

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 184/Srt/2023 (Assessment Year 2011-12)  
(Virtual hearing)

Falgun Kantibhai Patel (Represented by legal heir Minaxi Falgun Patel), E-701, Samrajya Flat, Nr. Fatehgunj Post Office, Vadodara. <b>PAN No. AEBPP 2582 D</b>	Vs.	I.T.O., Ward 2(1), Bharuch.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	None / written submission
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of Appeal	15/03/2023
Date of hearing	01/05/2023
Date of pronouncement	16/06/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the legal heir of assessee/appellant is directed against the order of learned National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 17/02/2023 wherein the Id. CIT(A) confirmed the penalty levied under Section 271(1)(b) of the Income Tax Act, 1961 (in short, the Act) of Rs. 10,000/-, levied vide order date 13/09/2021. Though, the legal heir of assessee/appellant has raised multiple issue, however, in my considered view, sole ground of appeal relates to validity of penalty levied under Section 271(1)(b) of the Act.

2. Brief facts of the case are that the Assessing Officer while passing the assessment order, noted that the notice under Section 142(1) dated 06/08/2018 was issued to the assessee for making certain compliance. The assessee failed to make compliance in respect of such notice. The assessment was completed under Section 143(3) r.w.s. 147 of the Act by making certain additions on account of cash deposit of Rs. 14.50 lacs in HDFC bank account. The Assessing Officer issued show cause notice for levying penalty dated 25/05/2021 fixing the date of hearing on 31/05/2021. The Assessing Officer recorded that in response to such notice, the assessee replied that the assessee applied for Vivad Se Vishwas Scheme, 2020 against the addition in the quantum assessment for the impugned assessment year and the department has issued Form-5 of Vivad Se Vishwas Scheme, 2020. The assessee prayed for dropping of the penalty. The reply of assessee was not accepted by the Assessing Officer. The Assessing Officer levied penalty of Rs. 10,000/- for non-compliance of notice dated 06/08/2018 vide his order dated 13/09/2021.
3. Aggrieved by the order of penalty, the legal heir of assessee/appellant filed appeal before the Id. CIT(A). Before the Id. CIT(A), legal heir of assessee/appellant submitted that the assessee died on 18/05/2019, copy of death certificate was attached. The legal heir of assessee/appellant submitted that the penalty was being levied against a dead person and such penalty order is not sustainable. On merit, the

legal heir of assessee/appellant submitted that the assessee has already applied for Vivad Se Vishwas Scheme, 2020 for which Form No. 5 has already been issue and prayed for setting aside the order of penalty.

4. The Id. CIT(A) after considering the submission of legal heir of assessee/appellant held that Form-5 was issued on 27/04/2021 in respect of disputed tax and not in respect of disputed penalty under Section 271(1)(b) of the Act and confirmed the penalty. Further aggrieved, the legal heir of assessee/appellant has filed present appeal before this Tribunal.
5. Notice of appeal was served upon the legal heir of assessee/appellant. The legal heir of assessee/appellant has filed their written submission and prayed to decide the appeal on the basis of their written submission.
6. I have seen the submission of legal heir of assessee/appellant. In her written the appellant submitted that the Id. CIT(A) has not considered the submission which was coupled with the various evidences. The penalty order as well as order of Id. CIT(A) was passed in haste. The legal heir of assessee/appellant specifically stated that the assessee died much before the date of penalty order. The assessee expired on 18/05/2019 and such fact was informed to the Assessing Officer vide letter dated 31/05/2021 i.e. before passing order on 13/09/2021. The assessee relied upon the decisions of Hon'ble Jurisdictional High Court in Jaydeepkumar Dhirajlal Thakkar Vs ITO in Special Civil Application No.

17186 of 2017 dated 19/09/2017 and in Rasid Lala Vs ITO in Special Civil Application No. 18987 of 2016 dated 15/11/2016. The legal heir of assessee/appellant also submitted that in the quantum assessment, the assessee subsequently complied and assessment order was passed under Section 143(3) of the Act.

7. On the other hand, the Id. Sr. DR for the revenue supported the orders of the lower authorities.
8. I have considered the submissions of both the parties and perused the record carefully. I find that a very short point is involved in the present appeal. There is no dispute that the assessee informed the Id. CIT(A) about the death of assessee which has been recorded in para 4 of his order. Though, the appellant in her submissions specifically submitted that the assessing officer was also informed about the death of assessee, however, copy of such application is not filed on record. Facts remained the same that before Id CIT(A) the appellant in her statement of facts as well as in grounds of appeal raised specific plea that the assessee died much before the passing of penalty order, yet the Id CIT(A) has not taken any remedial action. Admittedly, the assessee died much before passing of penalty order. The assessee died on 18/05/2019, however, the penalty order was passed on 13/09/2021. It is settled position under law that order passed against a dead person is

nullity. Therefore, the penalty levied by the Assessing officer is deleted/quashed.

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

Order announced in open court on 16<sup>th</sup> June, 2023.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 16/06/2023

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat