

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 1179/MUM/2022
(Assessment Year 2017-18)

Mohammad Sharif Siddiqui
(Through legal Heir Suhail
Siddiqui)
4A, Ground Floor,
Essa Sumer Bldg., 2nd,
Ghelabhai Street, Mumbai
Central,
Mumbai- 400 008

Vs.

ITO-20(2)(1)
Room No. 216, 2ndFloor,
Piramal Chambers,
Lalbagh Parel, Mumbai-
400 012

(Appellant)

(Respondent)

PAN No. BNQPS3447H

Assessee by : None
Revenue by : Shri. Sanjeev Kashyap, (CIT
DR)

Date of hearing: 11.10.2022.
Date of pronouncement : 29.12.2022.

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by Mr. Suhail Siddiqui in ITA No.1179/Mum/2022 against the revisionary order passed by the Pr. Commissioner of Income Tax under Section 263 of the Income-tax Act, 1961 (the Act) in the name of Late Mr. Mohammad Sharif Siddique for A.Y. 2017-18 on 29th March, 2022 wherein the learned PCIT held that assessment order passed under Section 143(3) of the Act dated 17th December, 2019 determining the total income

of the assessee at ₹22,30,740/- by the learned Assessing Officer, ward 20(2)(1), Mumbai (the learned Assessing Officer) is erroneous and prejudicial to the interest of the Revenue.

02. This appeal is filed by the legal heir of late Mr. Mohammad Sharif Siddique (the assessee).
03. Brief facts of the case shows that assessee is an individual who filed his return of income for A.Y. 2017-18 on 29th July, 2017 declaring total income of ₹3,20,740/-. The case was selected for limited scrutiny. The learned Assessing Officer noted that during the course of assessment proceedings that assessee expired in the month of January, 2019, the legal heir filed the submission during the course of assessment proceedings and subsequently, the assessment order was passed wherein the addition of ₹19,10,000/- was made in the hands of the assessee as unexplained money, being cash deposited in the assessee's bank account. The assessment order was passed on 17th December, 2019 in the name of late Mr. Mohammad Sharif Siddique determining total income of ₹20,30,740/-.
04. The learned PCIT on examination of the record that the learned Assessing Officer has failed to initiate the penalty proceedings under Section 271AAC of the Act. Pursuant to that show cause notice was issued under Section 263 of the Act on 24th February, 2022 in the name of late Mr. Mohammad Sharif Siddiqui . Legal heirs responded by filing a letter dated 4th March, 2022. The learned PCIT rejected the explanation of the assessee and held that the non



initiation of penalty under Section 271AAC of the Act by the learned Assessing Officer rendering the order erroneous and prejudicial to the interest of the Revenue. He directed the learned Assessing Officer to initiate the penalty proceedings under Section 271AAC of the Act. He passed the order under Section 263 of the Act in the name of Mohammad Sharif Siddique.

05. The legal heir of the assessee is aggrieved with the above order and filed this appeal. The first ground raised is that the 263 order is invalid as same is passed in the name of deceased person. It was also stated that assessment order is also passed in the name of dead person.
06. At the time of hearing, none appeared on behalf of the assessee. Therefore, this appeal is decided on the basis of information available on record.
07. The learned CIT Departmental Representative supported the order of the order of the learned PCIT.
08. We have carefully considered the contentions of the learned CIT Departmental Representative and also perused the orders of the lower authorities. In the assessment order itself, the learned Assessing Officer has mentioned that he has come to know through e-portal that assessee has expired in the month of January, 2019. Despite this fact, the assessment order was passed in the name of late Mr. Mohammad Sharif Siddique on 17th December, 2019. This order was revised by the learned PCIT on 29th March, 2022 by an order passed under Section 263 of the Act. This order was also passed in the



name of deceased assessee. The factum of the death of the assessee in the month of January, 2019 is mentioned in the assessment order itself. Despite this fact, the learned PCIT passed the order in the name of deceased assessee. Further, the notice for hearing under Section 263 of the Act dated 24th February, 2022 was also issued in the name of dead person. Thus, where the notices were issued to the assessee under Section 263 of the Act after his death the notice could not have been validly served upon the assessee, therefore, said notices are invalid and liable to quash. The assessment order framed under dead person is also liable to be quashed. Consequently, the order under Section 263 of the Act also passed on the dead person is liable to be quashed.

09. In view of this, we have no hesitation in quashing the order passed under Section 263 of the Act. Accordingly, the appeal of the assessee is allowed.
010. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 29.12.2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.12.2022

Sudip Sarkar, Sr.PS

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai