

**आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**“C” BENCH, AHMEDABAD**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**  
**AND**  
**MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.1366/AHD/2019**  
**Assessment Year:2012-13**

MD. Gulam Ahmed UmermiyaMalek, Legal Heir of Late UmermiyaChandmiyaMalek, 5C/o S.V. Agrawal& Co., CA 502, MangalMurti Complex, Opp. City Gold Cinema, Ashram Road, Ahmedabad-380009. <b>PAN : BKFPM 4983 E</b>	Vs	The ITO, Ward-3(2)(10), Ahmedabad.
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<b>(Appellant)</b>		<b>(Responent)</b>
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Assessee by :	None.
Revenue by :	Shri V. K. Singh, Sr. DR

सुनवाईकीतारीख/**Date of Hearing** : **19/04/2022**  
घोषणाकीतारीख/**Date of Pronouncement**: **29/06/2022**

**आदेश/O R D E R**

**PER BENCH**

Captioned appeal filed by the Assessee, pertaining to the Assessment Year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-3, Ahmedabad [in short “ld.CIT(A)”]in Appeal No. CIT(A)-3/ITO Ward 3(2)(10)/515/17-18,dated 29.07.2019, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) r.w.s 147of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] dated 27.12.2017.

2. The grounds of appeal raised by the assessee are as follows:

“1. Learned CIT(A)-3 has erred in confirming re-assessment made by AO u/s. 147 of the Act, in as much as:

- i) *On the ground that re-assessment in within 4 years of original assessment u/s. 143(3) of the Act. This is patently wrong there was no assessment u/s. 143(3) and re-assessment is 1<sup>st</sup> assessment. Further Learned CIT(A) has erred in not giving finding on the ground of appeal No. 1 raised by appellant before him.*
- ii) *Notice u/s. 148 dt. 29/03/2017 is issued to dead person. Appellant died on 22/10/2016.*
- iii) *Notice u/s. 148 is affixed at unknown place in village Ramol and not at residence of appellant.*
- iv) *No Notice u/s. 148 is served on legal heirs of appellant.*
- v) *AO had for re-opened of assessment, made base that appellant did not file return. In fact appellant had filed return u/s. 139. Re-open is on wrong facts.*
- vi) *The JCIT has not recorded satisfaction in granting approval.*

2. *Learned CIT(A) has erred in confirming the addition made by AO of Rs.59,15,400 (2,46,00,000 – 1,86,84,600) u/s. 50C to the sale consideration by rejecting.*

i) *Notarized Banakhat Dt. 18/03/2011 under which payment by account payee cheque was received. The original Banakhat was produced by AO with reply dt. 21/12/2017 of Show Cause Notice.*

ii) *The jantri value was decided in case of appellant by Deputy Collector vide letter dt. 09/03/2011 at Rs.3,73,69,200 ½ share at Rs.1,86,84,600.*

3. *Learned CIT(A) has erred in confirming the rejection made by AO not following the decision of jurisdictional Ahmedabad ITAT in case of Dharamshibhai Sonani vs CIT, ITA No. 1327/AHD/2013.*

4. *Learned CIT(A) has erred in confirming the non-allowance of cost of improvement of Rs.3,25,000 (1/2 Share of Rs.6,50,000) though all the details were furnished to AO.*

5. *Learned CIT(A) had erred in not allowing the cost of M.V as on 01/04/1981 as per registered valuer's report. The AO had adopted cost as per valuation report of AVO which is subject to various defects and adjustments."*

3. None appeared on behalf of the assessee, despite of issuance of notice of hearing. We have heard Ld. Senior DR for the Revenue and note that assessee has died on 22.10.2016 and notice under section 148 of the Income Tax Act was issued on 29.03.2017 after the death of the assessee. Hence, we note that this issue is covered by the judgment of the Hon'ble Jurisdictional High Court of Gujarat in the case of Jaydeepkumar Dhirajlal Thakkar vs. ITO, 401 ITR 302 (Guj.) wherein it was held that if the Assessing Officer issued the notice on deceased person and continued the assessment proceedings, the assessment proceedings would be vitiated and assessment order made on such dead person is null and void in the eyes of law, therefore addition made by the Assessing Officer does not have any leg to stand. However, Ld. Sr-DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer and supported the findings of Assessing Officer.

4. We have heard Ld. DR for the Revenue and noted that issue under consideration is no longer *res integra*; it is covered by the judgment of the Hon'ble Jurisdictional High Court of Gujarat in the case of Jaydeepkumar Dhirajlal Thakkar (supra) wherein it was held as follows:

*“10. On behalf of the respondent, reliance was placed upon section 159 and section 292B read with section 292BB of the Act. Insofar as the provisions of section 159 of the Act are concerned, this court in the above decision has held that the same would not be applicable where the assessee had passed away and the notice has not been issued in favour of the heir of the deceased. On a plain reading of section 159 of the Act, it is apparent that for the purpose of making an assessment, (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of subsection (1) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative. Therefore, in the light of the provisions of section 159 of the Act the proceedings are required to be initiated against a legal representative and not against the deceased. The impugned notice under section 148 of the Act is therefore, not in consonance with the provisions of section 159 of the Act.*

*11. Insofar as the provisions of section 292B of the Act are concerned, the same would not be applicable in the facts of the present case. As regards section 292BB of the Act, the same provides that where an assessee appears in any proceeding and cooperates in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provisions of the Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under the Act that the notice was – (a) not served upon him; (b) not served upon him in time; (c) served upon him in an improper manner. The proviso thereto says that nothing contained in the section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment. In the present case, apart from the petitioner is not the assessee, the petitioner has raised objection before completion of the reassessment and, therefore, the provisions of section 292BB would not be applicable in the facts of the present case.*

*12. In the light of the above discussion, the impugned notice under section 148 of the Act having been issued against a dead person, is a nullity and cannot be sustained. The petitioner, therefore, succeeds and is accordingly allowed. The impugned notice dated 30.03.2017 issued against late Shri Dhirajlal Dayalji bhai Thakkar, father of the petitioner, for assessment year 2010-11 is hereby quashed and set aside. RULE is made absolute accordingly.”*

5. Therefore, respectfully following the binding judicial precedent of the Hon'ble jurisdictional High Court in the case of Jaydeepkumar Dhirajlal Thakkar (supra), we quash the re-assessment proceedings initiated by Assessing Officer.

6. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous, therefore, we do not adjudicate them.

7. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open court on 29<sup>th</sup> June, 2022.**

Sd/-  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

Sd/-  
**(Dr. A. L. SAINI)**  
**ACCOUNTNAT MEMBER**

Ahmedabad, dated 29/06/2022

*SAMANTA /TANMAY*

TRUE COPY

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad