

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A" BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT BEENA PILLAI, JUDICIAL MEMBER**

**ITA. Nos. 1681 to 1684/Bang/2018
Assessment Years: 2009-10 to 2012-13**

Smt. Rudramma, L/H – Kiran Pandurang, No. 48, 1 st B Main, J.S. Nagar, Saraswathipuram, Nandini Layout, Bangalore – 560 096. PAN: AIJPR6573Q	vs.	The Assistant Commissioner of Income Tax, Circle – 6 (2) (1), Bangalore.
(Appellant)		(Respondent)

Assessee by	:	Shri C.R. Nulvi, CA
Revenue by	:	Shri Senthil .P, JCIT (DR)

Date of Hearing :	18.10.2021
Date of Pronouncement :	08.11.2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals are filed by assessee against the common order of Ld.CIT(A), Bangalore – 6 dated 22/01/2019 for assessment years 2009-10 to 2012-13.

Brief facts of the case are as under

2.1 As per the information received from Director of Income tax (Investigation) Unit-2(4), Bangalore an enquiry was conducted in the case of Mr. Harikumar Jha, S/o Dr. Harihar Jha, Additional Chief Conservator of Forest.

2.2 During the course of verification of Mr.Harikumar Jha and his family members bank accounts Ld.AO noticed that, lot of cash was deposited amounting Rs.2,38,28,000/- and subsequent cash withdrawals on various dates were made. On enquiry for the sources of the cash deposits, Mr.Harikumar Jha stated in his statement dated 03/03/2016 recorded u/s 131 that his wife had entered into an agreement for sale of house property bearing no.160, 14th Block RMV II stage, Bangalore, with Rudramma on 08/05/2009 for an amount of Rs.2,60,00,000/-.

2.3 The investigation team recorded statement u/s 131 of the IT Act from Mr.Kiran Panduranga and Kiran Pandurang has accepted that his mother (Smt. Rudramma) had advanced Rs.2,44,00,000/- to Smt.Vibha Jha for purchase of above property. He also stated that since the deal was not struck due to some reasons his late mother Rudramma received back Rs.1,95,00,000/- in cash. When asked about the sources of cash payments by his mother Late Rudramma to Smt.Viba Jha, Mr. Kiran Pandurang stated that, out of agricultural income. However, he could not produce any evidence/proof for the above of Rs.2,44,00,000/-. Therefore, he accepted that he could not prove the sources of Rs.2,44,00,000/- cash paid by his mother to Smt.Viba

3. The Ld.CIT(A) upheld the addition made by Ld.AO.

Aggrieved by the order of Ld.CIT(A), the assessee is in appeal before us.

4. The Ld.AR submitted that, issues raised by the assessee in all the assessment years under consideration are common and on

identical facts. For the sake of convenience, grounds for A.Y. 2009-10 are reproduced hereinbelow:

“1. The orders of the authorities below are bad in law and against the facts and circumstances of the case.

2. On the facts and circumstances of the case and under the provisions of the law, the Assessing Officer erred in passing order u/ s 143(3) r.w.s 147 in the hands of the appellant without serving a valid notice u/s 148 in the name of the appellant within the time limit in view of section 149 of the Income-tax Act, 1961.

3. On the facts and circumstances of the case and under the provisions of the law, the Hon'ble CIT(A) erred in dismissing the appeal on the ground that the corrigendum issued by the Assessing Officer is curable for the defect in the notice u/s 148, though notice u/s 148 is a statutory notice wherein the assessment year and status of the appellant shall be clearly mentioned. In case if not done so, it is not a curable defect.

4. On the facts and circumstances of the case and under the provisions of the law, the Hon'ble CIT(A) erred in dismissing the appeal without considering the judicial citation relied on by the appellant regarding the validity of a notice u/s 148, wherein the status and name of the appellant is wrongly mentioned.

5. Without prejudice to the above grounds of appeal, on the facts and circumstances of the case and under the provisions of the law, the Assessing Officer erred in issuing a corrigendum for curing the incurable defect in section 148 notice on only one legal heir without serving the notice u/s 148 on the other legal heirs, as the appellant has six legal heirs, in view of section 159.

6. On the facts and circumstances of the case and under the provisions of the law, the liability of legal representative is limited to the value of asset debarred from deceased person. Therefore, the Assessing Officer erred in passing the order on one legal heir for the collection of entire tax demand of the deceased person.

7. On the facts and circumstances of the case and under the provisions of the law, the Assessing Officer and Hon'ble CIT(A) erred in denying the claim of agricultural income, treating it as income u/s 68 without appreciating the fact that the appellant has made elaborative submission regarding the crops grown, yield per acre, market value of crops grown and sales bills. Everything has been submitted which has been accepted by the Assessing Officer at Page no.3 of the Assessment Order.

8. On the facts and circumstances of the case and under the provisions of the law, the authorities below erred in denying the claim of agricultural income by the appellant only on suspicious, surmises and conjectures, as evident from the opinion expressed by the Assessing Officer at Page no.7 and Page no.8 of the Assessment Order.

9. For these and other reasons which may be adduced at the time of hearing, the appellant prays before the Hon'ble Bench to annul the order as there was no valid notice u/s 148 in the name of the appellant

before framing the assessment u/s 143(3) r.w.s 147 and also the defect in statutory notice in respect of status of the assessee and assessment year are not curable defect by corrigendum as held by various constitutional benches.

10. The appellant craves leaves, to add, to alter, to amend and to delete any other grounds at the time of hearing.”

4.1 Before us the Ld.AR submitted that during the assessment proceedings, Ld.AO issued a notice u/s. 148 on 31/03/2016 in the name of Shri Kiran Pandurang by mentioning his PAN. Subsequently, the successor Assessing Officer issued a corrigendum on 13/04/2016 stated as under:-

“In the case of Smt. Rudramma, for the A.Y: 2011-12, it was noticed that income chargeable to tax as escaped assessment within the meaning of section 147 of I.T. ACT,1961. Accordingly, a notice u/s 148 dated 31/03/2016 was issued to the Legal Heir of the assessee Sri. Kiran Pandurang. However, inadvertently the name of the assessee was not mentioned in the Notice u/s 148. Accordingly, the addressee in the notice u/s 148 dated 31/03/2016 may be read as Sri. Kiran Pandurang, Legal Heir of Smt. Rudramma instead of Sri. Kiran Pandurang.”

4.2 The Ld.AR is challenging the validity of notice as no notice has been issued in the capacity of legal heir of Smt. Rudramma with her PAN.

4.3 Another contention raised by the Ld.AR is that Shri Kiran Pandurang is not the only legal heir of Smt. Rudramma. Referring to page 32 of written submissions, he submitted that there are 5 more legal heirs of Smt. Rudramma. He thus argued that the assessment is to be framed in the names of all the legal heirs. He thus submitted that assessment order so passed is bad in law.

4.4 On the contrary, the Ld.Sr.DR submitted that Shri Kiran Pandurang neither objected regarding validity of notice u/s. 148 nor objected regarding validity of assessment order being passed

in the name of only one legal heir. It is submitted that this objection is raised for the first time before this *Tribunal*. He submitted that Shri Kiran Pandurang subsequent to issue of corrigendum participated in the assessment proceedings in the capacity of legal heir of Smt. Rudramma. This is clear from the submissions filed before Ld.AO/CIT(A). The Ld.Sr.DR thus submitted that, the proceedings and assessment order passed can't be invalidated at this stage after wilfully participating in the assessment proceedings and subsequent proceeding before first appellate authority.

We have heard both sides and based on records placed before us. We note that assessee has not filed the details of all Legal heirs before the Ld.AO/Ld.CIT(A). Before us details are placed at page 32. This needs examination at the end of the Ld.AO. The assessee shall cooperate during the proceedings before the Ld.AO. The Ld.AO shall bring all the legal heirs on record and carry out *de novo* assessment in accordance with law.

Accordingly, the grounds raised by assessee stands allowed for statistical purposes.

In the result, appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in open court on 08th November, 2021.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Dated: 08th November, 2021.
/MS/

Copy to

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore