

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2735/Mum/2016
(A.Y. 1996-97)**

Bimal V Pala (legal heir of late Smt. C/o H.H. Parmar & Co. 512, Maker Chambers, V. 221, Nariman Point Mumbai – 400021	Vs.	Principal Commissioner of Income Tax 26 BKC Bandra East
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: APMPP6636G		
Appellant	..	Respondent

Appellant by :	M.V. Choksi
Respondent by :	S. Srinivasu

Date of Hearing	10.08.2023
Date of Pronouncement	24.08.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. PCIT-26, Mumbai, dated 16.03.2016 for A.Y. 1996-97.

The assessee has raised the following grounds before us:

- “1. On the facts and under the circumstances of the case and in law, the learned CIT erred in passing order u/s 263 and setting aside the order dated 19/03/2014 u/s 143(3) r.w.s 147 on the ground that it was erroneous and prejudicial to the interest of the revenue.
2. On the facts and under the circumstances of the case and in law, the learned CIT erred in passing order u/s 263 without taking on record the details submitted and expecting to do the impossible of bring on record the lost passport
3. On the facts and under the circumstances of the case and in law, the learned CIT erred in passing order u/s 263 relying on decision of

Rampyaridevi Saraogi vs CIT 67 ITR 84(SC), Taradevi Aggarwal vs CIT 88 ITR 323(SC) and Ramaswamy Chettiayar vs CIT 220 ITR 657.665(MAD) which are not relevant to the appellant.

4. *The appellant reserves the right and alter/amend grounds of appeal at any time before the hearing.”*

2. Fact in brief is that in this case assessment u/s 143(3) r.w.s 147 of the Act was completed on 19.03.2014 accepting nil income as declared in the return of income.

Subsequently, the ld. Pr.CIT received a proposal u/s 263 of the Act from the ACIT 26(1), Mumbai through JCIT Range 26(1), Mumbai pointing out some discrepancy/shortcoming in the assessment order. On examination of the assessment record the ld. Pr.CIT has noticed the following shortcoming as under:

“On going through the assessment records and the assessment order passed, it was observed that the assessee had submitted that in 2007 she lost her passport and submitted a copy of passport dated 11.12.2007 issued at Bahrain, on the observation page of which it was written: "This passport is duplicate. Issued in lieu of lost passport No. 2003983 dated 26.12.2006 issued at Bahrain". Thus, no submission was made with regard to her stay in India, but the assessment was completed taking the status as 'Non-resident', as per the claim of the assessee.”

In view of the above the ld. Pr.CIT observed that order passed by the assessing officer is erroneous and prejudicial to the interest of revenue, therefore, a show cause notice u/s 263 of the Act was issued on 15.03.2016 to the assessee. In response vide letter dated 17.03.2016 assessee submitted copies of various documents/correspondences including copy of affidavits dated 31.03.2015 of the assessee explaining the facts of 'Residence' in Bahrain and loss of passport etc. copy of certificate received from head of Human & Financial Resources Directorate Bahrain dated 12.11.2014 and copy of police complaint filed for the lost passport dated 02.12.2007. Further vide letter dated 15.03.2016 it was submitted that the assessee was NRI in assessment

year 1996-97 and in 2007 in Bahrain and she along with her family members had lost passport.

The Pr. CIT has not agreed with the submission of the assessee and stated that the AO should have asked for the details of the assessee in India along with concrete documentary evidences and the same should have been thoroughly verified. He also mentioned that the submission made by the assessee were simply placed on record and the assessment was completed taking the status as 'Non-Resident' as per the claim of the assessee. Therefore, the Pr.CIT held that there is failure on the part of the AO in making necessary verification while passing the assessment order and held the same as erroneous and prejudicial to the interest of revenue.

3. During the course of appellate proceedings before us the ld. counsel vehemently contended that against the order u/s 263 passed by the Pr.CIT a writ petitions has been filed before the Hon'ble jurisdictional High Court at Bombay and the Hon'ble High Court held that assessee had expired on 22.01.2016 at Singapore and this fact was brought to the notice of Pr.CIT vide communication dated 07.03.2016 therefore, the Pr.CIT was having full knowledge about the factum of the death of the deceased assessee and the order passed against a dead person was thus a nullity in law. Therefore, the matter is remanded to the ITAT for limited consideration for considering the aforesaid facts that assessee had expired on 22.01.2016 and ld. Pr.CIT was informed about this fact as discussed supra. After narrating aforesaid facts the ld. Counsel submitted that impugned order u/s 263 of the Act passed against the dead person is not valid in law. The ld. Counsel has also placed reliance on the following judicial pronouncement:

- i. *CIT Vs. M. Hemanathan (2016) 384 ITR 177 (Mad)*
- ii. *Mohammad Sharif Siddiqui Vs. ITO 20(2)(1) vide ITA No. 1179/Mum/2022 dated 29.12.2022*

iii. *Sheela Devi Vs. Pr.CIT vide ITA No. 1854/Del/2021 dated 03.03.2022*

On the other hand, the ld. D.R relied on the order of lower authorities.

4. Heard both the sides and perused the material on record. Without reiterating the fact as elaborated above we have perused the decision of Hon'ble jurisdictional High Court in the case of the assessee vide Income Tax Appeal No. 517 of 2018 dated 16.09.2022 in the case of Bimal V. Pala Vs. ACIT 26(2). The relevant extract of the judgment is reproduced as under:

- “4. *Be that as it may, it appears that the assessee Ms. Ranjana Pala had expired on 22nd January, 2016 at Singapore. A copy of the death certificate issued by the authorities at Singapore which is on record, confirms this fact. According to the certificate, the deceased assessee passed away on 22nd January, 2016 in the Mount Alizabeth Hospital Singapore. It is stated that the factum of the death of the deceased assessee was brought to the notice of the Principal Commissioner of Income Tax, vide communication dated 07th March, 2016, which was not only acknowledged by hand receipt but also got reflected in the order dated 16th March, 2016 passed under Section 263 of the Act by the Principal Commissioner of Income Tax It is thus stated that having full knowledge about the factum of the death of the deceased assessee, the authority had proceeded to pass an order against a dead person, which was thus a nullity in law.*
5. *Since the issue which is now sought to be raised before this Court in the present appeal, was not an issue which was raised or agitated before the Tribunal, but nevertheless has a direct bearing on the controversy, we deem it necessary to remand the matter to the Tribunal for a fresh consideration on this limited issue, keeping all other issues, which have been raised in the present memo of appeal, open.*
6. *Be that as it may, the matter is remanded to the Tribunal in the light of the observations herein above. Appropriate orders be passed preferably within a period of four months.”*

On perusal of the order u/s 263 of the Act it is noticed that at para 3.1 of the order the ld. Pr. CIT has categorically mentioned that in response to the notice issued the authorized representative attended and submitted copies of various documents vide letter dated 07.03.2016. A reference of the said letter has also been given by the Hon'ble High Court

of Bombay in the order dated 16.09.2022 as discussed supra in this order. With the assistance of ld. Representatives we have perused the submission made before the ld. Pr.CIT vide letter dated 07.03.2016. It is noticed that at the outset that in the letter at serial no. 1 it is categorically submitted as under:

- “1. Our above mentioned client has expired on 22.01.2016 at Singapore. Copy of the Death certificate is enclosed herewith for your ready reference and record. – Annexure A.”

Further we noticed that a copy of death certificate of registration of death of the assessee on 22.01.2016 issued by the Republic of Singapore along with said letter was also submitted. Both these document and submission were made before the ld. Pr.CIT vide letter dated 07.03.2016 before passing the order u/s 263 of the Act.

5. However, the ld. Pr.CIT has passed the order u/s 263 of the Act on the dead person i.e Ms. Ranjana Pala who had expired on 22.01.2016. We have also perused judicial pronouncement referred by the ld. counsel the Hon'ble High Court of Madras in the case of CIT Vs. M. Hemanathan (2016) 384 ITR 177 (Mad) wherein held that initiation of the proceedings against dead person and continuation thereafter despite the Income Tax Department having noticed the factum of death of the assessee were not valid. In the light of the above facts and findings we find that vide submission dated 07.03.2016 it was categorically brought to the knowledge of the ld. Pr.CIT that along with documentary evidences i.e death certificate that assessee had expired on 22.01.2016 and the ld. Pr.CIT has acknowledge the receipt of the aforesaid letter in his order passed u/s 263 of the Act at para 3.1 of the order. In view of the above it is clearly established that ld. Pr.CIT has passed the order u/s 263 of the Act against the deceased assessee despite the fact that communication of the death of the assessee was made to the ld. Pr.CIT well before passing the order u/s 263 of the Act, therefore, considering

the above fact and judicial finding as referred supra the order u/s 263 of the Act passed on the dead person is liable to be quashed. Accordingly, we quash the order passed u/s 263 of the Act. Accordingly, the appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 24.08.2023

Sd/-

Sd/-

(Aby T Varkey)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 24.08.2023

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.