

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC-1" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 224/MUM/2022
Assessment Year: 2019-20**

Estate of Suresh Vallabhji Vora,
201(A), 2nd floor, Unique Centre, 15
Waterfield Road, Bandra West,
400050.

**PAN No. AABAE 5685 M
Appellant**

AO Ward 23(3)(4),
Matru Mnadir, Tardeo Road,
Vs. Mumbai-400 007.

Respondent

Assessee by : Mr. Kirit Sanghvi, AR
Revenue by : Mr. Kiran P. Unavekar, DR

Date of Hearing : 30/05/2022
Date of pronouncement : 30/05/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by assessee against the order dated 23.12.2021 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre [in short 'the Ld. CIT(A)'] for assessment year 2019-20 arising from order u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act') which was passed by

Central Processing Centre, Bangalore. The grounds raised by the assessee are reproduced as under:

1. *The learned CIT(A) erred on facts and in law in passing an ex-parte order under s.250 of the Act without appreciating that due to peculiar facts of the case the PAN of the appellant was blocked, and the appellant was thus prevented from visiting his account on the Portal of the Income-tax.*

Relief claimed: The impugned Order be cancelled or in the alternative the matter be sent back to CIT(A).

2. *The learned CIT(A) erred on facts and in law in holding that the Return for A. Y.2019-20 was rightly processed by the Centralized Processing Centre (CPC) in the status of an Association of Persons without appreciating that the Return was filed by the estate of deceased to which s.168 of the I.T. Act, 1961 applied.*

Relief claimed: The assessment of the appellant be made in the same status as that of the deceased.

3. *The learned CIT(A) failed to recognize that the Executors of the Estate of Late Shri Suresh V.Vora did not form an Association of Persons (AOP) to which the maximum marginal rate of tax applied.*

4. *The learned CIT(A) erred on facts in not recognizing that the PAN allotted to the appellant erroneously contained, as fourth letter, the letter 'A' indicating the status of the appellant as an AOP.*

2. Briefly stated, the facts of the case are that the assessee Late Shri Suresh Vallabhji Vora died and subsequent to his death, his

legal representatives filed return of income in respect of his Estate on 19.10.2019 declaring total income of ₹3,73,040/-. The Ld. Assessing Officer of Central Processing Centre (CPC) Bangalore assessed the total income vide order u/s 143(1) of the Act, at the returned income, however computed tax on income at maximum marginal rate treating the status of assessee as Association of Persons (AOP).

3. Aggrieved, the assessee filed appeal before the Ld. CIT(A) . The Ld. CIT(A) followed the decision of the Hon'ble Supreme Court in the case of **Addl. ITO v. Suseela Sadanandan (1965) 57 ITR 168** (SC) wherein it is held that where a person dies executing a will, appointing one or more executors or dies intestate leaving behind him more than one heir, the Assessing Officer should proceed to assess the total income of the deceased against all the executors or legal representative, as the case of may be. The Ld. CIT(A) also observed that assessee itself has obtained PAN in the status of the AOP. He has further noticed that no submission were filed before

him in support of grounds taken and therefore he decided the appeal *ex-parte* confirming the order of the Ld. AO CPC applying maximum marginal rate of tax.

4. Before us, the Paper Book containing nine pages has been filed by the assessee which inter alia include death certificate of Late Shri Suresh Vallabhji Vora and application for Permanent Account Number in the status of AOP as well as Artificial Judicial Person (AJP).

5. Before us, the Ld. counsel of the assessee submitted that inadvertently the initial application for PAN was made under status of the AOP. However, subsequently assessee has requested for cancellation of PAN as status of the AOP and filed another application for allotting the PAN in the status of the AJP. Due to the request of the assessee for allotting PAN under the AJP, the earlier PAN of the assessee was blocked and thus assessee was prevented from visiting his account on the portal of the Income-tax and therefore, the assessee could not file his submission/response

before the Ld. CIT(A), which has resulted in *ex-parte* order. The Ld. counsel submitted that income being assessed under consideration is belonging to individual and the return was filed by the assessee of the deceased under section 168 of the Act, therefore, same should be assessed in the capacity of individual rather than AOP and accordingly rate of tax as per individual should be applied rather than maximum marginal rate.

6. We have heard rival submissions of the parties on the issue-in-dispute. We have noticed that the assessee was prevented from visiting his account portal due to blocking of PAN. As the assessee has not been represented before the Ld. CIT(A), in the interest of substantial justice, we feel it appropriate to restore the issue back to the Ld. CIT(A) for deciding afresh. The Ld. CIT(A) shall ensure that notices are duly served on the assessee either by the E-mail or other addresses specified under Rule 127 of the Income Tax Rules, 1962 and sufficient opportunity of heard is allowed to the assessee. The

grounds of appeal of the assessee are accordingly allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 30/05/2022

Rahul Sharma, Sr. P.S.

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,

(Sr. Private Secretary)
ITAT, Mumbai

		Date	Initials	
	Original dictation pad is enclosed at the end of file			
1.	Draft dictated on: Computer	31.05.2022		Sr. PS/PS
2.	Draft placed before author:	31.05.2022		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:			
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of dispatch of Order:			