

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI S.S.GODARA, JM  
AND SHRI DR. DIPAK P. RIPOTE, AM

आयकर अपील सं / ITA No.1402/PUN/2015  
निर्धारण वर्ष / Assessment Year : 2009-10

Javed Karimkhan Patel,  
L/H of Lt.Karimkhan Shahnoorkhan Patel  
S/O Shahanur Khan H.No.4-5-74,  
Eknath Nagar Rd., Nr. Osmanpura P.O.,  
Aurangabad-431 005

PAN : AFAAPP4482N

.....अपीलार्थी / Appellant

बनाम / V/s.

Income Tax Officer - Wd, 2(2),  
Aurangabad

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte  
Revenue by : Shri Ramnath P. Murkunde

सुनवाई की तारीख / Date of Hearing : 29.08.2023  
घोषणा की तारीख / Date of Pronouncement : 31.08.2023

**आदेश / ORDER**

**PER S. S. GODARA, JM :**

1. This assessee's appeal for A.Y. 2009-10, is directed against the CIT(A)-2, Aurangabad's order dated 07/09/2015 passed in case No.ABD/CIT(A)-2/224/14-15, involving proceeding u/s. 271(1)(c) of the Income Tax Act, 1961 ; in short "the Act".

Heard both the parties at the length. Case file perused.

2. It emerges during the course of hearing that the assessee/appellant herein Lt. Karim Khan Shahnoorkhan Patel; who had filed the instant appeal way back on 29.02.2015, has left for his heavenly abode on 04.06.2021. We are informed that one Mr. Javed Karim Khan Patel has filed his petition seeking to pursue his deceased father's file preferred against the both the learned lower authorities' action imposing penalty of Rs.29,85,790/- u/s.271(1)(c) of the Act.

3. Learned Counsel invited our attention to tribunal's detailed order in file noting dt. 30.05.2023 seeking the Assessing Officer's verification report dated 10.08.2023 wherein the latter has refused to accept Shri Javed Khan Patel's status as the "legal representative" of the deceased assessee. Mr. Shingte's case before us is that the application of Shri. Javed Karimkhan Patel deserves to be accepted as the deceased assessee's "legal representative" so as to pursue the instant appeal on behalf of his father.

4. We sought to know from learned counsel as to whether this applicant has succeeded to deceased assessee's estate or not. The reply received from the applicant's side through his learned counsel is in negative only. That being the case, we are of the considered opinion that the section 159 dealing with liability of a "legal representative" deserves to be read in conjunction with section 2(29) of the Act defining such a representative; thereby adopting

the corresponding definition, in section 2(11) of the Civil Procedure Code, 1908. We deem it appropriate to reproduce the definition of a “legal representative” defined in Sec.2(11) of the Civil Procedure Code, 1908 as under.

*“ ‘legal representative’ means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in representative character the person on whom the estate devolves on the death of the party so suing or sued;”*

5. It is thus clear that legislature has prescribed specific conditions for an applicant that he or she represents the estate of the deceased person; as the case may be we thus conclude that since the appellant has failed to satisfy the above clinching criterion his instant petition seeking his impleadment as the “legal representative” fails as per Shri V.V. Ramarao Naidu Vs. CIT, [1961] 42 ITR 80(AP). Ordered accordingly. This assessee’s appeal also fails as this necessary corollary with a rider with it shall very much open for his legal representative(s); if any to pursue the same as per law.

6. This assessee’s appeal is dismissed in above terms.

Order pronounced in the Open Court on this 31<sup>st</sup> day of August, 2023.

|   |                                      |
|---|--------------------------------------|
| <b>Sd/-</b>   | <b>Sd/-</b>                          |
| <b>(DR.DIPAK P.RIPOTE)</b>                                  | <b>(S.S. GODARA)</b>                 |
| <b>लेखा सदस्य/ ACCOUNTANT MEMBER</b>                        | <b>न्यायिक सदस्य/JUDICIAL MEMBER</b> |
| पुणे / Pune; दिनांक / Dated : 31 <sup>st</sup> August, 2023 |                                      |
| Ashwini   |                                      |

ITA No.1402/PUN/2015,  
A.Y. 2009-10,  
Javed Karim Khan Patel,  
L/H of Lt.Karimkhan Shahnoorkhan Patel

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Aurangabad.
4. The Pr.CIT -2, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File. आदेशानुसार / BY ORDER,  
// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

*ITA No. 1402/PUN/2015,*  
*A.Y. 2009-10,*  
 Javed Karim Khan Patel,  
 L/H of Lt.Karimkhan Shahnoorkhan Patel

| S.No. | Details  | Date       | Initials |
|-------|--|------------|----------|
| 1     | Draft dictated on                                | 31.08.2023 |          |
| 2     | Draft placed before author                       | 31.08.2023 |          |
| 3     | Draft proposed & placed before the Second Member |            |          |
| 4     | Draft discussed/approved by Second Member        |            |          |
| 5     | Approved Draft comes to the Sr. PS/PS            |            |          |
| 6     | Kept for pronouncement on                        |            |          |
| 7     | Date of uploading of Order                       |            |          |
| 8     | File sent to Bench Clerk                         |            |          |
| 9     | Date on which the file goes to the Head Clerk    |            |          |
| 10    | Date on which file goes to the A.R.              |            |          |
| 11    | Date of Dispatch of order                        |            |          |