

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH, VARANASI**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.96/VNS/2020
Assessment Year: 2009-10**

Late Raghawendra Pratap Singh, L/H Geeptha Singh (Wife), C-53-54, Shivlok Tower, Lanka Varanasi-221005 PAN-AHBPS8614A	vs.	Deputy Commissioner of Income Tax, Circle-2, Varanasi
(Appellant)		(Respondent)

Appellant by:	Sh. Ashish Bansal, Advocate
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	11.01.2023
Date of pronouncement:	11.01.2023

ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 05.12.2018 of CIT(A) for the assessment year 2009-10.

2. The learned AR of the assessee has filed the death certificate of the assessee certifying the death on 18.12.2020 alongwith the amended Form No. 36 whereby the legal heir of the assessee is brought on record. The same is taken on record. Accordingly, the assessee is substituted through his legal heir Smt. Geeta Singh (wife). The legal heir has also filed the revised grounds of appeal which reads as under:-

"1. BECAUSE the proceedings initiated under section 147 of the Act by the issuance of notice dated 30.03.2016 under section 148 has neither

been validly initiated nor concluded in accordance with law, the entire proceedings are vitiated.

2. BECAUSE merely deposit in the regular bank account by the appellant cannot be the 'material' so as to invoke reassessment proceedings under section 147 of the Act.

3. BECAUSE the Id. Assessing Officer has erred in law and on facts in initiating proceedings under section 147 of the Act, as the same had been initiated merely on the basis of deposits in his regular bank account and no 'material' of adverse nature having been found against the appellant.

WITHOUT PREJUDICE TO THE AFORESAID

4. BECAUSE the authorities below have erred in law as well as on facts in adding Rs.10,92,465/- by invoking section 68 of the Act, to the returned income disclosed by the appellant as the amount deposited by the appellant in his regular bank account were out of duly disclosed sources, without having brought on record any adverse material against the appellant, the addition made is wholly erroneous and bad.

5. BECAUSE the submission made by the appellant during the course of assessment proceedings was duly substantiated from the books of account and other records, the authorities below has added sums aggregating to Rs.10,92,465/- merely on the basis of 'presumption' and 'assumption'.

6. BECAUSE the appellant after having made by submission for the source of deposits in his bank account the onus had shifted to the other side which remained uncontroverted on this score only the appeal of the appellant deserves to be allowed and the addition so made is liable to be deleted.

7. BECAUSE the premise on which addition under section 68 has been made by the Id. Assessing Officer being;

i) appellant has withdrawn cash in amount of Rs.10,000/- to Rs.15,000/- on multiple dates however, it is not justifiable for him to deposit huge cash deposits of Rs.1,00,000/- to Rs.2,00,000/- per month;

ii) idea of withdrawing small amounts of cash on multiple dates from the company and then depositing into another bank account does not make sense;

iii) any person is expected to spend on its daily expenses, food, running of house hold and expenses to maintain a certain standard of living and these expenses are mostly done in cash;

iv) on perusal of frequency of withdrawals from Alaknanda Hospital P. Limited, it can be appreciated that frequent withdrawals may easily corroborate to daily living expenses incurred by the Doctor

v) in this present case, only source of cash for assessee is through withdrawals from Alaknanda Hospital P. Limited;

vi) it is impossible to lead a living, that too of a famous doctor like him, without incurring any expenses on his living Hence, it is safe to decline that the cash withdrawals from Alaknanda Hospital P. Limited were used by the assessee for his daily expenses and the deposits in Canara Bank are nothing but his unaccounted income for which the assessee has failed to provide any satisfactory explanation;

is merely on the basis of the farfetched approach of the Id. Assessing Officer which is not admissible in fiscal law.

8. BECAUSE apart from withdrawal from Alaknanda Hospital P. Limited, the appellant has a cash receipt of Rs.3,25,000/- from the profession and the drawings during the year itself was sufficient enough to maintain his daily expenses, presumption made by the Id. Assessing Officer for invoking section 68 is wholly erroneous and accordingly the addition of Rs. 10,92,465/- deserves to be deleted by this Hon'ble court.

9. BECAUSE the ex-parte assessment order dated 05.12.2018 passed by the CIT(A) is bad and due to lack of effective and proper opportunity of being heard to the appellant.

10. BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice."

3. At the outset, learned AR of the assessee has pointed out that the CIT(A) has dismissed the appeal of the assessee in limine for non prosecution without adjudication of the same on merits. Thus, he has pleaded that the impugned order of the CIT(A) may be set aside and the matter may be remanded to the record of

the CIT(A) for fresh adjudication on merits. The learned Sr. DR has raised no objection if the matter is remanded back to the record of the CIT(A) for adjudication on merits.

4. Having considered the rival submissions and careful perusal of the impugned order, we note that the CIT(A) recorded the facts of issuing the notice to the assessee and there was no response or attendance on behalf of the assessee despite various notices. Accordingly, the CIT(A) dismissed the appeal of the assessee in para 4 and 5 as under:-

"4. During the appellate proceedings also, no arguments have been presented by the appellant despite various notices issued. Therefore, so far as the appeal under consideration is concerned, since, the Grounds of Appeal are not explained / substantiated even after repeated opportunities, the appeal of the appellant is hereby dismissed and all the Grounds of Appeal are decided against the appellant and the order of the A.O. is upheld.

5. Under these circumstances, in my considered opinion, assessee is not interested in prosecuting the appeal. As such I hold that this appeal is liable to be dismissed for non prosecution. In this regard, we place reliance upon following case laws:-

- 1. CIT vs. Multiplan India Ltd. 38 ITD 320 (Del)*
- 2. Estate of Late Tukojirao Hekar vs. CWT 223 ITR 480 (M.P.)*
- 3. New Diwan Oil Mills vs. CIT (2008) 296 ITR 495 (P&H)*
- 4. CIT vs. B.N. Bhattachargee And Another 118 ITR 461(SC)*

Therefore, considering the above factual and legal position, the appeal filed by the appellant is dismissed for non prosecution."

5. Thus, it is manifest from the impugned order of the CIT(A) that the appeal of the assessee was dismissed for non prosecution summarily without giving the finding on the merits of the issue raised by the assessee before the CIT(A). Hence, the impugned order passed by the CIT(A) is not in accordance of the provisions of section 250 and 251 of the Income Tax Act. Accordingly, the impugned order of the CIT(A) is set aside and the matter is remanded to the

record of the CIT(A) for fresh adjudication after giving opportunity of hearing to the assessee.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court after a conclusion of hearing on 11.01.2023 at Varanasi which is reduced in writing and signed on the date indicated below.

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 12/01/2023

Varanasi

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Copy forwarded to:

1. Appellant- Late Raghawendra Pratap Singh, L/H Geepta Singh (Wife), C-53-54, Shivlok Tower, Lanka Varanasi-221005
2. Respondent-Deputy Commissioner of Income Tax, Circle-2, Varanasi
3. CIT(A), Varanasi
4. CIT
5. DR

By order
Sr. P.S.