the material available on record. Assessee in the present appeal is challenging the validity of reopening the assessment on the deceased person. It is an undisputed fact that the assessee expired on 28.11.2011 and the intimation of his death, as can be seen from the documents placed by the assessee in the paper book, was given to the AO during the course of original assessment proceedings and also the reassessment proceedings. It is also an undisputed fact that the notice for reassessment proceedings was issued on 31.03.2018 i.e. much after the death of the assessee. It is a settled law that the issuance of notice u/s 148 is the foundation of reopening of an assessment and the notice has to be issued in the name of correct person. It is also a settled position of law that the requirement of issuing notice to the correct person and not a dead person is not merely a procedural requirement but a condition precedent to the notice being valid in law. We find that Hon'ble Delhi High Court in the case of Savita Kapila (supra) has held that the notice issued to a deceased person is not valid and is not a curable defect by Section 292BB. The Hon'ble High Court has further held that there is no legal requirement for the legal representative to report death of the assessee to income tax authorities. In the

present case, we find that the AO in the report dated 16.09.2020 (which has been placed on record by Revenue) has admitted intimation of the death being communicated to the AO during the assessment proceedings u/s 143(3) and during the reopening proceedings u/s 147/148 of the Act. Before us, Revenue has not pointed out any contrary decision in its support. We therefore, following the decision of Hon'ble Delhi High Court in the case of Savita Kapila (supra) hold that the present reassessment proceedings to be bad in law and accordingly set aside the reassessment framed. Since we have held the reassessment proceedings to be bad in law, the issue on merit have been rendered academic and therefore not decided. **Thus the grounds of assessee are allowed.**

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 15.10.2020

Sd/-
(SUSHMA CHOWLA)
VICE PRESIDENT

Priti Yadav, Sr.PS

Date:- 15.10.2020

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI