

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.8593/Del/2019
[Assessment Year : 2011-12]**

Salochna Devi, L/H of Rakesh Koshik, B-7/209, First Floor, Sector-4, Rohini, Delhi-110085. PAN-BBRPK1918C	vs	ITO, Ward-37(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri N.S.Bhatnagar, Adv.	
Respondent by	Ms. Maimun Alam, Sr.DR	
Date of Hearing	02.02.2023	
Date of Pronouncement	14.02.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2011-12 is directed against the order of Ld. CIT(A)-13, New Delhi dated 01.08.2019.

2. The assessee has raised following grounds of appeal:-

1. *"That the Assessment Order and the Appellate Order in the name of the deceased (Rakesh Koshik) is illegal and the assessment order deserves to be quashed.*
2. *That the assumption of the jurisdiction u/s 147/148 in the absence of proper service of notices of the assessee, is illegal and without jurisdiction and deserves to be quashed.*
3. *That the Ld. CIT (A) erred in law in rejecting the appeal merely on surmises and conjectures against the facts of the case.*
4. *That the Ld. CIT (A) erred in law and on the facts of the case confirming the order u/s. 147/148 in the absence of proper service u/s. 147/144. She further erred in ignoring that the two notices alleged to have been served were available on file and wrongly presuming the services of these notices. She further erred in treating*

the assessee in default in complying with the notice u/s. 142 (2) issued to the deceased person.

5. *That the learned CIT erred in law in confirming the additions' of Rs.23,09,100/- against the communication received from the bank in response to notice u/s. 133 (6) of I.T. Act issued by the ITO and responded by the concern bank.*
6. *That in facts and circumstances of the case the Assessment Order deserves to be quashed and consequent additions made deserves to be deleted.*
7. *That in facts and circumstances of the case, the appellant craves permission to develop, submit additional grounds and material evidence, be permitted during the course of hearing.”*

3. Facts giving rise to the present appeal are that the assessee is a legal heir of Shri Rakesh Kausik (Rakes Kosik), S/o-Shri Chanda Kosik. The case of the assessee was re-opened u/s 147 of the Income Tax Act, 1961 (“the Act”), on the basis of AIR information available on record, the assessee had made cash deposit of Rs.70,62,000/- in his saving bank account with Canara Bank and Punjab National Bank. In response to the statutory notice, no one attended the proceedings on behalf of the assessee. The Assessing Officer (“AO”) therefore, treating the cash deposits of Rs.17,81,000/- and interest income of Rs.5,28,100/- as unexplained income hence, made addition of Rs.23,09,100/- and assessed the income of the assessee at Rs.23,09,100/-.

4. Aggrieved against the findings of AO, the assessee carried the matter before Ld.CIT(A) who after considering the submissions, dismissed the appeal of the assessee and sustained the addition.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Ld. Counsel for the assessee submitted that the orders passed by the authorities below, are illegal and *ab-initio* void as the same have been passed in the name of a dead person. Ld. Counsel for the assessee drew my attention to the Death Certificate furnished by the assessee. Ld. Counsel for the assessee submitted that in respect of the merit of the addition, the assessee was not given sufficient opportunity of hearing.

7. Ld.Sr.DR supported the orders of the authorities below and submitted that when the proceedings were initiated, deceased Shri Rakesh Kausik was alive. He placed reliance on the provision of section 159 of the Act and submitted that the proceedings would be deemed to be taken against the legal representative.

8. In re-joinder, Ld. Counsel for the assessee submitted that before proceedings against the legal representative, the AO was required to give a notice but in this case, the assessment order has been passed in the name of a dead person. This action of the AO is *ex-facie*, illegal and contrary to settled law.

9. I have heard Ld. Authorized Representatives of the parties and perused the material available on record. I find that impugned assessment order is in the name of Shri Rakesh Kausik, son of Shri Chanda Kosik, R/o- B-7/209, First Floor, Sector-4, Rohini, Delhi-110085, died on 16.09.2018 much prior to the passing of the impugned order. The assessee had taken a specific ground before Ld.CIT(A) that the assessment is nullity as the assessment was framed in the name of dead person. However, Ld.CIT(A) did not advert to this issue in right perspective. The findings of Ld.CIT(A) are reproduced as under:-

Findings:-

- 4.1. *"I have considered the material on record Including oral and written arguments/submissions of the appellant/AR and the (impugned) assessment order.*
- 4.2. *On the basis of AIR information the AO gathered that the appellant had made cash deposit of Rs. 70,62,000/- in Canara Bank and Punjab National Bank during the year. As per records available no ITR was filed. After recording this satisfaction notice u/s 148 was issued and served. Despite several opportunities offered by AO, there was no compliance by the appellant. The AO issued notices u/s 133(6) to both the banks. It was noted that there were cash transactions of Rs.17,81,000/- and term deposits were amounting to Rs. 52,81,000/-. In the absence of any explanation the AO held that the cash deposit of Rs. 17,81,000/- and 10% of the term deposit of Rs. 52,81,000/- i.e. Rs. 5,28,100/- was to be added to the income of the assessee and accordingly the total taxable income was determined that Rs. 23,09,100/-. Since, the appellant expired during the course of proceedings, they were continued against the legal representative Smt. Sulochna Devi (his wife). This is in conformity with the provisions of section 159(2)(a) of the Act.*
- 4.3. *The appellant has challenged the assessment order and filed an appeal in Form 35. During appellate proceedings, it has been submitted that on inspection of the Department's file, there was no proof of service of the notice u/s 148 as both the copies of the notice were available on file at the time of inspection. The assessment record was called for to examine this issue. It is noted that no doubt there are two notices u/s 148 with original signatures dated 29.03.2018 but the speed post dispatch numbers are different, namely ED706645-6041N and ED7066457371N. The 148 notice bearing dispatch number ED7066457371N was found to have been booked by the postal department on 31.03.2018 at 16:16:38 hours and delivered to the addressee on 02.04.2018 at 19:47:00 hours as per the track consignment report. Hence, the appellant's argument*

regarding non service of the notice is not borne out by records and therefore dismissed.

4.4. *The appellant has denied the details of cash deposits and term deposit referred to in the assessment order. However, a close perusal of the individual transaction statement submitted by the appellant shows that the name of the appellant Sh. Rakesh Kausik (Rakes Kosik) shows him to be the son of Sh. Chanda Kosik which is not denied by the appellant. Hence, a bald denial of a document does not prove or establish the claim of the appellant. Accordingly, the addition of Rs. 23,09,100/- made by the assessing officer does not call for any interference and is accordingly confirmed.”*

10. From the above finding, it is clear that there is a contradiction in the finding of Ld.CIT(A) and the assessment order. In the assessment order, AO has not stated that the proceedings were continued against the legal heir nor there is any mention of passing away of the assessee. Under these facts, the impugned order is hereby, set aside and restore the grounds to the file of Ld.CIT(A) to decide it afresh. Ld.CIT(A) would verify the fact whether during the pendency of assessment proceedings, any notice was served upon to the legal heir after the death of the assessee i.e. Shri Rakesh Kausik. Ld.CIT(A) would also verify the correct name of the assessee as mentioned in the assessment order wherein the name is written as “Rakesh Kosi”. Thus, grounds raised by the assessee are allowed for statistical purposes.

14. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 14th February, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI