

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'C' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 3164/Mum/2022 (A.Y. 2010-11)

Parmanand Jamnadas Kapadia (Legal Heir Mr. Harit P. Kapadia) 61-D, Madhav Bhuvan, 2 nd Floor Khadilkar Marg, C.P. Tank Mumbai-400 004. PAN : ASHPK9745K (Appellant)	Vs.	ITO, Ward-19(2)(5) Room No. 210 Tardeo Road Matru Mandir Mumbai-400 007. (Respondent)
--	-----	--

Assessee by	Shri Satish Mody
Department by	Shri V.K. Chaturvedi
Date of Hearing	09.02.2023
Date of Pronouncement	14.02.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 28.10.2022 passed by the learned CIT(A)-National Faceless Appeal Centre, Delhi and it relates to A.Y. 2010-11.

2. At the outset, learned AR submitted that the assessee has expired on 7.2.2013. However, the Assessing Officer has issued notice under section 148 of the I.T. Act on the dead person on 30.3.2017. Accordingly, he contended that the impugned notice issued by the Assessing Officer and the assessment order passed by him are not valid.

3. The Learned DR, on the contrary, submitted that the fact of death of assessee has not been communicated to the assessing officer. Hence the Assessing Officer has issued notice under section 148 of the Act in the name of the assessee. The Learned DR further submitted that nobody has appeared

before the Assessing Officer during the course of assessment proceedings and hence the Assessing Officer was constrained to pass the assessment order to the best of his judgement under section 144 read with section 147 of the Act. The Learned DR also submitted that the legal heir of the assessee did not appear before the learned CIT(A) also and hence he was also constrained to pass the order ex-parte, without presence of the assessee.

4. In the rejoinder learned AR submitted that the legal heir has intimated the fact of death of the assessee in 2013 itself. He further submitted that the legal heir of the assessee has raised a specific ground before the learned CIT(A) stating therein the assessment order has been passed in the name of the deceased person. The Learned AR further submitted that he is submitting by way of additional evidences copy of death certificate of the assessee and also copies of the letters through which the fact of the death of the assessee was intimated to the AO.

5. We have heard the parties and perused the record. Admittedly notice under section 148 has been issued and also the orders of the tax authorities have been passed in the name of the assessee, who has died in 2013 itself. It is settled proposition of law that proceedings initiated and orders passed in the name of the dead person is not valid. However, it appears that the AO was not aware of the fact of death of the assessee and the copy of death certificate is furnished for the first time before us. Hence, we feel it proper to restore all the issues to the file of the Assessing Officer for examining the veracity of the documents and also for taking appropriate decision in the light of discussions made supra. Accordingly, we set aside the order passed by the learned CIT(A) and restore all the issues to the file of the Assessing Officer for taking appropriate decision in the light of discussions made supra.

6. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on 14.2.2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(B.R. BASAKARAN)
Accountant Member

Mumbai; Dated : 14/02/2023

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.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS