

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**  
(Through web-based video conferencing platform)

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 115/VIZ/2020  
(Asst. Year : 2009-10)**

ITO, Ward-1(1),  
Vijayawada.

vs. Smt. Gorrepati Pushpalatha,  
L/H of Gorrepati Raghava  
Reddy, D.No. 31-23-6,  
Srinivasa Nilayam, Eluru  
Road, Maruthi Nagar,  
Vijayawada.

(Appellant)

PAN No. AFHPG 6683 H  
(Respondent)

**C.O.No. 20/VIZ/2020  
(Arising out of I.T.A. No. 115/VIZ/2020)  
(Asst. Year : 2009-10)**

Smt. Gorrepati Pushpalath,  
L/H of Gorrepati Raghava  
Reddy, D.No. 31-23-6,  
Srinivasa Nilayam, Eluru  
Road, Maruthi Nagar,  
Vijayawada.

Vs. ITO, Ward-1(1),  
Vijayawada.

PAN No. AFHPG 6683 H  
(Applicant)

(Respondent)

Assessee by : Shri C.Subrahmanyam, FCA  
Department by : Shri D.K. Sonawal, CIT-DR

Date of hearing : 16/09/2021.  
Date of pronouncement : 24/09/2021.

## **ORDER**

### **PER BENCH**

This appeal has been preferred by the Revenue Department and the cross objection by the Assessee against the order dated 03/12/2019 impugned herein passed by the Id. Commissioner of Income Tax (Appeals) [for short, "Id. Commissioner"], Vijayawada u/sec. 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the A.Y. 2009-10.

**2.** The Revenue Department challenged the impugned order, whereas the Assessee preferred the CO. In this case, Id. Commissioner has dealt with the facts and issues involved in the case extensively and therefore for the cost of repetition, we are not reproducing the same herein.

**3.** It is the case of the Revenue that notice u/sec. 148 of the Act was issued in the name of the deceased Assessee on dated 28/03/2016 which was returned by the postal authorities on dated 31/03/2016 by endorsing the remarks that the addressee has expired, therefore the same notice was subsequently served upon the Legal Representative (LR) of the Assessee. Further as there was no prior intimation about the death of the Assessee therefore no named notice was issued in the name of the LR of the Assessee. Further even the LR of the Assessee has never raised any objection before the AO regarding the validity of notice issued u/sec. 148 and therefore the impugned order is liable to set aside.

**4.** On the contrary the Assessee more or less supported the impugned order by filing cross objection.

**5.** Having heard the parties and perused the material available on record. The Id. Commissioner examined the issue to the effect that as to whether notice was issued in the name of LR of the deceased Assessee on or before 31/03/2016 i.e. before expiry of limitation period for issuing of notice u/sec. 148 of the Act. In the remand report, the AO submitted that no notice u/sec. 148 of the Act was issued in the name of LR as there was no prior intimation about the death of the Assessee. The AO also pointed out that LR of the Assessee never raised any objection about the validity of notice issued u/sec. 148. The Id. Commissioner while analysing the facts and circumstances of the case and referring and respectfully following the dictums laid down in the judgments of the Hon'ble Supreme Court and High Courts held that notice issued u/sec. 148 of the Act is bad in law and consequently the addition of Rs.3,41,00,500/- under the head 'income from other sources' made in the said assessment does not survive. The concluding part of the order of the Id. Commissioner is reproduced herein below:-

**20.** *Having regard to the ratio laid down by the Hon'ble High Courts in the above mentioned cases, it is seen that it is a settled position of law that a notice such a notice are invalid in the eyes of the law. Respectfully following the said decisions, it is held that the notice issued u/s.148 in the present case in the name of the deceased person Sri Gorrepati Raghava Reddy is void and unenforceable in law. The non-issuance of notice u/s 148 in the name of the L/R of the assessee is a jurisdictional defect and the said jurisdictional defect, cannot be considered to have been cured by the provisions of Sec. 292BB of the Act on account of participation of the L/R of the assessee in the re-assessment*

*proceedings, as the said provisions are applicable for curing the specified defects in the service of the notices that have been issued by the revenue and they do not apply to the defect of non-issuance of the mandatory notices itself. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Laxman Das Khandelwal (2019) 108 taxrann.com 183.*

**21.** *Consequent to the above, it is held that the order passed by the AO u/s.143(3) r.w.s.147 on 26.12.2017 in pursuance of such a legally invalid notice u/s 148 is bad in law. As a result, it is held the addition of Rs.3,41,00,500/- made under the head Income from other sources in the said assessment order does not survive. The additional grounds of appeal are therefore allowed.*

**“39.** *I have carefully considered the facts of the case, the assessment order, the written submissions of the L/R of the Assessee, the remand report of the AO and the rejoinder furnished by the L/R of the Assessee. In the assessment order, the AO made addition of Rs. 3,41,00,500/- under the head income from other sources by treating the agricultural income of Rs. 3,41,00,500/- admitted by the Assessee in the revised return of income as unexplained income. While disposing off the additional grounds of appeal Nos. 1 & 2 above, it was held that the reassessment order is legally invalid and consequently, the addition made in the assessment order does not survive. In view of the same, these grounds of appeal have become infructuous and the same are therefore treated as dismissed for statistical purposes.”*

**5.1** The factum of Assessee death and issuing the notice u/sec. 148 of the Act in the name of the deceased Assessee on dated 28/03/2016 is not in dispute. The said notice was returned to the AO on 31/03/2016, with the remarks *that the said person has expired on dated 29/06/2015*. However, it was claimed by the AO that the same notice dated 28/03/2016 in the name of deceased Assessee was served to the wife of the deceased and therefore it cannot be termed that no notice was ever been served upon the LR of the Assessee.

It is undisputed fact that the AO had received back the notice dated 28/03/2016 issued u/sec. 148 of the Act only on 31/03/2016 which was the last date of issuing notice u/sec. 148 of the Act. It is an admitted fact that no notice in the name of the LR of the deceased Assessee specifically issued or served independently and the fact remains that the same notice issued in the name of the deceased Assessee, was only issued to the LR of the Assessee and therefore Id. Commissioner correctly held that notice u/sec. 148, in the present case, in the name of the deceased person is void and un-enforceable in law. Further, the Id. Commissioner has held that order passed by the AO u/sec. 143(3) r.w.s. 147 on dated 26/12/2017 in pursuance of such invalid notice u/sec. 148 is bad in law. We are unable to find any contrary judgment and/or material to contradict the decision of the Id. Commissioner, hence order under challenge in our considered view does not suffer from any perversity, impropriety and/or illegality, consequently the same is upheld.

**6. C.O.No. 20/VIZ/2020**

At the outset, it was observed that in filling of C.O., there is a delay of 68 days as per Registry of ITAT and 63 days as per the Assessee. The Assessee filed a condonation petition.

However the Assessee, during the course of hearing of appeal, has withdrawn the cross objection, therefore there is no need to consider the petition dated 11/06/2021 filed by the Assessee for condonation of delay. Considering the request of the Assessee, the cross objection stands dismissed in limine.

**7.** In the result, appeal filed by the Revenue Department and the cross objection filed by the Assessee stands dismissed.

Order Pronounced in open Court on this 24<sup>th</sup> day of Sep., 2021.

Sd/-  
**(D.S. SUNDER SINGH)**  
Accountant Member

sd/-  
**(N.K. CHOUDHRY)**  
Judicial Member

**Dated: 24<sup>th</sup> Sep., 2021.**

**vr/-**

Copy to:

1. *The Assessee - Smt. Gorrepati Pushpalath, L/H of Gorrepati Raghava Reddy, D.No. 31-23-6, Srinivasa Nilayam, Eluru Road, Maruthi Nagar, Vijayawada.*
2. *The Revenue - ITO, Ward-1(1), Vijayawada.*
3. *The Pr.CIT, Vijayawada.*
4. *The CIT(A), Vijayawada.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.