

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 551/CHNY/2020
निर्धारण वर्ष /Assessment Year: 2011-12

Income Tax Officer,
Ward -3,
Vellore.

Shri. Naveen Kumar,
v. L/R of Late Shanmugam
Chandrasekar
17, 13th East Cross Road,
Gandhi Nagar, Katpadi Taluk,
Vellore – 632 006.

(अपीलार्थी/Appellant)

PAN: ALPPC-0202-L
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : None
प्रत्यर्थी की ओर से/Respondent by : Shri Chinthapalli Mehar Chand, JCIT
सुनवाई की तारीख/Date of Hearing : 26.05.2022
घोषणा की तारीख/Date of Pronouncement : 26.05.2022

आदेश /O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the Department is arising out of the order of Commissioner of Income-tax (Appeals)-13, Chennai in ITA No. 176/2018-19/AY2011-12/CIT(A)-13 dated 12.12.2019 against the order of ITO, Ward-3, Vellore passed u/s. 144 r.w.s. 147 of the Income-tax Act, 1961 (herein after referred to as "the Act") dated 26.12.2018.

2. The grounds taken by the Department in the appeal are reproduced as under:

"1. The Order of the learned CIT(A) is contrary to facts and circumstances of the case.

2. The CIT(A) ought to have noticed that since the Hon'ble High Court did not restrain the department from collecting the taxes from the bank A/c or any assets of the deceased assessee that may be detected in future, demand notice issued is held as valid and thus the assessment order also holds good as the assessment was not annulled by the Hon'ble High Court.

3. The Ld. CIT(A) ought to have upheld the assessment order as the main issue relating to writ petition was not setting aside the assessment but restraining the department from collecting the taxes from the legal representative as he did not inherit any assets from the deceased assessee.

4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored."

3. We note that there is a delay of 13 days in filing this appeal by the Department. The order of the Ld. CIT(A) dated 12.12.2019 served on 03.01.2020 and the last date for filing of this appeal was 03.03.2020. There is a delay of 13 days in filing this appeal. The Ld. AO has placed on record the petition for condonation of delay and has explained the reason for delay praying for condonation of this brief delay of 13 days. From the perusal of the records, we find it proper to condone this delay of 13 days and admit the appeal for adjudication.

4. The brief facts are that the case was reopened u/s. 147 of the Act and notice u/s. 148 of the Act was issued to the assessee on 27.03.2018, which was based on the information available in the

system that the assessee had deposited cash of Rs. 10,00,000/- or more in savings bank account during the AY 2011-12. The Ld. AO noted in the assessment order that the assessee expired on 06.06.2018, accordingly, a letter to the legal heir Shri. C. Naveen Kumar was issued for making compliances to complete the assessment proceedings. Since, the legal heir did not respond and file the details, the Ld. AO completed the assessment u/s. 144 of the Act determining the total income at Rs. 90,27,790/-. Aggrieved, the assessee went into appeal before the Ld. CIT(A), who gave his observations and findings as under:

"5. The legal heir of the appellant, Shri. Naveen Kumar filed an appeal before CIT(A)-13, Chennai on 02.02.2019 against the said order. Simultaneously, he has also moved writ petition before the Hon'ble High Court, Chennai vide WP No. 6547 of 2019 and WMP No. 7365 of 2019. The Hon'ble Justice has set aside the impugned assessment order dated 26.12.2018 stating as under:

20. There is no disputation or disagreement that the liability of a legal representative ,under the IT .Act is limited to the extent to which the estate is capable of meeting the liability. To be noted, writ petitioner has not inherited anything from his father and he has/had nothing to do with his father's aforementioned bank account is learned counsel's say.

21. Owing to the peculiar facts and circumstances of this case, with a rider that this case shall .not be cited as a -precedent, the following order is passed:

a) Impugned SCN dated 26.12.2018 bearing reference PAN: ALPPC0202L/2018-19 and the impugned assessment order also dated 26.12:201·8 are set aside.

b) The statement made on oath i.e., affidavit filed in support of the writ petition by the writ petitioner that he has not inherited any assets and deposits from his 'father (assessee) particularly ·ground (f), which has been extracted and reproduced supra is recorded.

c) It is open to the respondent to proceed against the aforesaid Bank Account bearing A/c No.12451930001835,

HDFC Bank, 22, 7th East Cross, Gandhi Nagar, Katpadi, Vellore, IFSC : HDFC0001245 and any other assets of the assessee (Writ petitioner's father), if unearthed and if it comes to light or surface in future..."

5. It is noted that the Ld. CIT(A) held that appeal of the assessee is infructuous in the light of decision of Hon'ble High Court in the Writ Petition filed by the assessee vide WP No. 6547 of 2017 and WMP No. 7365 of 2019. During the course of hearing, a copy of the judgments given by the Hon'ble High Court of Madras dated 08.07.2019 (supra) was submitted by the Ld. Sr. DR. From the perusal of the judgments at para 21, it is noted that the Hon'ble High Court had set aside the impugned order dated 26.12.2018 which is reproduced as under:

"21. Owing to the peculiar facts and circumstances of this case, with a rider that this case shall .not be cited as a -precedent, the following order is passed:

a) Impugned SCN dated 26.12.2018 bearing reference PAN: ALPPC0202L/2018-19 and the impugned assessment order also dated 26.12:201·8 are set aside."
[emphasis supplied by us]

5. Accordingly, respectfully following the decision of the Hon'ble High Court in the assessee's own Writ Petition, we do not find any reason in interfering with the findings given by the Ld. CIT(A). Accordingly, the appeal filed by the Department is dismissed. Before parting, it is brought on record that in the order sheet for the hearing held on 26.05.2022, inadvertently it was mentioned as 'The Appeal of the Department is **Allowed**.' Instead of noting as 'The Appeal of the

Department is **Dismissed.** Accordingly, the word 'allowed is to be read as 'dismissed.'

6. In the result, the appeal filed by the Department is dismissed.

Order pronounced on 26th May, 2022 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

Sd/-

(गिरीश अग्रवाल)

(GIRISH AGRAWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 26th May, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |