

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 853/JP/2018
निर्धारण वर्ष/Assessment Year : 2008-09.

Late Shri Ganesh Narain Legal Heir Ramesh Gupta, D-34, Chomu House, Jaipur.	बनाम Vs.	The ITO Ward 2(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ACIPG 3938 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Jain, Advocate

राजस्व की ओर से / Revenue by : Ms Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 23/03/2023

उद्घोषणा की तारीख / Date of Pronouncement: 1/05/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order of Id. CIT(A)-1, Jaipur dated 10.11.2016 for the assessment year 2008-09. The assessee has raised the following grounds of appeal :-

1. That on the facts and in the circumstances of the case Id. CIT (A)-1 has grossly erred in law and facts in confirming action initiated u/s 147 on the ground of sale consideration of Rs. 8 lacs of plot no. C-3, Vanasthali Marg, Jaipur whereas Sub-Registrar adopted sale consideration of Rs. 25,03,205/- for stamp duty purpose (S. 50C deemed income).
2. That on the facts and in the circumstances of the case Id. CIT (A) has grossly erred in law and facts in upholding the assumption of jurisdiction for reassessment. The reassessment proceedings in this case was only based on presumption/suspicion and thus not validly initiated.

3. That on the facts and in the circumstances of the case Id. CIT (A) has grossly erred in law and facts in upholding issuing notice u/s 148 on the basis of AIR information in respect of deemed income u/s 50C and without verifying the correctness of the information and therefore re-assessment proceeding is absolutely bad in law and without jurisdiction and further AO not recorded his satisfaction and re-assessment is based on borrowed satisfaction which was not sufficient to confer power on the AO to initiate reassessment proceedings against the assessee.
4. That on the facts and in the circumstances of the case Id. CIT (A) has grossly erred in law and facts in upholding not taking the sanction u/s 151 of the IT Act before issue of notice u/s 148 from the Joint Commissioner of Income Tax and sanction ought not to be mechanical and sanctioning authority did apply his mind. Even the Id. AO has not provided sanction order.
5. That on the facts and in the circumstances of the case Id. CIT (A) has grossly erred in law and facts in upholding making reassessment u/s 147 without service of notice issued u/s 148 on the appellant. The assessee has right to receive notice issued u/s 148.
6. That on the facts and in the circumstances of the case Id. CIT (A) has grossly erred in law and facts in upholding order passed on dead person is valid order whereas it is settled law that an order can be passed on a dead person.
7. That on the facts and in the circumstances of the case Id. CIT (A) has grossly erred in law and facts in upholding that re-opening on the basis of stamp valuation by Sub-Registrar for the purpose of stamp duty is not permissible in law.
8. That on the facts and in the circumstances of the case Id. CIT (A) has grossly erred in law and facts in upholding addition of Rs. 25,03,205/- on account of long term capital gain whereas this is not a sale by father to sons but was a family settlement.
9. That on the facts and in the circumstances of the case Id. CIT (A) has grossly erred in law and facts in upholding not deducting the cost of acquisition of the asset and the cost of any improvement from the sale consideration of capital asset.
10. That on the facts and in the circumstances of the case Id. AO has grossly erred in law and facts in not referring the matter to the DVO for valuation of capital asset.

11. That on the facts and in the circumstances of the case Id. CIT (A) has grossly erred in law and facts in upholding not providing adequate opportunity of hearing to the appellant and not appreciating replies and evidences of the assessee.
12. That on the facts and in the circumstances of the case Id. CIT (A) has grossly erred in law and facts in upholding disputed additions without serving show cause notice which is mandatory as per CBDT Circular.
13. That the appellant reserves his right to add, amend or alter the ground of appeal on or before the date of appeal hearing.

2. The brief facts of the case are that the AO received information from the DIT (I&CI) Rajasthan, Jaipur that assessee has sold immovable property shop at plot No. C-3, Vanasthali Marg, Jaipur for a sale consideration of Rs. 8,00,000/- during the year under consideration. The Sub-Registrar has adopted the sale consideration at Rs. 25,03,205/- for stamp duty purposes. Since the assessee has not filed his income tax return for the year under consideration, the taxability of capital gain could not be ascertained. Thus notice under section 148 was issued on 27.03.2015 after recording valid reasons and taking prior approval from the Additional CIT, Range-2, Jaipur. Notice under section 142(1) along with query letter was issued to assessee on 22.07.2015. No compliance was received from assessee. The assessee was asked to show cause vide letter dated 22.01.2016 as to why the total sale consideration of Rs. 25,03,205/- may not be taken as sale of property under section 50C of the IT Act, 1961 and long term capital gain may not be imposed in case of assessee. The assessee was also asked to furnish the cost of acquisition of property for computation of capital gain latest by 27.01.2016. In response to the show cause notice, Shri Kailash Bajaj, CA furnished computation of income on 27.01.2016 claiming cost of acquisition and improvement expenses shown but he has not

furnished any documentary evidence in respect of cost of acquisition as on 01.04.1981. He has stated that cost of construction was taken on different dates as shown in the computation of income. The assessee has not furnished return of income in response to notice under section 148. Since the assessee has not produced any evidence in respect of cost of acquisition of property and cost of improvement/construction of the property, the AO completed the assessment vide order dated 30.01.2016 by taking the sale consideration of Rs. 25,03,205/- adopted by the Sub-Registrar Jaipur as Long Term Capital Gain. Being aggrieved by the order of the AO, the assessee preferred appeal before Id. CIT (A). The Id. CIT (A) also dismissed the appeal of the assessee observing that the appellant has failed to prove that the indexed cost of acquisition/construction was to the tune of Rs. 25,94,521/- as no evidence including the report of a registered valuer was furnished even during the appellate proceedings.

3. Now the assessee is in appeal before the Tribunal.

4. Before us, at the very outset, the Id. A/R appearing on behalf of the assessee has racked up ground no. 6 as the same is legal and goes to the root of the case. The Id. A/R submitted that the Id. CIT (A) has grossly erred in law and on facts in upholding the order passed on a dead person as the same is not valid as no order can be passed against a dead person. In this regard, the Id. A/R reiterated the same arguments as raised by him before the lower authorities. Whereas on the contrary, the Id. D/R strongly relied upon the findings of Id. CIT (A) and also submitted that since in the present case no return was filed by the deceased, consequently notice under section 148 of the IT Act was issued on 27.03.2015 and

further notice under section 142(1) of the IT Act was issued on 22.7.2015 (both these letters were issued during life time of deceased assessee), but no compliance was made.

4.1. As per the Id. D/R, Shri Kamlesh Gupta son of the deceased attended and requested for some time. Thereafter, the AO issued another letter dated 31.12.2015 which was received back unserved with the postal remarks that the person concerned has died. The Id. D/R further submitted that in response to show cause notice issued, Shri Kailash Bajaj, CA attended the proceedings but neither informed about the death of the deceased assessee nor brought on record the legal heirs of the deceased appellant, and since the assessment was getting time barred, AO has no other option except to complete the assessment in the name of deceased appellant through its legal heirs without specifying their names.

5. After hearing both the parties at length on this particular issue and taking note of the orders passed by the lower authorities, we find that late Shri Ganesh Narain did not file his return of income for the year under consideration and subsequently on the basis of information received from DIT (I&CI) Jaipur that the deceased had sold an immovable property during the year under consideration, a notice under section 148 of the IT Act, 1961 was issued upon said Shri Ganesh Narain. Since no return of income was filed in response to the notice issued under section 148 of the Act, consequently assessment was completed under section 147/144 of the IT Act determining the total income at Rs. 25,03,205/- on 30.01.2016. Aggrieved by the said order of assessment, the legal representative of the deceased assessee preferred appeal before Id. CIT (A) which was dismissed and

against the said order, the present appeal has been filed. Since the Id. A/R has racked upon a legal issue, therefore, we have decided to deal with the said issue first.

5.1 It is an admitted fact that during the assessment proceedings notice was issued on 31.12.2015 by the AO which was received back unserved with the postal remarks that the said Shri Ganesh Narain, the recipient of the said notice has already died. Therefore, in our view, when once the AO had come to know about the death of appellant Shri Ganesh Narain during the proceedings, therefore, AO was under obligation to verify or to investigate about the legal heirs of the said deceased. Even otherwise, as per provisions of section 159 of the IT 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 the death of the deceased. Since it had come to the knowledge of the AO that assessee had died and as per this particular Act i.e. Income Tax Act, 1961, the AO has been vested with the dual power i.e. investigation as well as adjudication, therefore, it has become all the more important for the AO to strictly comply with the procedure laid down by law. We are conscious of the fact that it is a settled law that no order of assessment can be passed against the deceased. Since as per the facts of the present case, amended Form 36 has been filed by the legal heirs of the deceased before us and are contesting the appeal and have already been taken on record. Therefore, in the fitness of circumstances, since the AO has passed assessment order against a dead person without specifying names of legal heirs, which is not

legally sustainable, thus we have no other option except to quash the impugned order. However, taking into consideration the peculiar facts and since provisions of section 159 of the Act has not been complied with by the AO and also the assessment order has been passed ex parte under section 144/147 of the Act, therefore, considering the interest of justice, equity and fair play, we restore the matter back to the file of the AO to initiate proceeding against the legal representatives already taken on record before us, in accordance with the provisions of section 159 of the Act from the stage it has come to the knowledge of the AO regarding the death of the deceased. Thus the AO is at liberty to initiate proceedings in accordance with law against the legal representative and thus the legal heirs shall be deemed to be an assessee.

6. Before parting, we may make it clear that these appeals have been decided on the basis of documents placed on record and the submissions along with case laws relied on by the respective parties before us and on the basis of circumstances arises from the facts of the present case. This decision may not be the precedent in other cases having different facts.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 1/05/2023.

Sd/-

(संदीप गोसाईं)

(SANDEEP GOSAIN)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 1/05/2023.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-Late Shri Ganesh Narain, L/H Shri Ramesh Gupta, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Ward 2(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 853/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar