

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "B", BANGALORE**

**Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM**

ITA No.91/Bang/2023 : Asst.Year 2017-2018

Sri.Varadarajan Narayan Aiyar 3024, Level 2, 1 <sup>st</sup> Floor, Wing C Block 2, Prestige Park View Hope Farm Circle, Whitefield Bangalore – 560 066. <b>PAN : ABIPA7972N.</b>	v.	The Income Tax Officer Ward 1(2)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : --- None ---

Respondent by : Sri.P.Suresh Rao, Addl.CIT-DR

<b>Date of Hearing : 27.04.2023</b>	<b>Date of Pronouncement : 02.05.2023</b>
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**ORDER**

**Per George George K, JM :**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 17.01.2023 passed u/s 250 of the Income-tax Act, 1961 ("the Act" for short). The relevant assessment year is 2017-2018.

2. The grounds raised read as follows:-

*"1. The learned assessing officer erred in levying the penalty, though your Appellant had disclosed the true facts before him.*

*2. The learned assessing officer levying the penalty failed to appreciate that the penalty order was passed on the deceased person and accordingly invalid and liable to be annulled.*

*3. The learned assessing officer levying the penalty ought to have appreciated that the legal representative had entered the record through the Letter of Indemnity 01.10.2021 and*

*consequently the penalty order passed in the name of deceased is opposed to law and thus liable to be cancelled.*

4. *Without prejudice, the learned assessing officer levying penalty ought to have appreciated that the provisions of Sec. 269SS of the Act were not applicable to the case of the appellant and consequently the penalty under sec 271D was not eligible.*

5. *The learned assessing officer ought to have appreciated the amount received was only the balance consideration at the time of registration and part of the sale.*

6. *The learned assessing officer ought to have appreciated that the receipt could not even fall within the specified sum provided under sec 269SS of the Act since the payment did not take the colour from advance.*

7. *The learned assessing officer ought to have appreciated the cash payments received as advance or in the nature of advance then there could be violation of sec. 269SS and not on the final payment made at the time of registration and consequently the penalty under sec. 271D of the Act is not eligible.*

8. *Without prejudice, the appellant was prevented by reasonable cause in accepting the cash payment at the time of registration which was required form completion of the sale transaction and accordingly there was reasonable cause for accepting the cash and the penalty under sec. 271D is not eligible.*

9. *Without prejudice, the penalty levied is excessive, arbitrary, unreasonable and liable to be deleted in toto.*

10. *The learned assessing officer erred in rejecting the reply before considering the assessment proceedings.*

11. *The learned assessing officer erred in levying the penalty, though your Appellant had filed various supporting of decided case laws not to levy the penalty.*

12. *The learned assessing officer failed to consider the fact, that the Appellant disclosed all facts before completion of assessment.*

13. *In the instant case before your Hon'ble Appellate*

*Authority brought to your good office kindly notice that the Assessee has been demised during the proceedings of the assessment and by virtue of law, one of his Sons became a Legal Representative in this case and prayed for your Honour that levying penalty is in violation of the one of the fundamental principles of the constitution of India under Natural Justice and opportunity of being heard not granted. Since, the Assessee had declared total consideration received as per sale deed and bank statements and TDS has be, covered against the entire consideration. Accordingly the Assessee disposed off taxes and applicable interest before the assessment proceedings. The Assess acted as one of the honest tax payers of the beloved country. Since, inception of the I.T.Act 1961. As per Article 265 of the Constitution of India says that "No tax shall be levied or collected except by authority of law". The Article 13(3) says, "law includes any ordinance, order, by-law, rule, regulation, notification, customs usage having in the territory of India, the force of law". As per this principles Assessee discharged all applicable taxes and interest thereon before the assessment proceedings.*

*14. Since, there is no violation of Rule of Law under the Income Tax Act, 1961. Hence U/s 269SS of the LT. Act doesn't applicable to the Assessee because there is source of income or transactions relating to under the head of Income from Business / Profession during the assessment year to levy penalty U/s 271D of the Act against the legal representative of the deceased Assessee.*

*15. If penalty have been waived off under the principle of Natural Justice, there will not be any loss of revenue to the Department. Hence, your Appellant prays before your Hon'ble Authority and to direct the Assessing Authority to drop the penalty proceedings in the Interest of Justice and equity.*

*16. The appellant craves, leave to add, alter, amend, substitute, change and delete any grounds of appeal.*

*17. For the above and other grounds that may be urged at the time of hearing, the appellant prays that the appeal may be allowed and justice rendered."*

3. The brief facts of the case are as follows:

The assessee has sold a property for Rs.2,14,22,160 and received Rs.2,12,07,936 from the purchaser after deduction of TDS at 1% as per the provisions of section 194-IA of the Act. Out of the consideration received of Rs.2,12,07,936, Rs.2 crore was received by way of RTGS and balance Rs.12,07,936 was accepted in cash. Taking note of this cash transaction in respect of the transfer of the property, the Assessing Officer invoked the provisions of section 269SS of the Act. The A.O. after affording opportunity of being heard to the assessee, imposed penalty of Rs.12,07,939 u/s 271D of the Act (being equal amount received by the assessee in cash).

4. Aggrieved by the order of the penalty u/s 271D of the Act, amounting to Rs.12,07,936, the assessee filed an appeal before the first appellate authority. Before the first appellate authority, the assessee raised issue on merits as regards the imposition of penalty u/s 271D of the Act and also contended that since the assessee had died on 18.03.2021 and the legal representative of the assessee had intimated the A.O. of the fact of the assessee's death on 01.10.2021, the order imposing penalty u/s 271D of the Act on 28.01.2022 is bad in law and the same is to be quashed. The CIT(A) rejected the contentions of the assessee on merits as well as on the technical plea that the order imposing penalty has been passed on a dead person.

5. Aggrieved by the order of penalty, the legal representative of the assessee has filed the present appeal before the Tribunal. During the course of hearing, neither the assessee nor anyone was present on his behalf. However, we proceed to adjudicate the issue raised before us, after hearing the learned Departmental Representative.

6. The learned DR supported the orders of the A.O. and the CIT(A).

7. We have heard the learned DR and perused the material on record. The admitted fact is that the assessee had died on 18.03.2021 and the legal representative of the assessee had entered the record through letter of indemnity dated 01.10.2021. The order imposing penalty u/s 271D of the Act was passed subsequently on 28.01.2022. Therefore, penalty order was passed on the deceased person. The CIT(A) upheld the penalty order by holding that the penalty proceedings were initiated when the assessee was alive and the objections to the notice for the penalty initiated was filed by the assessee himself.

8. As per section 159(2) of the Act, mere initiation of penalty proceeding correctly is not sufficient, but it ought to have been completed also in accordance with the said provisions. In other words, any proceedings 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. Therefore, when the penalty order was passed in the name of the assessee, he had already died. Hence, the penalty order is invalid. In support of the above conclusion, we rely on the following judicial pronouncements:-

- (i) The Hon'ble Supreme Court in the case of ITO v. Bhupendra Bhikhalal Desai [2021] 131taxmann.com 40 (SC) *held that:*

*SLP dismissed against High Court's ruling that notice issued under section 153C against dead person is unenforceable in law and in such case revenue cannot contend that as they have no knowledge about death of assessee, they are entitled to plead that notice is not defective.*

- (ii) The Hon'ble Apex Court in the case of ITO Ward 1(3)(7), Surat v. Durlabhbhai Kanubhai Rajpara [2020] 114 taxmann.com 482 (SC) *held that:*

*Where High Court set aside reassessment proceedings on ground that no valid notice under section 148 could be issued against a dead person, SLP filed against said order was to be dismissed.*

- (iii) The Hon'ble High Court of Gujarat in the case of Krishnaawtar Kabra v. ITO [2022] 140 taxmann.com 423 (Gujarat) *held that:*

*Reopening notice under section 148 issued upon deceased assessee was void ab initio and therefore, consequential proceedings and orders passed thereon were without any jurisdiction and were to be quashed and set aside.*

- (iv) The Hon'ble High Court of Jharkhand in the case of Sandeep Chopra v. PCIT [2023] 149 taxmann.com 225 (Jharkhand) *held that:*

*Where during original assessment proceeding itself, original assessee died and AO was well-informed of same, reopening notice issued in name of deceased assessee on his PAN and not in name of his legal representative was held to be illegal*

*and all consequential orders passed pursuant to notice would be non est and was to be quashed*

- (v) The Hon'ble Delhi High Court in the case of Vikram Bhatnagar v. ACIT [2023] 147 taxmann.com 254 (Delhi) held that:

*Where it was duly disclosed in return that it was filed by legal representative of deceased assessee, jurisdictional notice issued against deceased assessee and assessment order passed against dead person on his PAN without bringing on record all legal representatives would be null and void and was to be set aside*

- (vi) The Hon'ble High Court of Madras in the case of K. Suresh v. ACIT, Non-Corporate Circle-1, Chennai [2021] 129 taxmann.com 67 (Madras) held that:

*Where factum of demise of mother of assessee was communicated to Assessing Officer by assessee, impugned reopening notice issued and subsequent reassessment order passed thereafter in name of mother of assessee and bringing on record assessee as a legal representative for all tax dues were invalid.*

- (vii) The ITAT Ahmedabad in the case of Sanabhai R. Dalwadi v. ITO [1990] 34 ITD 183 (AHD.) held that:

*In the instant case, it was not disputed that the assessment had been made on a dead person. The penalty orders had also been passed against and in the name of the deceased. The AAC was totally labouring under misconception of law that the appellant had accepted the assessment order as the same did not appear to have been challenged by him before higher authorities. It is well settled that doctrine of res judicata/estoppel does not apply to the proceedings under the Act and that the consent of parties cannot confer jurisdiction upon an authority to do an act which such authority is not legally competent to do.*

*The question whether an authority has jurisdiction to do an act depends not on the truth or falsehood of the facts into which such authority is called upon to enquire or upon the correctness of its findings on those facts, but upon their nature, and it is determinable at the commencement, not at the conclusion of the enquiry. A study of section 159 would*

*make it clear that only those proceedings for making assessment or levying any sum may be taken against the deceased, so that they may be continued after his death, which have been taken in his lifetime. In his lifetime such proceedings would necessarily be taken against and in the name of the deceased. However, if the deceased has died before any such proceedings could have been taken against him, the proceedings may be taken against the legal representative of the deceased under the provisions of sub-clause (b) of sub-section (2) of section 159. It is now clear that assessment under the Act can only be made against an individual assessee who is a living person. It is, thus, well settled that an assessment made on a dead person would, on the face of it, be a nullity in law.*

*Therefore, in the instant case, the penalty order founded as it was on an assessment order which was void ab initio and nullity in law, could not be held valid. The same was set aside.*

*As regards the penalty levied on the assessee under section 273(1) (b), it was based on the same assessment order which had been found void ab initio and nullity in law and the same was also set aside.*

- (viii) The ITAT Patna in the case of ITO v. Bibhuti Mishra [1985] 13 ITD 158 (PAT.) held that:

*It is settled law that no penalty can be levied on a dead person. Further a legal representative cannot be made liable without issue of any show-cause notice to him.*

*Hence, the penalty order passed in the instant case was null and void as it was levied on a dead person and no show-cause notice was issued to the legal representative.*

*That apart, even on facts, it was not a fit case for levy of penalty under section 271(1)(c). The assessee was a very old man. The income was taxable in his hands only by a fiction of law and it was not his actual income. The fiction of law was applicable by virtue of an amendment made only one year before the relevant assessment year. It could reasonably be held that the assessee may not have been aware of the said amendment. Hence, the levy of penalty was not correct even on facts.*

9. In the light of the aforesaid reasoning and the judicial pronouncements, cited supra, we quash the penalty order as invalid, since it has been passed on a dead person. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 02<sup>nd</sup> day of May, 2023.

**Sd/-**  
**(Laxmi Prasad Sahu)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 02<sup>nd</sup> May, 2023.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)NFAC, Delhi.
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore