

observing that the assessee has not furnished any explanation for the source of deposits of Rs. 28 lakhs and therefore same is to be brought to tax as unexplained income. The Pr.CIT directed the A.O. to compute total income of the assessee by adding Rs.28 lakhs. In view there of, AO issued show cause notice to the assessee to explain source of deposits to the tune of Rs.28 lakhs. However, assessee did not furnish any evidence and therefore Assessing officer brought Rs. 28 lakhs to tax as unexplained money u/s 69 of the Act.

3. Aggrieved, assessee preferred an appeal before the CIT(A) who confirmed the order of the Assessing officer by holding that assessment order is pursuant to directions of the Pr.CIT u/s 263 of the Act and therefore appeal of the assessee is not maintainable. Further aggrieved, the assessee is in appeal before the tribunal by raising the following grounds of appeal.

- 1) *The CIT(A) erred in law in holding that he has no jurisdiction over order passed u/s 143(3) r.w.s. 263.*
- 2) *The CIT(A) erred in law and on facts in holding that the appeal is not maintainable.*
- 3) *The CIT(A) ought to have realized that both Pr..CIT and AO failed to note that assessee died when they finalized respective orders u/s 263 rws 143(3) rws 147 and accordingly held that the assessment order was passed without affording reasonable opportunity to legal heir therefore the assessment order is deficient in law and procedure. (tax effect: Rs.9,31,658/-).*
- 4) *The CIT(A) erred in law and on facts in not considering assessee's contention that when the AO verified source of impugned deposit of Rs.28 lakhs and found in order, the Pr..CIT had no jurisdiction u/s 263 over such issue.*
- 5) *The case laws relied on by CIT(A) are where definite findings of CIT are present In assessee's case, CIT(A) ought to have noted that AO made addition on the ground that assessee has not furnished explanation/written submission for examination and therefore jurisdiction u/s 263 is exercisable.*
- 6) *Any other ground that may be urged at the time of hearing”*

3.1. The learned counsel for the assessee submitted that the assessee had passed away on 05.10.2018 while the order u/s 263 was dated 22.03.2019 and the consequential assessment order u/s 143(3) r.w.s. 263 of the Act is dated 15.07.2019. He drew my attention to the fact both the above orders were passed in the name of the assessee while only CIT(A)'s order is issued in the name of the legal heirs of the assessee. He submitted that the legal heirs were not aware of the facts of the case and therefore did not have relevant information to be filed before the CIT(A). Therefore, he submitted that the assessment order u/s 143(3) r.w.s. 263 passed on a dead person is not valid.

3.2. Ld.DR is also heard.

4. Having regard to facts that the order u/s 263 of the Act dt. 22.03.2019 was passed on the assessee, after the death of the assessee on 05.10.2018 and the consequent assessment order u/s 143(3) r.w.s. 263 is also passed on a dead person, the said order has no legs to stand. Therefore, I set aside the assessment order dated 5.7.2019 passed on a dead person as not maintainable in law.

In the result, assessee's appeal is allowed.

Order pronounced in Open Court on 27/05/2021.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Dated: 27th May, 2021

• *gmv*

Copy of Order forwarded to:

1. Sri BalaSubramanyam Mallaiah Salla, L/R of late Smt. Radha Balasubramanyam Salla, 7-1-8/1/A/7, Ameerpet, Hyderabad 500 016, Telangana.
2. ITO, Ward 6(3), Hyderabad.
3. ACIT, Range 6, Hyderabad.
5. Pr.CIT -6, Hyderabad
- 6 D.R. ITAT Hyderabad
7. Guard File