

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 453/Hyd/2022
(निर्धारण वर्ष / Assessment Year: 2013-14)

Siva Janardhana Varma
Muppala,
Hyderabad
[PAN No. ABHPV8335R]

अपीलार्थी / Appellant

Dy. Commissioner of
Income Tax,
Circle-2(1),
Hyderabad

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.C.Devdas, AR
राजस्व द्वारा/Revenue by: Shri K.P.R.R. Murthy, DR

सुनवाई की तारीख/Date of hearing: 23/03/2023
घोषणा की तारीख/Pronouncement on: 31/03/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 10/08/2022 passed by the learned National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Siva Janardhana Varma Muppala ("the assessee") for the assessment year 2013-14, assessee preferred this appeal.

2. At the outset, the only point that is argued before us is that the order passed by the learned Assessing Officer against a dead person is a nullity and, therefore, no consequent demand survives.
3. It is brought to our notice by the learned AR that at paragraph No. 5 and 6 the learned Assessing Officer noted that during the assessment proceedings, learned AR brought to his notice that the assessee expired on 02/09/2015 and the notice issued under section 148 of the Income Tax Act, 1961 (for short "the Act") on 16/05/2016 was after his death. Though the learned Assessing Officer recorded that the proceedings under section 147 of the Act thereafter were dropped, but proceeded to record that since there was assessment escaped income in the hands of the deceased assessee within the meaning of Section 147 of the Act, proceedings against the Legal Representative (LR) of the deceased assessee were initiated afresh.
4. Be that as it may the fact remains that the order dated 29/10/2018 passed under section 144 read with section 147 of the Act was against the deceased assessee and though the learned Assessing Officer stated to have initiated the proceedings against the LR of such deceased assessee, the assessment order was not passed against the LR but it was only against the deceased himself.
5. From Form-35, it is demonstrated before us that vide grounds No. 1 & 2, it was contended before the learned CIT(A) that in spite of knowing the fact of death of the assessee, the learned Assessing Officer passed the order in the name of the deceased assessee and raised the demand under section 156 of the Act on the name of the deceased only and, therefore, no such demand could be realised. Learned CIT(A), however, did not advert to such argument, but simply referred to the merits of the case and disposed-of the appeal.

6. Per contra, it is contended by the learned DR that as is evident from the assessment order, the learned Assessing Officer dropped the initial re-open proceedings after being informed of the death of the assessee and subsequently, re-initiated such proceedings on the name of the LR of the deceased and such a fact is noted in paragraph No. 6 of the assessment order. He, therefore, submits that the proceedings under section 147 of the Act are in fact initiated against the LR of the deceased assessee and, therefore, merely because the name of the LR is not to be found on the face of the assessment order, it does not vitiate the proceedings.

7. We have gone through the record in the light of the submissions made on either side. It is an admitted fact that the assessment order was passed on the name of the deceased assessee, and the name of the LR is not reflected on the face of the order. It is not in dispute that the demand under section 156 of the Act was raised against the deceased assessee, such a demand cannot be enforced against the LR of the deceased assessee because the assessment order is passed against the deceased assessee. Any order passed against the deceased person is a nullity and no consequent demand could be permitted to be enforced against any person other than the one against whom the assessment order was passed. In view of the fact that the assessment order in this case is a nullity, we find force in the argument of the learned AR and quash the assessment proceedings. Appeal is allowed accordingly.

Order pronounced in the open court on this the 31st day of March, 2023.

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 31/03/2023

TNMM

Copy forwarded to:

1. Siva Janardhana Varma Muppala, C/o. B. Narsing Rao & Co., Chartered Accountants, Plot No. 554, Road No. 92, Jubilee Hills, Hyderabad.
2. Dy. Commissioner of Income Tax, Circle-2(1), Hyderabad.
3. DR, ITAT, Hyderabad.
4. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD