

THE INCOME TAX APPELLATE TRIBUNAL
“H” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Ravish Sood (JM)

I.T.A. No.1434/Mum/2020 (Assessment Year 2011-12)

Kapil Vinodkumar Vaidya C/RH2, Panchvati Gardens Upper Govind Nagar Malad(E), Mumbai-400 097 PAN : ACMPV1268K	Vs.	ITO-31(3)(5) Room No.739, 7 th Floor Kautilya Bhavan, G-Block, BKC, Bandra(E), Mumbai-400 051
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Pavan Beerla
Date of Hearing	02.09.2021
Date of Pronouncement	06.09.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the Assessee is directed against the order of learned CIT(A)-42, dated 31.12.2019 and pertains to Assessment Year 2011-12.

2. The grounds of appeal read as under :

1. The learned CIT(A)-42 order dated 31.12.2019 against ITO order u/s 271(1)(b) dated 19.12.2016 is bad in law and/or against the Principles of Natural Justice.
2. The learned CIT(A)-42 erred in confirming Penalty of Rs 10,000/- u/s 271(1)(b) on alleged grounds of non-compliance.
3. The learned CIT(A)-42 failed to appreciate and/or overlooked ;
 - a. By ignoring and not passing order against ground no.5 of appeal before it.
 - b. That no section 142(1) notice dated 27.1.2016 and 23.5.2016 and 25.6.2016 were ever issued and/or served to assessee or his legal heir as A.O. tried to serve them at business address which was closed and not existing and assessee had expired almost 2 years ago at that time.
 - c. That alleged notice u/s.142(1) dated 16.6.2016 was served to relative only on 11.7.2016 for compliance on 23.6.2016 which was impossible for compliance and further that legal heir of the assessee immediately within few minutes of receipt of notice on 11.7.2016 complied by informing the A.O. that

assessee had expired 2 years ago and also a copy of death certificate was given to A.O. and no further 142(1) notice was served to assessee or legal heir.

d. That alleged show cause notice related to penalty proceedings u/s.271(1)(b) dated 10.11.2016 was served only on 7.12.2016 at 4.05 p.m. to the relative of the dead assessee for compliance on 12.12.2016; in response to which legal heir of the assessee filed written submission dated 9.12.2016 within 48 hours and also appeared on 12.12.2016 in compliance; but A.O. refused to note the presence and accept further submission and further Income tax office was closed on 10.12.2016-and 11.12.2016 and 12.12.2016 and further no show cause notice was issued.

3. Brief facts of the case are that when the notice was issue to the assessee, the assessee was no more. The assessee had expired and this was informed by the son of the assessee to the AO. Despite the same no notice was issue to the legal heir. The son of the assessee Shri Kapil Vaidya made submissions before the Ld.CIT(A), who reproduced the same as under :-

1. The Id. ITO 31(3)(5) , Mumbai assessment order is bad in law and / or against the principal of natural justice.
2. The (TO erred in reopening the assessment u/s 148/147 against a dead person.
3. The ITO did not issue any notice to the legal heirs of the relevant assessee inspite of knowing that the assessee was a dead person.
4. The ITO erred in assessing against a dead person u/s 144 r.w.s. 147 of the assessment.
5. The ITO erred in refusing to accept the presence and submission of the son of the assessee on 12/12/2016 at 11:35 AM in response to ITO's notice dated 07/12/2016 the alleged ground that the IT office was closed and he had come to the income tax office for his personal work and would therefore not acknowledge any presence or submission of the son of the assessee and further the ITO did not issue any notice to the assessee and / or legal heir.
6. The ITO erred in levying a penalty of Rs. 10.000/- u/s 271(1)(b) to the dead assessee.
7. The ITO erred in holding that:
 - a. Various notices were issued and served to the alleged dead assessee.
 - b. Dead assessee was delaying the alleged assessment proceedings without any alleged reasonable cause.
8. The ITO failed to appreciate and / or overlooked:
 - a. That son of the dead assessee appeared on 12/12/2016 at 11:35 AM in response to notice issued to the dead assessee, but the AO refused to accept the submission and record attendance and was therefore not justified in levying penalty u/s271(1)(b)

b. That son of the dead assessee filed a written request to drop the proceedings against the dead assessee but the AO without responding to the said request chose to pass an ex-parte order and levy penalty u/s 271(1)(b), which was unjustified.

4. The Ld. CIT(A) did not advert to any of the pleadings of the above submission. He proceeded to pass the following order

5. The contention of the appellant is that the AO has issued notices u/s 142(1) and 271(1)(b) to the appellant's father, who is dead already, in spite of issuing the notices to the legal heir of the assessee. Further, the appellant has submitted that no penalty order can be passed under these circumstances. During the course of appellate proceedings, the appellant filed a written submission dated 13/06/2018, the relevant portion of which is reproduced hereunder:

1. AO knew that assessee was dead, when he issued notice u/s 142(1) and 271(1)(b). In spite of knowing that alleged assessee was not alive, he chose not to issue legal heir of the dead assessee. In the circumstances as aforesaid no penalty u/s 271(1)(b) could not have been levied.

2.

2. Annexed hereto & marked Annexure B is copy of all alleged notices issued by AO. None of the notices are issued to the legal heir or family members.

6. The penalty order has been passed on 19/12/2016 in the name of Late Sh.Vinod Kumar Vaidya C/o Sh.Kapil V.Vaidya. The notices were served accordingly, in the name "Late Sh.Vinodkumar G.Vaidya, C/o Sh.Kapil V.Vaidya". The AO has issued notices and passed order in the name of legal heir Sh. Kapil V.Vaidya. Further, no submission has been made with regard to reasonable cause in not complying with the statutory notices issued u/s. 142(1) of the Act. In view of these facts of the case, the penalty order passed u/s. 271(1)(b) is valid and the penalty of Rs.10,000/- u/s. 271(1)(b) of the Act is sustained.

5. Against this order, assessee is in appeal before us. We have heard the Ld. DR and perused the records. The aforementioned orders by the authorities below are an abundant reflection of non performance of a statutory duties by the AO, as well as the Ld.CIT(A). When, the AO was duly informed by the assessee son that assessee is no more, it was incumbent upon the AO to bring the legal heir on record and issue the notice thereof. The copy of notice produced by the assessee before us is dated 10.11.2016 and is in the name of

Shri Vinod G.Vaidya. The fact that assessee son has approached the AO and AO has refused to acknowledge the presence did need examination or at least comment by the Ld.CIT(A). Still, Ld.CIT(A) notes facts totally contrary to the submission of the assessee. He proceeds to confirm the order passed in the name of Lat Shri Vinodkumar Vaidya C/o Shri Kapil K.Vaidya.

6. In our considered opinion, the gay abandon and the scant regard with which the authorities below have discharged their statutory duties can only be deprecated. In our considered opinion, on the facts and circumstances of the case levy of penalty on a dead person accompanied by a notice in the name of dead person is without any mandate of law and the same is liable to be quashed. Accordingly, the penalty in this regard is deleted.

Pronounced in the open court on 06.09.2021.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 06 /09/2021
Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai