

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
श्री जार्ज माथन, न्यायिक सदस्य एवं श्री अरुण खोड़पिया लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.106/CTK/2020
& CO No.01/CTK/2022**

(निर्धारण वर्ष / Assessment Year :2009-2010)

ACIT, Circle-2(1), Cuttack

.....Revenue

Versus

Shri Damodar Agarwal LR. of Late Basudev Agarwal
Mangalabag, Bagha Mangala Lane,
Cuttack-753002

PAN : ABOPA 1919 M

.....Assessee

Shri S.N.Sahu, Advocate for the assessee

Shri M.K.Gautam, CIT-DR for the Revenue

Date of Hearing : 16/09/2022

Date of Pronouncement : 16/09/2022

आदेश / O R D E R

Per Bench :

This is an appeal filed by the revenue against the order of the CIT(A), Cuttack, dated 28.11.2019 passed in I.T.Appeal No.0640(A)/2016-17, for the assessment year 2009-2010.

2. It was submitted by the Id. CIT-DR that notice u/s.148 of the Act came to be issued on 29.03.2016 in the name of Shri Basudev Agarwal. There was no compliance. Subsequently, on 15.09.2016 one CA, namely, Shri B.K.Tibrewal appeared before the Id. AO and informed that Shri Basudev Agarwal had expired on 06.03.2015 i.e. before issuance of

notice u/s.148 of the Act. Shri B.K.Tibrewal, CA had also filed a letter dated 15.09.2016 enclosing the death certificate and a letter addressed to the ITO Ward-2(1),Cuttack, dated 09.04.2015, which contains the signature of staff working in the office of the ITO Ward-2(1), Cuttack. The said letter showed the intimation of the demise of Shri Basudev Agarwal along with death certificate. The said letter dated 09.04.2015 did not contain the seal of receipt by the department. It was the submission that the letter dated 09.04.2015 is questionable as the original is also not available in the file of the AO. The said letter signed by a staff working in the office of ITO Ward-2(1), Cuttack was produced for the first time on 15.09.2016 by the CA Shri B.K.Tibrewal. Consequent to the information, the AO issued a letter to the legal heirs of late Shri Basudev Agarwal on 24.11.2016 intimating about the notice issued u/s.148 of the Act in respect of late Shri Basudev Agarwal and to cooperate in the assessment proceedings. There was no cooperation from the legal heirs side and consequently the assessment came to be completed ex-parte u/s.144 of the Act on 13.12.2016. It was the submission that the Id. CIT(A) annulled the assessment on the ground that the notice has been issued on a deceased assessee. The Id.CIT-DR placed before us a letter mentioning that the PAN of late Shri Basudev Agarwal is still active and no action has been taken to cancel the PAN. The letter is extracted as under :-



भारतसरकार
GOVERNMENT OF INDIA
आयकर निदेशक कार्यालय(लेखा परीक्षा)
OFFICE OF THE COMMISSIONER OF INCOME TAX (AUDIT & ITAT)
तृतीय मंजील, आयकर भवन आनेक्सी, राजस्व विहार,
3RD FLOOR, AAYAKAR BHAWAN ANNEXE, RAJASWA VIHAR,
भुवनेश्वर- 751007 / BHUBANESWAR - 751007
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आआ/ ले. प./भू./2022-23/CIT (Audit & ITAT)/BBSR/2022-23/

भुवनेश्वर दिनांक/ Dated, Bhubaneswar the 23rd May, 2022

To

The Registrar,
ITAT, Cuttack

Sir,

Sub:- Appeal in the case of Basudev Agarwal (PAN No. ABOPA1919M) for AY 2009-10 - regarding.

In this case, the CIT(Appeal) has observed that any income tax proceedings initiated by serving a notice on dead person is invalid and a nullity in the eyes of the law. Consequently, the proceedings initiated u/s 147 for the instant case have been rendered vide ab initio and the CIT(Appeal) has deleted all the additions made in the order u/s 147 dated 30.12.2016.

2. Perusal of assessment order shows that notice u/s 148 of the Act was issued on 29.03.2016. Till the month of October, 2016 there was no response of the assessee. A notice u/s 142(1) of the Act dated 03.10.2016 was issued fixing the hearing on 17.10.2016. None attended on the same date. On 23.11.2016, Shri B. K. Tibriwala, AR of the assessee appeared and furnished a written submission stating that the assessee, Shri Basudev Agarwal expired on 06.03.2015 and furnished a death certificate in this regard. Further, a copy of the above information acknowledged by a staff of the ITO, Ward 2(1), Cuttack regarding the death of the assessee was submitted. Thereafter, the AO issued a fresh notice u/s 148 dated 24.11.2016 to the legal heir of the assessee and continued the reassessment proceedings.

3. The CIT(Appeal) in his order dated 28.11.2019 has held that the AO's action in issuing a fresh notice u/s 148 to the legal heir treating the original notice u/s 148 issued to the deceased person as a 'mistake' which can be cured by seeking refuge u/s 292B/292BB, is not correct. As per the CIT(Appeal), Section 292BB can't be invoked to correct a foundational error which the AO committed in serving a notice u/s 148 on a dead person.

4. The CIT(Appeal) in his order observed that a communication in respect of the death of the assessee, Shri Basudev Agarwal was duly communicated to ITO, Ward 2(1), Cuttack as per the provisions of section 176(3) of the Act and the PAN of the deceased assessee was also successfully blocked. Hence, as per the CIT(Appeal), the fact of the death of the assessee was in the possession of the Income Tax Department at the time when notice u/s 148 dated 29.03.2016 was issued to the deceased assessee. The moot point remains as to whether the fact of the assessee was known to the AO while issuing notice u/s 148 on 29.03.2016. The Department's contention is that it was definitely not within the knowledge of the AO regarding the fact of the communication of the death of the assessee, purportedly given by the legal heir. The other fact that PAN was successfully blocked is blatantly false and misleading. The status of the PAN has been retrieved from the system by the Asst. Director, System, Shri Sukumar Mishra, who has intimated that the PAN No. ABOPA1919M belonging to the deceased assessee, Basudev Agarwal is active as of now and is lying with Circle 1(1), Cuttack. In fact, no request has ever been made either to the AO or to the System Directorate to change the status of the assessee to 'Deceased'. The requisite screen shot in this regard is enclosed in the Annexure.

5. The AR in his Paper Book from Page 44 to 46 has given the copy of the PAN belonging to Basudev Agarwal, the details of the e-filing done by the legal heir. No heir does it so that Basudev Agarwal, having PAN No. ABOPA1919M is deceased.


Consequently, the AO has having no means to know the status of the assessee as deceased.

6. Had the status of the deceased assessee was known to the Department, no prudent AO would have issued a notice u/s 148 of the Act to the dead person. It is very clear that 148 notice was issued to Basudev Agarwal with a presumption that he was alive. It is very relevant to mention here that had the AO known the status of the assessee before 31.03.2016 (the AR should have intimated this fact to the AO before 31.03.2016), he would have issued a notice u/s 148 of the Act to the legal heir in the first instance itself. Consequently, the assessment proceedings would not have faced the legal infirmity as it is facing now. The Department is of the firm view that it is the failure of the AR/legal heir which has put the Department in a precarious position and as a result, the Department is losing precious revenue to the tune of Rs.2.53 crore.

7. Against this background, the prayer of the Department before the Hon'ble ITAT is to affirm the validity of the proceedings u/s 147 of the I.T Act and further, to decide the merits of the addition involved in this case.

Yours faithfully,

Encls: As above


(एम.के.गौतम / M. K. Gautam)
आयकर आयुक्त(लेखा परीक्षा व आई. टी.ए.टी)
Commissioner of Income Tax(Audit & ITAT)
भुवनेश्वर / Bhubaneswar

PAN Details		Representative Assessee Details		Event Details	
PAN Key Details					
PAN	ABOP1919M	AO Popular Name	DOT CIRCLE 111, CUTTACK	AO Code	BBN-C-4-3
Status	INDIVIDUAL	Title	Shri		
Assessee First Name	BASUDEV	Middle Name		Surname	AGARWAL
Father's First Name	LALCHAND	Middle Name		Surname	AGARWAL
Mother's Name					
DOB / DOI	15/03/1999	Sex	Male		
PAN Address Details					
Office Address	AGARWAL TRANSPORT CORPORATION, MANGALABAG CUTTACK, Orissa 753002				
Residence Address	BAGHA MANJOLA LANE, MANJOLA BAG, CUTTACK, Orissa 753003				
Communication Address	<input type="radio"/> Residence Address <input checked="" type="radio"/> Office Address				
PAN Other Details					
Form Type		Name on Card		Other Name	
Verifier Name		Verifier Place		Verifier Capacity	
Date of Allotment	05/03/1999	Telephone No.	9	Email ID	
Registration No.	8/3/1999	Source of Income	Business	Business Profession Code	
PAN Duplication Status	Active	<input type="checkbox"/> KYC Compliant		<input checked="" type="checkbox"/> Indian Citizen Flag	
UID Verification Flag		UID		<input type="checkbox"/> Not Case	
					Active

3. It was the submission that the notice was validly issued and the order of the Id.CIT(A) was required to be reversed.

4. In reply the Id. AR vehemently supported the order of the Id CIT(A) and read out the order of the Id. CIT(A). It was submitted that at page 44 of the paper book the screenshot of the legal heirs request details were available in which late Shri Basudev Agarwal and his PAN has been shown as the details of the deceased assessee. The said screenshot is as follows :-

The screenshot displays the 'Legal Heir Request Details' page on the e-Filing portal. The page includes a header with the e-Filing logo and navigation links. The main content is divided into two sections: 'Deceased Assessee details' and 'Legal Heir Details'.

Deceased Assessee details	
PAN	ABOPA1919M
Name	BASUDEV AGARWAL
Date of Birth	16/10/1931
Legal Heir Details	
Heir PAN	ADIPA0029L
Heir Full Name	DAMODAR AGARWAL
Heir Date of Birth	02/07/1969
Comments	APPROVED
Approval Date	25/01/2016

At the bottom of the table, there is a 'Back' button.

5. Ld. AR also certified the said screenshot to be true.

6. Further attention was drawn to page 43 which was a screenshot of the legal heir list wherein the deceased PAN is also mentioned and the same has been submitted on 25.01.2016. The copy of the said screenshot is extracted as under :-

S.No.	Transaction ID	Deceased PAN	Status	Request Type	Legal Heir Type	Submitted On
1	2738668231	ABOPA1919M	Approved	New Request	Permanent	25/01/2016

7. It was the prayer that the order of the Id. CIT(A) is liable to be upheld.

8. We have considered the rival submissions.

9. At the outset, the fact remains that Shri Basudev Agarwal expired on 06.03.2015. This is undisputed fact. A letter has been filed by one CA Shri B.K.Tibrewal on 15.09.2016 intimating the AO that Shri Basudev Agarwal is not more and that his PAN is to be closed. Now, the question is when the revenue is now placing before us the screenshot mentioning that the PAN is still active, then how can an assessment be done in the name of legal heirs of the deceased. If the stand of the revenue is that the PAN is active, then the assessment is invalid because the assessment has been done on the wrong persons. The alternative would be the assumption that the AO has been rightly intimated that Shri Basudev Agarwal is no more, in such a situation the option is to initiate fresh assessment in the case of the LRs of the deceased. This should require to issue fresh notice u/s.148 of the Act. This has not been done. Had Shri Basudev Agarwal expired in the course of the assessment proceedings, then the letter issued by the Id. AO on 24.11.2016 would have kept the proceedings alive. But the fact remains that Shri Basudev Agarwal

expired on 06.03.2015 much before the notice u/s.148 of the Act was issued being on 29.03.2016. We are also carried by the fact that in the legal heirs list the screenshot which has been extracted the deceased PAN is shown as that of Shri Basudev Agarwal and as per the screenshot the said request has been submitted as early as on 25.01.2016, this is also before the issuance of notice u/s.148 of the Act in the name of late Shri Basudev Agarwal, therefore, it cannot be said that there was an afterthought on the part of the legal heirs of the assessee to circumvent the proceedings. This being so, we are of the view that the order of the Id. CIT(A) is liable to be sustained and we do so.

10. As we have already dismissed the appeal of the revenue, the cross objection filed by the assessee also stands dismissed as infructuous and we are not going into the technicalities raised in the cross objection.

11. In the result, appeal of revenue and the cross objection of the assessee, both are dismissed.

Order dictated and pronounced in the open court on 16/09/2022.

Sd/-
(अरुण खोड़पिया)
(ARUN KHODPIA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-
(जार्ज माथन)
(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 16/09/2022

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
ACIT, Circle-2(1), Cuttack
2. प्रत्यर्थी / The Respondent-
Shri Damodar Agarwal LR. of Late
Basudev Agarwal Mangalabag, Bagha
Mangala Lane, Cuttack-753002

3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack