

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

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| ITA No.900/Hyd/2019 | | |
| Assessment Year: 2009-10 | | |
| Shri Kabeer Khan Hyderabad PAN:AWDPK0297J (Appellant) | Vs. | Income Tax Officer Ward 14(4) Hyderabad (Respondent) |
| Assessee by: | None | |
| Revenue by: | Shri KPRR Murthy, CIT(DR) | |
| Date of hearing: | 29/03/2023 | |
| Date of pronouncement: | 12/04/2023 | |

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 1.3.2019 of the learned CIT(A)-6, Hyderabad, relating to A.Y.2009-10.

2. None appeared on behalf of the assessee at the time of the hearing. The Counsel who appeared in earlier occasions and was present in the Court Room also expressed his inability to contact the legal heirs of the assessee due to their noncooperation and rescued himself from appearing in this case. Even the notice server of the Revenue, despite his best efforts, could not contact and serve the notice on the legal heirs. Under these

circumstances, we feel that no purpose will be served by adjourning the matter.

3) Rule 26 of the ITAT Rules reads as under:

26. Continuation of proceedings after the death or adjudication of a party to the appeal.-

Where an assessee assesses 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 may be."

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 the I.T. 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"**

4. Since the legal heirs of the deceased assessee in the instant case have not taken any steps to file the revised Form No.36, duly filled up giving the revised name of the party duly verified in the manner as prescribed in the rules, therefore, the present appeal cannot be proceeded with in the absence of any of the above said requisite information/form. Further, it is the settled proposition of law that no appeal can be continued/prosecuted or filed in the name of a dead person. It is incumbent upon the legal heirs in the present case to substitute their names in place of the deceased assessee. In the present case, the assessee has died on 31/03/2021 and more than 2 years have passed from the death of the assessee till today and no steps have been taken by the legal heirs to substitute their names. In general law i.e. Civil Procedure Code, the limitation to substitute for impleading the legal heir in the suite has been provided as 90 days. In the present case, despite a lapse of more than 2 years,

the names of the legal heirs have not been substituted. Therefore, we are left with no option but to dismiss the appeal.

5. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 12th April, 2023.

Sd/-

Sd/-

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| (LALIET KUMAR) JUDICIAL MEMBER | (R.K. PANDA) ACCOUNTANT MEMBER |
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Hyderabad, dated 12th April, 2023.

Vinodan/sps

Copy to:

| S.No | Addresses |
|------|---|
| 1 | Shri Kabeer Khan, H.No.8-1-332/3/A/4, Aravind Nagar Colony, Aziz Bagh, Hyderabad 500008 |
| 2 | Income Tax Officer Ward 14(4) IT Towers, AC Guards, Hyderabad |
| 3 | Pr. CIT-6 Hyderabad |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order