

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

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

ITA No. 2170/MUM/2022

(Assessment Year 2004-05)

ITA No. 2171/MUM/2022

(Assessment Year 2005-06)

ITA No. 2172/MUM/2022

(Assessment Year 2006-07)

ITA No. 2173/MUM/2022

(Assessment Year 2007-08)

Smt Rasilaben K Gedia
Legal heir of Late Shri
Khimjibhai G. Gedia
Flat No. 72, 7th Floor, Shreeji
Kutir Off S.V. Road, Ram Galli,
Kandivali (West)
Mumbai-400 067

(Appellant)

Vs.

ACIT CC-13
C.G.O. Annexe, M.K.Road,
Mumbai-400 020

(Respondent)

PAN No. AACPG3363N

Assessee by : Shri Ketan Vajani, CA
Revenue by : Dr. Pallavi Darade, CIT DR

Date of hearing: 12.12.2022

Date of pronouncement : 22.02.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are 4 appeals pertaining to same assessee one Late Shri Khimjibhaiji Gedia filed by his legal heir Smt rasilaben Khimjibhai Gedia for A.Y. 2004-

05 to 2007-08 against consolidated Appellate orders passed by the CIT(A) 48, Mumbai [the Id CIT (A)] on 22.04.2022 for all these A.Y. whereby the respective appeals filed by the assessee for all these years were either partly allowed or dismissed. This appellate order was passed by the Id CIT (A) when original order passed by him was remanded back by ITAT to First Appellate Authority.

02. The assessee is aggrieved with that and has preferred appeal before us through the legal heirs Smt. Rasilaben Khimji Gedia of the assessee.

03. The brief facts of the case shows that

- i. Shri Khimjibhai Gedia expired on 22.01.2007.
- ii. search and seizure action u/s. 132 and survey action u/s. 133A were carried out in case of Gedia Group on 25.08.2009.
- iii. Several documents were seized containing evidence of cash loan and interest. Some of the documents pertained to the assessee for the relevant assessment year.
- iv. Accordingly, notices u/s. 153C were issued in the name of late Shri Khimjibhai G Gedia.
- v. For A.Y. 2004-05 to the original return was filed by the assessee on 02.08.2004 at a total income of ₹ 1,16,569/-.

- vi. In response to notice issued u/s. 153C on 23.02.2010, on 20.01.2011 assessee filed return declaring income of ₹ 39,16,569/-. The assessee has originally shown income from business.
- vii. During the course of assessment proceedings, the undisclosed bank accounts were also found. Undisclosed cash loans were also found.
- viii. The Id. AO also raised several query letters and final show cause notice. However, there was no response.
04. Therefore, the Id. AO passed order u/s. 143(3) r.w.s. 143C of the Act on 30.11.2011 in the name of Late Shri. Khimjibhaiji Gedia, (legal heir Smt. Rasilalben Khimjiibhai Gedia) the total income of the assessee was computed at ₹ 1,62,57,504/-.
05. The assessee aggrieved preferred an appeal before the Id.CIT (A) raising the first ground that assessment made on a dead person deserves to be quashed. On the merits several ground were taken. The appeal was filed by wife of the assessee has legal heir.
06. Similarly, for A.Y. 2005-06 the assessment order u/s. 143(3) r.w.s. 153C was passed on 31.11.2011 declaring total income at ₹60,07,420/-. For A.Y. 2006-07 the assessment order was passed on 30.11.2011 determining total income of the assessee

at ₹ 23,56,690/- and similarly, for A.Y. 2007-08 the order was passed on 30.11.2011 at total income of ₹88,08,650/-. All the assessments were passed in the name of Late Shri. Khimjibhai Gedia (legal heir Shri. Rasilaben Khimji Gedia). This ground was challenged before the Id.CIT(A) who passed consolidated order for both these years in the name of legal heir Rasilaben Khimji Gedia as legal heir of Late Shri. Khimjibhai Gedia on the first ground of the appeal. The assessment is made on a dead person the assessee submitted that Shri. Khimjibhai Gedia expired on 22.01.2007. The search took place on 25.08.2009, during the course of search Shri. Chandresh Ghedia was the person searched. Despite these facts, notice u/s. 153(C) is issued in the name of Shri. Khimjibhai Gedia, return was filed by the legal heir Smt. Rasilaben Gedia but the assessment is passed in the name of Khimjibhai Gedia.

07. The appeals filed by the assessee before the CIT (A) 37 earlier were disposed off on technical issues. That order was challenged before the ITAT and ITAT set aside the orders back to the file of the Id.CIT (A) and thereafter the Id.CIT (A) passed order on 24.04.2022 where this additional ground was raised.
08. The Id.CIT(A) rejected this ground vide paragraph 5.1 of order without giving any reason however, in paragraph no. 6.1.2 of his order he held that the appellant has never communicated to AO about the



correct legal heir of the deceased appellant whose estate was under assessment by the AO. Therefore, no blame can be put on the AO. On the merits, the additions were upheld. Accordingly, assessee is in appeal before us.

09. The Id AR submitted a paper book in two volumes containing 103 pages. He submitted that Mr. Khimjibhai Gedia passed away on 22.01.2007, which is evidenced by the Death Certificate placed on Page No. 1. The notice was issued on 24.02.2010 for the respective assessment years in the name of Mr. Khimjibhai Gedia. The search took place on 25.08.2009. Therefore, the assessee in whose name the orders have been passed was not alive. Therefore, the whole proceeding in all these four assessment years deserves to be quashed. He submitted that there could not be an assessment order or even the initiation of assessment proceedings in case of a dead person.
010. The Id. DR vehemently supported the order of the AO.
011. We have carefully considered the rival contention. In the present case, search took place when the assessee was not alive. The notices u/s. 153C were also issued in the name of the assessee i.e. dead person. Therefore, the initiation of 153C proceedings itself was on a dead person. In fact, notices issue u/s. 153C against dead person is unenforceable in

law and further the revenue cannot contend that they have no knowledge about the death of assessee and they are not entitled to state that notice is not defective. Such is a mandate of in case of Bhupendra Bhikalal Desai Vs. ITO (2023) 130 taxmann.com 196 (Gujarat) against this decision the Special Leave Petition filed by the Revenue is also dismissed by the Hon'ble Supreme Court in 131 taxmann.com 40 holding that even participation by legal heir is also not valid when 153C notices are in the name of dead person. Such is also the mandate of Hon'ble Supreme Court in 80 taxmann.com 23 SC in case of Gunjan Girish Mehta. We are also conscious of the decision of the Hon'ble Bombay High Court in case of Jagdish Madhav das Ahuja Vs. Union of India 114 taxmann.com 722 where the notices were issued on the legal heir of dead person therefore it could not be said that the notices were issued to the dead person. However, the notices placed before us at page No. 2-5 of the paper book filed clearly shows that notices were not at all issued to the legal heir but to the late Shri. Khimjibhai Gedia only. Therefore, the decision of the Hon'ble Bombay High Court is on different facts. The Hon'ble Bombay High Court has dealt identical issue in case of 120 taxmann.com 323 in case of Rupa Dhumatkar wherein its has been held that when the notices for assessment are issued against dead person such notices are invalid. We also draw support from the decision of the Hon'ble



Bombay High Court in case of Sumit Balakrishna Gupta Vs. ACIT 112 taxmann.com 93. Therefore, we do not have any hesitation in quashing the assessment order passed for all these 4 years against the assessee.

012. In the result, appeal of the assessee on these ground are allowed for all the 4 years.
013. In view of our above finding, We do not feel any requirement to adjudicate on other grounds.
014. Accordingly, appeals of the assessee are allowed.

Order pronounced in the open court on 22.02.2023.

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

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai Dated: 22.02.2023.

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