

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T. A. Nos. 261 to 267/Asr/2019
Assessment Years: 2007-08 to 2013-14

Sh. Puran Singh,
S/o Sh. Vir Singh,
Near Sidh Shakti Peeth,
Model Town, Shahkot,
Jalandhar

[PAN: BMDPS 5757A]

(Appellant)

V. Pr. C.I.T. (Central),
Ludhiana

(Respondent)

Appellant by : None

Respondent by : Sh. Girish Bali, CIT DR

Date of Hearing : 21.03.2023

Date of Pronouncement : 30.03.2023

ORDER

Per Bench:

This bunch of appeals have been filed by the assessee against the order of the Ld. Pr. Commissioner of Income Tax (Central), Ludhiana even dated 26.03.2019 in respect of Assessment Years 2007-08 to 2013-14.

2. At the time of hearing on date 16.02.2023, it is brought to our notice by the Ld. Counsel that the assessee has been died immediately after 3 months of filing the appeals. Accordingly, the case was adjourned to next date 21.03.2023 with directions to the Ld. AR to bring the legal heirs on record and to file its power of attorney. However, he failed to bring the legal heirs on record and the power of attorney stating that the legal heirs are absconding. It is noticed that more than 90 days are expired to the death of the appellant as per the Appellant Representative, though he could not be taken on record as legal representative in absent of power of attorney on record. Considering the fact that since, these 7 appeals in respect of the Assessment Year 2007-08 to 2013-14 are 3 years old and the where about of either of the diseased appellant or its Legal heirs are not available on record, it is decided to dispose the appeals as per law on hearing the Ld. DR.

3. The Ld. DR explained that there is no provision of abetment in Income Tax Law as per provisions of section 159 of the Act, where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased. The death of a person

who is liable to pay tax under the Act would not get extinguished on account of his death. If he dies, his legal representative shall be liable to pay any tax which would have been liable to be paid by such person if he had not died. Sub-section (2) makes the position clear that for the purpose of assessment, reassessment or recomputation under section 147 of the Act, any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of death of the deceased.

4. It is clarified that the procedural law before the Tribunal is governed by the Income-tax (Appellate Tribunal) Rules, 1963. These Rules are framed by the Appellate Tribunal in exercise of the powers conferred by sub-section (5) of section 255 of the Act. Rule 26 deals with continuation of proceedings after the death or adjudication of a party to the proceedings which reads as under:

"26. Where an assessee whether he be the appellant or the respondent to an appeal dies or is adjudicated insolvent or in the case of a company is being wound up, the appeal shall not abate and may, if the assessee was the appellant, be continued by and if he was the respondent be continued against, the executor, administrator or other legal representative of the assessee or by or against the assignee, receiver or liquidator, as the case maybe:

Provided that:

- (i) *The assessee files a revised Form No. 36 duly filled up giving revised name of the party duly verified in the same manner as required by rule 47 of Income-tax Rules, 1962;*
- (ii) *The revised Form No. 36 shall specify the appeal number as originally assigned or, in the event of non-availability of such number on the date of filing the appeal shall be mentioned in the covering letter to enable the Registrar to place fresh Form No. 36 in the original file."*

5. Thus, it is obvious that this is underlying principle of no abatement upon the death of the assessee equally applies to the appeal before the Tribunal. The aforesaid rule expressly states, the appeal shall not abate. It is in inconformity with the principle underlying section 159 of the Act. However, the Hon'ble Karnataka High Court in LT.A. No. 9/2000 in the case of the ITO v. T. Parthasarathy has observed vide paras 3 and 4 of the judgment as follows:

"3. At the time of argument, it is brought to our notice that the assessee has died on March 11, 2006. No legal representatives have been brought on record as on today.

4. In the circumstance, the appeal stands abated as on today. Ordered accordingly. No costs."

6. In the Later Judgment, in APPEAL NOS. 32 AND 3048 OF 2005 pronounced on 09/08/2010 in the instant case of revenue appeals the Hon'ble Court allowed condonation of delay while set aside the abatement order as under:

“26. As is clear from the aforesaid wordings, the Division Bench did not go into the question whether the appeal abates or not. It proceeded on the basis that as the legal representatives are not brought on record, the appeal stands abated. In the circumstance, it cannot be said the said question is decided in the aforesaid appeal and it would bind us. No law is laid down. Nothing is decided in the aforesaid appeal.

27. On the merits also, we have gone through the averments and the statement of objections filed and we are satisfied that sufficient cause is made out for condoning the delay.

28. Accordingly, the applications filed by the revenue for condoning the delay, for setting aside abatement and to bring the legal representatives of the deceased-assessee on record are allowed. The Revenue to amend the cause title accordingly.”

7. In the present case, the assessee is died and legal heirs are required to be brought on record to adjudicate the captioned appeals.

8. It is evident from the order sheet that these are old appeals pending for adjudication since 22.04.2019 and none is appearing nor any adjournment application is filed on behalf of assesseees on the dates of hearing, despite several opportunities granted by fixing the case for hearing on 04.03.2020, 28.04.2020, 11.05.2022, 07.06.2022, 05.07.2022, 25.08.2022, 18.02.2022, 30.11.2022, 10.01.2023 and 16.02.2023. In the meantime the assesseees have been died, and no appeals are maintainable

on a dead person in the eyes of law. In our view, the appeals filed by the assesseees are liable to be abated till the legal heirs of the assesseees are brought on record.

9. Considering peculiar the facts and circumstances of the case, that in the absence of the legal heir and legal representative as well for the appellant, there is no one to plead the subject appeals to protect appellant interest for a considerable period of 3 years approximately and that multiple times period of 90 days to bring legal heirs on record has been expired. We, therefore, are of the considered view that these appeals may be liable to be abated, so as to enable the AO to proceed for recovery of demand out of the assets and estate that is capable of meeting the liability. It is further clarified that the intention of the Legislation is apparently clear that every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with. We appreciate, the contention of the Ld. DR that the Assesses appeal may be abated but revenue appeal may

not be abated, and the instant appeals pertains to the assessee appeal, the abatement order would be in compliance to law to facilitate collection of revenue.

10. In view of the matter, these appeals are being abated with a caveat that the legal heirs shall have right to revive these appeals with condonation of delay for the period till the legal heirs are brought on record on filing revised Form No. 36.

11. In the backdrop of the aforesaid discussion, these subject appeals of the appellant assesseees are disposed of in the terms indicated as above.

Order pronounced in the open court on 30.03.2023

**Sd/-
(Anikesh Banerjee)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

GP/Sr./P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order