

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1889/Del/2020
Assessment Year: 2009-10

Farah Naaz & Others (Legal heirs of Late Sh. Ghulam Nezami, C/o M K Bhatt & Co., Chartered Accountants, 302, Triveni Complex, E-10/12 Jawahar Park, Laxmi Nagar, Delhi 110092 PAN ACUPN 2280 K	vs.	ITO, Ward 1(2), Ghaziabad
(Appellant)		(Respondent)

For Assessee :	Shri M.K. Bhatt, CA Shri Malav Goswami, Adv.
Revenue For :	Shri Pankaj Khanna, CIT(DR)

Date of Hearing :	01.03.2023
Date of Pronouncement :	29.05.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

1. This appeal has been filed against the order of CIT(A) Ghaziabad dated 10.10.2019 for AY 2009-10.

2. Grounds no. 1 to 3 of assessee are as follows:-

1. On the facts and circumstances of the case and in law, the Hon'ble CIT (Appeals) has erred in law and on facts by upholding the Order passed under Section 144/147 by the ITO, Ward 1(2), Ghaziabad (A), as the same is bad in law and on facts.

2. On the facts and circumstances of the case and in law, the Hon'ble CIT (Appeals) has erred in law and on facts by upholding the issue and service of notice under section 148 dated 28-03-2016 to be valid, even though the same was issued in the name of a deceased person and was returned back on 01-04-2016, hence making the notice and subsequent proceedings void ab initio.

3. On the facts and circumstances of the case and in law, the Hon'ble CIT (Appeals) has erred in law and on facts by upholding the continuation of proceedings under Section 147 in the name of legal heirs, in absence of a valid service of notice under section 148 within the limitation period.

3. The learned authorized representative of assessee (AR) submitted that the Id. CIT (Appeals) has erred in law and on facts by upholding the issue and service of notice under section 148 dated 28-03-2016 to be valid, even though the same was issued in the name of a deceased person and was returned back on 01-04-2016, hence making the notice and subsequent proceedings *void ab initio*. He further submitted that under the facts and circumstances of the case and in law, the Hon'ble CIT (Appeals) has erred in law and on facts by upholding the continuation of proceedings under Section 147 in the name of legal heirs, in absence of a valid service of notice under section 148 within the limitation period. The Id. AR submitted that the Assessing Officer after recording reasons for reopening of assessment u/s. 147 of the Act on 18.03.2016 issued notice on 28.03.2016 in the name of deceased assessee Shri Ghulam Nezami and on receipt of said notice daughter of deceased assessee Ms. Farah Naaz vide letter dated 13.07.2016 inform the Assessing Officer about the death of her father on 22.09.2009 along with copy of death certificate, requesting the Assessing Officer to cancel/drop reassessment proceedings but Assessing Officer did not gave attention to said request and passed reassessment order on 05.12.2016 u/s. 144/147 of the Act only by mentioning the name of daughter of assessee Ms. Farah Naaz as legal heir. Therefore, entire proceedings are *void ab initio* and bad in law therefore the same may kindly be quashed.

4. Placing reliance on the judgments of Hon'ble jurisdictional High Court of Delhi in the case of Vipin Walia vs. ITO [2016] 67 taxmann.com 56 (Delhi) and in the case of Rajender Kumar Sehgal vs. ITO [2019] 101 taxmann.com 233 (Delhi) the Id. AR submitted that where notice seeking to reopen assessment was issued in name of deceased assessee, since she could not have participated in reassessment proceedings, provisions of section 292BB were not applicable to assessee's case and as a consequence, impugned reassessment proceedings deserved to be quashed.

5. Replying to the above the Id. Senior DR strongly opposed to the above contention of Id. AR and submitted that there was vital and sufficient information in the hands of Assessing Officer regarding cash deposit to the bank account of Shri Ghulam Nezami therefore the action of initiation of reassessment proceedings u/s. 147 of the Act, and issuance of notice u/s. 148 of the Act, is valid and the Assessing Officer has mentioned name of the legal heir of the assessee in the reassessment order therefore legal grounds of assessee being devoid of merits may kindly be dismissed.

6. On careful consideration of above rival submissions and vigilant perusal of the documents available at pages 1 to 5 of assessee paper book, first of all, we note that the Assessing Officer for AY 2009-10 recorded reasons for initiation of reassessment proceedings on 10.03.2016 and after obtaining approval u/s. 151 of the Act on 18.03.2016 issued notice on 28.03.2016. These proceedings initiated and notice was issued in the name of Shri Ghulam Nezami and on receipt of said notice the daughter of deceased assessee Ms. Farah Naaz vide letter dated 13.07.2016, enclosing the copy of death certificate of her father showing date of the death as 22.09.2009, requested the Assessing Officer to drop/cancel the initiation of reassessment proceedings but the Assessing Officer despite recording these facts in the para 3 at page no. 1 of assessment order proceeded to pass reassessment order on 05.12.2016 nearly adding the name of Ms. Farah Naaz as legal heir of deceased assessee. This factual position has not been controverted by the Id. Senior DR. Therefore, we have no alternate but to hold that the Assessing Officer initiated reassessment proceedings u/s. 147 of the Act and issued notice u/s. 148 of the Act on 28.03.2016 in the name of Shri Ghulam Nezami who died much before on 22.09.2009 and despite information to the Assessing Officer by the daughter of deceased assessee Ms. Farah Naaz vide letter dated 13.07.2016 the Assessing Officer instead of dropping the proceeding passed ex-parte reassessment order on 05.12.2016 u/s. 144/147 of the Act.

7. As per various judgments of Hon'ble High Court including judgments of Hon'ble jurisdictional High Court of Delhi in the cases of Vipin Walia vs. ITO (supra) and Rajender Kumar Sehgal vs. ITO (supra), as relied by the AR, we have no hesitation to hold that where notice seeking to reopen assessment was issued in name of deceased assessee, since she could not have participated in reassessment proceedings, provisions of section 292BB were not applicable to assessee's case and as a consequence, impugned reassessment proceedings deserved to be quashed. It is pertinent to mention that in said judgement their Lordship speaking for Hon'ble jurisdictional High Court referred to its earlier judgement in the case of Vipin Walia (supra) held that the provision of section 292BB of the Act does not come in to play to rescue the reassessment proceedings in favour of the revenue. Therefore in view foregoing discussion we hold that initiation of reassessment proceedings u/s. 147 of the Act issuance of notice u/s. 148 of the Act and also consequent proceedings and orders including reassessment order dated 05.12.2016 for AY 2009-10 deserve to be quashed and we hold so. Accordingly, grounds no. 1 to 3 of assessee are allowed.

8. The Id. Representatives of both the sides have not placed any submissions on the other grounds of assessee and since in the earlier part of this order we have quashed the entire proceedings and impugned reassessment order therefore other grounds of assessee are not being adjudicated and left open.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 29.05.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 29th May, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi