

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

[CONDUCTED THROUGH VIRTUAL COURT]

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 251/Rjt/2022
Assessment Year 2013-14**

Shri Jasubhai Najabhai Barad, Chhatroda (Gir Somnath) PAN: BFNPB8341A (Appellant)	Vs	The ACIT, National Faceless Assessment Centre, Delhi (Respondent)
---	----	--

**Assessee by: Shri R.D. Lalchandani, A.R.
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 21-03-2023
Date of pronouncement : 24-03-2023

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This assessee's appeal for A.Y. 2013-14, arises from order of National Faceless Appeal Centre, Delhi dated 26-08-2022, in proceedings under section 250 of the Income Tax Act, 1961; in short "the Act".

2. The assessee has taken the following grounds of appeal:-

“1 The CIT(A) erred in confirming the levy of penalty under section 271B of the Act. The levy of penalty is not justified.

2. The ld. CIT(A) erred in confirming the penalty on a deceased person. The levy of penalty is void ab initio.”

3. The brief facts of the case are that the assessee had declared turnover/gross receipts of Rs. 67,98,000/- during the year under consideration. During the course of assessment proceedings, the Assessing Officer observed that on perusal of the bank statement of various bank accounts held by the assessee, the total gross receipt of the assessee have been found to be Rs. 1,91,10,280/- i.e. above Rs. 1 crore. Accordingly, the Assessing Officer initiated penalty proceedings u/s. 271B of the Act for not maintaining and getting book of accounts audited as per section 44AB of the Act. During the course of 271B proceedings, the assessee requested that 271B proceedings may be kept in abeyance till the disposal of the appeal against the assessment order by ld. CIT(A), before whom the appeal was pending adjudication. However, the ld. Assessing Officer proceeded to levy penalty of Rs. 95,551/- u/s. 271B of the Act on account of failure to furnish audit report within due prescribed date as required u/s. 44AB of the Act and also held that the assessee also failed to furnish a reasonable cause for such failure.

4. The assessee filed appeal before Id. CIT(A) against the 271B order passed by Id. Assessing Officer who dismissed the appeal of the assessee with the following observations:-

“7. Facts of the case have been carefully perused. Noncompliance with statutory provisions is not acceptable. No reason has been furnished by the appellant assessee in spite of reasonable opportunities by AO & NFAC. There is no reason to interfere with the AO's order. Also the order has been made by the AO and is addressed as under-

c/o. Najabhai G. Barad (Legal Heir) Late Shri Jashubhai Najabhai Barad, Trevdu Wadi At: Chhatroda, Dist: Somnath 362265, Gujarat, India.

Thus the grounds of appeal that the order has been made on deceased person is baseless and fails.

8. *The same is upheld, appeal stands dismissed.”*

5. The assessee is in appeal before us against the aforesaid order by Id. CIT(A) confirming the penalty levied by the Id. Assessing Officer u/s. 271B of the Act. At the outset, the counsel for the assessee argued that the order passed by Id. Assessing Officer is bad for the simple reason that the assessment order has been passed on a deceased person, without bringing the legal heir on record. The counsel for the assessee produced the death certificate of the assessee certifying that the assessee had expired on 17-02-2021 whereas the order u/s. 271B of the Act was passed in the name of the assessee without bringing the legal heir of the assessee on record while the penalty order u/s. 271B of the Act was passed on a much later date and

Department was aware that the assessee had since expired. The counsel for the assessee submitted that it is a settled law that penalty u/s. 271B of the Act cannot be passed in the name of deceased person without bringing the legal heir of the person on record. In the instant facts, the counsel for the assessee submitted that the Id. Assessing Officer has not completed the necessary formality of bringing legal heir on record and passed the penalty order u/s. 271B in the name of the deceased person.

6. In response, the Id. Departmental Representative placed reliance on the observations made by the Assessing Officer and Id. CIT(A) in their respect orders.

7. We have heard the rival contentions and perused the material on record. The basic contention of the counsel for the assessee is that it is a well settled principle of law that since assessee was not in existence at the time of framing of assessment at the time of passing of order u/s. 271B of the Act, an order passed on a deceased is not valid in the eyes of law. The counsel for the assessee submitted before us that the Id. Assessing Officer has not completed the necessary formality for brining the legal heir of the assessee on record and effectively passed order in the name of the deceased person. We observe that we are in agreement with the counsel for the assessee that it is a settled law that no penalty can be passed in the name of the legal heir without impleading legal heir as a party. In the case of **Late Chandrakant A. Gandhi vs. ACIT [2013] 40 taxmann.com 432 (Ahmedabad - Trib.)**, the ITAT Ahmedabad has held that penalty imposed on legal heir without impleading such person as legal heir of the deceased is

not sustainable in the eyes of laws. In the case of **Alamelu Veerappan v. ITO [2018] 95 taxmann.com 155 (Madras)**, the High Court held that Notice issued in name of dead person is not enforceable in law. In the case of **ITO v. Bhupendra Bhikhalal Desai [2021] 131 taxmann.com 40 (SC)**, the Hon'ble Supreme Court SLP dismissed against Gujarat High Court's ruling that notice issued under section 153C against dead person is unenforceable in law. In the instant case, no legal formalities were carried out to bring the legal heir on record. Simply by stating in the assessment order that since the father has been named as nominee in the joint bank account held with the assessee, he is the legal heir, is in our view, not sufficient. We observe that the Income Tax Website lists down certain formalities which are required to be completed for impleading a person as legal heir of the deceased, which, inter alia include legal heir certificate issued by Court of Law/local Revenue Authority, surviving family member certificate by Revenue Authority, letter issued by banking or financial institution on their letter head (with official seal and signature) mentioning particulars of nominees etc. However, we observe nothing has been brought on record to show that the Id. Assessing Officer complied with any of the above procedures or issued any formal notice to the father of deceased impleading him as the legal heir on record. Therefore, respectfully, following the aforesaid decisions, we are of the considered view that the order passed by the Id. Assessing Officer u/s. 271B of the Act in the name of the deceased person without impleading the legal heir of the deceased is not sustainable in the eyes of the law and therefore directed to be set aside.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 24-03-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 24/03/2023

Sd/-
(SIDHHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot