

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 399/Jodh/2016
(ASSESSMENT YEAR- 2008-09)**

ITO, Ward-3(1), Jodhpur.	Vs	Shri Nemi Chand L/H Smt. Sita, (L/H Shri Jethmal Binawara), A-77, Kamla Nehru Nagar-II, Jodhpur.
(Appellant)		(Respondent)
PAN NO. DNPPS 5324 J		

(Virtual hearing)

Assessee By	Shri Rajendra Jain-Adv.
Revenue By	Shri Lovish Kumar, CIT-DR
Date of hearing	13/07/2023
Date of Pronouncement	09/10/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

It is noted that the Hon'ble judicature of Rajasthan High Court, Jodhpur vide its order dated 27.01.2020 in D.B. Income Tax Appeal No. 147/2018 has remanded the matter to the ITAT to pass the order afresh after substitution of the persons representing the estate of the deceased if any, in accordance with law. The relevant direction as mentioned in the order of

Hon'ble judicature of Rajasthan High Court, Jodhpur (supra) is reproduced hereunder.

“3. Learned counsel appearing for the proposed legal representatives of deceased respondent submits that the order under appeal has been passed by the ITAT without substitution of the legal representatives of deceased respondent is nullity in the eyes of law, deserves to be set aside and question of substitution of the legal representatives as prayed for in the present appeal does not arise. Learned counsel submitted that the proposed legal representatives have right to contest the application seeking substitution inasmuch as, the substitution prayed for can be allowed only if they represent the estate of the deceased and therefore, while setting aside the order under appeal, the matter may be remanded to the ITAT.

4. Learned counsel for the appellant has no objection if the order under appeal is set aside and the matter is remanded to the ITAT.

5. Indisputably, the order passed in favour of or against the dead person is nullity. It is not disputed before this Court that the respondent had expired prior to institution of the present appeal and therefore, the question of substitution of the legal representatives of the deceased respondent in the present appeal does not arise. Obviously, the proposed legal representatives has right to contest the application seeking substitution, if any prayed for.

6. In this view of the matter, it would be appropriate to set aside the order under appeal and remand the matter back to the ITAT to pass order afresh in accordance with law.

7. Accordingly, the order under appeal is set aside. The matter is remanded to the ITAT to pass the order afresh after substitution of the person representing the estate of the deceased if any, in accordance with law.

8. The appeal so also the application (No. 2/19) stand disposed of accordingly.”

2. The brief fact in this case is that a notice u/s 148 of the Act was issued on 20.06.2012 after recording reason and was served to legal heirs Smt. Sita

L/H of Shri Jethmal Binawara. Thus, it is noted that the case of late Shri Jethmal Binwara was reopened wherein the legal heirs was considered Smt. Sita. The assessment was finally made upon the Smt. Sita as a legal heir she filed an appeal before the Id. CIT(A). The appeal filed by Smt. Sita was allowed wherein this finding the Id. CIT(A) is as under:-

“7. Even on merits also, I find that the AO failed to bring on record any evidence whatsoever which could even remotely suggest that the appellant had some benefit on account of transaction entered by late Sh. Jethmal Binawara, It is fact that as per court's order dated 31-07-2009, the appellant and her sister Smt. Sanjana only received Rs. 21,355/- which was equally divided between both of them. Nothing substantial has been received by the appellant from the property of Sh. Jethmal Binawara. No proper inquiry has been conducted by the AO to find out the truth of the matter that who was the actual beneficiary of the transaction entered into by Sh. Jethmal Binawara. **Entire assessment has been framed in a very casual manner without establishing that the assessee being legal heir / legal representative was only beneficiary.** As per law, the AO cannot tax notional income without establishing that the same actually pertained to the assessee.

In the light of the above discussion and keeping in view the legal position, the impugned assessment order, requires to be held as void and consequently, additions made therein are also required to be held as bad in law and unjustified. Hence, the grounds of the appeal raised by the appellant are allowed.

8. In the result, the appeal is allowed.”

3. The Revenue aggrieved from the order of the Id. CIT(A) filed an appeal before the Coordinate Bench of the ITAT and the appeal of Smt. Sita was registered as ITA No. 399/Jodh/2016 vide order dated 19.03.2018 the appeal of the revenue was decided and the relevant finding of the bench is reiterated here in below:-

“5. We have heard the rival submissions and perused the material available on record. The facts in this case are undisputed that the assessee Smt. Sita Badoliya along with Smt. Sanjana was declared the legal heir of late Shri Jethmal Binwara

by virtue of a Court order dated 31.07.2009. It is also undisputed that the Assessing Officer, on receipt of information regarding sale of agricultural land by late Shri Jethmal Binwara, initiated reassessment proceedings against Smt. Sita Badoliya only and not to the other legal heir.

5.1 The Ld. Commissioner of Income Tax (A) has also elaborated on the entire factual matrix of the case in Para 6 of his order and has, thereafter, duly noted that the department was well aware about the names and existence of all the legal heirs/legal representatives of the deceased. Thereafter, the Ld. Commissioner of Income Tax (A) has held that it was incumbent upon the Assessing Officer to bring all the legal heirs on record and provide them with an opportunity of being heard. The Ld. Commissioner of Income Tax (A), while quashing the assessment u/s 148, has also placed reliance on the order of the ITAT Jodhpur Bench in the case of ACIT vs. Late Shri Mangilal through the legal heir Shri Badri Prasad Bhatia in ITA No. 720/Jodh/1993 wherein vide order dated 7.1.2004 reported in 83 TTJ 590, the ITAT Jodhpur Bench had held that notice u/s 148 must be issued to all the legal heirs so as to make the consequent assessment valid. The Ld. Commissioner of Income Tax (A) has also noted that the Assessing Officer had failed to bring on record any evidence whatsoever which could even remotely suggest that the assessee had received some benefit on account of transaction entered into by late Shri Jethmal Binwara. Ld. Commissioner of Income Tax (A) has noted that as per the Court's order dated 31.07.2009, the assessee and her sister Smt. Sanjana only received Rs. 21,355/- which was equally divided between both of them and nothing substantial has been received from the property of Shri Jethmal Binwara. The Ld. Commissioner of Income Tax (A) has also observed that no inquiry was conducted by the Assessing Officer as to who was the actual beneficiary of the transaction entered into by Shri Jethmal Binwara and further that the entire assessment has been framed in a very casual manner without establishing that the assessee being the legal heir was the only beneficiary.

5.2 On facts, we find no reason to interfere with the findings so arrived at by the Ld. Commissioner of Income Tax (A) and we also note that the issue is squarely covered in favour of the assessee by the order of ITAT, Jodhpur Bench in the case of ACIT vs. Late Shri Mangilal through the legal heir Shri Badri Prasad Bhatia (supra) wherein ITAT Jodhpur Bench held that the defect of not sending notices to all the legal representatives is not curable under the Act. The ITAT Jodhpur Bench has also noted that the issuance of notice u/s 142(1)/142(2) is different from the notice issued u/s 148 of the Act and that the processing of return u/s 143(3) simpliciter and the one processed u/s 148 of the Act after assuming jurisdiction to initiate reassessment proceedings are totally different. The Coordinate Bench further observed that the assumption of jurisdiction is a very important step under the Act, which is based on certain happenings whereas the proceedings u/s 142(1)/142(2) are quite procedural and ordinary. The proceedings under section 147/148 affect the rights of the assessee. The Bench went on to conclude that notice u/s 148, if not served to all the legal heirs of the deceased assessee, will be a defect which is not curable and, therefore, the reassessment will be null and void. Respectfully following the ratio as laid down by the ITAT, Jodhpur Bench, we

approve of the action of the Ld. CIT (A) and dismiss the grounds raised by the department.

6. In the result, the appeal of the department stands dismissed.”

4. Aggrieved from the order of the Coordinate Bench, the Revenue preferred an appeal before the Hon'ble Jurisdictional High Court wherein the Hon'ble High Court passed the order as under :

5. Indisputably, the order passed in favour of or against the dead person is nullity. It is not disputed before this Court that the respondent had expired prior to institution of the present appeal and therefore, the question of substitution of the legal representatives of the deceased respondent in the present appeal does not arise. Obviously, the proposed legal representatives has right to contest the application seeking substitution, if any prayed for.

6. In this view of the matter, it would be appropriate to set aside the order under appeal and remand the matter back to the ITAT to pass order afresh in accordance with law.

7. Accordingly, the order under appeal is set aside. The matter is remanded to the ITAT to pass the order afresh after substitution of the person representing the estate of the deceased if any, in accordance with law.

5. Before us when the matter is listed for hearing. From the side of Late Smt. Sita Badoliya in accordance with the direction of the Hon'ble Jurisdictional High Court, the content of the application reads is as under:-

Sub:- Application for bringing the legal heirs of late Smt. Sita on record.

Ref:- Direction of Hon'ble Jurisdictional High Court of Rajasthan,
Hon'ble Sir's

In compliance to direction of Hon'ble Jurisdictional High Court of Rajasthan, I have the honour to submits as under:-

1. That after death of Smt. Sita, the following legal representative of late Smt. Sita:-

a. Shri Parkash Chand	Son
b. Shri Nemi Chand	Son
c. Smt Manju W/o Late Rajendra Kumar	Wife of late sons

- d. Smt. Mangala W/o Late Prem Chand Wife of late sons
e. Smt. Santosh Daughter
f. Smt. Leela Daughter
2. We shall be grateful if Hon'ble Bench, bringing "Shri Nemi Chand" as legal heir of late Smt. Sita on record and for which no objection by other legal representative of decease.
3. The documentary evidences of legal representative of late Smt Sita are enclosed herewith.

Yours faithfully
(Prakash Chand)
(Nemi Chand)
(Smt. Manju W/o Late Rajendra Kumar)
(Smt. Mangala w/o Late Prem Chand)
(Smt. Santosh)
(Smt. Leela)"

6. Per contra, the ld. DR was heard and was confronted to the following finding of the ld. CIT(A)

"7. Even on merits also, I find that the AO failed to bring on record any evidence whatsoever which could even remotely suggest that the appellant had some benefit on account of transaction entered by late Sh. Jethmal Binawara, It is fact that as per court's order dated 31-07-2009, the appellant and her sister Smt. Sanjana only received Rs. 21,355/- which was equally divided between both of them. Nothing substantial has been received by the appellant from the property of Sh. Jethmal Binawara. No proper inquiry has been conducted by the AO to find out the truth of the matter that who was the actual beneficiary of the transaction entered into by Sh. Jethmal Binawara. **Entire assessment has been framed in a very casual manner without establishing that the assessee being legal heir / legal representative was only beneficiary.** As per law, the AO cannot taxed notional income without establishing that the same actually pertained to the assessee.

The ld. DR did not bring anything on record that late Smt. Sita Badoliya has received any benefit from the transaction entered by Late Shri Jethmal Binawara. Therefore, we have as per direction of the Jurisdictional high court considered the legal heirs, but the moot question is that whether the legal heirs also received any benefit or not is also not proved as noted by the ld.

CIT(A) that late Smt. Sita Badoliya has not received any benefit from the transaction done by Shri Jethmal Binawara. Thus, in the absence of the any help from the revenue the bench has no option but to pass the same order as originally passed considering the finding of the Id. CIT(A).

7. We have heard the rival contentions and perused the material placed on record. The bench noted that in this case reopening of the case was done in the case of Shri Jethmal Binwara (deceased) and the notice u/s. 148 of the Act was served upon the L/H Smt. Sita Badoliya and finally assessment was completed on 12.03.2014 u/s. 147 r.w.s. 143(3) of the Act. Smt. Sita Badoliya filed an appeal and contended that she is not only the legal heirs and has not received any benefit from late Shri Jethmal Binwara. The Id. CIT(A) allowed the appeal of the assessee by observing that

“7. Even on merits also, I find that the AO failed to bring on record any evidence whatsoever which could even remotely suggest that the appellant had some benefit on account of transaction entered by late Sh. Jethmal Binawara, It is fact that as per court's order dated 31-07-2009, the appellant and her sister Smt. Sanjana only received Rs. 21,355/- which was equally divided between both of them. Nothing substantial has been received by the appellant from the property of Sh. Jethmal Binawara. No proper inquiry has been conducted by the AO to find out the truth of the matter that who was the actual beneficiary of the transaction entered into by Sh. Jethmal Binawara. **Entire assessment has been framed in a very casual manner without establishing that the assessee being legal heir / legal representative was only beneficiary.** As per law, the AO cannot taxed notional income without establishing that the same actually pertained to the assessee.

7.1 Revenue carried the matter before the Income Tax Appellate Tribunal and the coordinate bench has taken a detailed finding about the issue of notice u/s 148 of the Act. The relevant findings of the Coordinate Bench in the order dated 19.03.2018 is as under:-

“5. We have heard the rival submissions and perused the material available on record. The facts in this case are undisputed that the assessee Smt. Sita Badoliya along with Smt. Sanjana was declared the legal heir of late Shri Jethmal Binwara by virtue of a Court order dated 31.07.2009. It is also undisputed that the Assessing Officer, on receipt of information regarding sale of agricultural land by late Shri Jethmal Binwara, initiated reassessment proceedings against Smt. Sita Badoliya only and not to the other legal heir.

5.1 The Ld. Commissioner of Income Tax (A) has also elaborated on the entire factual matrix of the case in Para 6 of his order and has, thereafter, duly noted that the department was well aware about the names and existence of all the legal heirs/legal representatives of the deceased. Thereafter, the Ld. Commissioner of Income Tax (A) has held that it was incumbent upon the Assessing Officer to bring all the legal heirs on record and provide them with an opportunity of being heard. The Ld. Commissioner of Income Tax (A), while quashing the assessment u/s 148, has also placed reliance on the order of the ITAT Jodhpur Bench in the case of ACIT vs. Late Shri Mangilal through the legal heir Shri Badri Prasad Bhatia in ITA No. 720/Jodh/1993 wherein vide order dated 7.1.2004 reported in 83 TTJ 590, the ITAT Jodhpur Bench had held that notice u/s 148 must be issued to all the legal heirs so as to make the consequent assessment valid. The Ld. Commissioner of Income Tax (A) has also noted that the Assessing Officer had failed to bring on record any evidence whatsoever which could even remotely suggest that the assessee had received some benefit on account of transaction entered into by late Shri Jethmal Binwara. Ld. Commissioner of Income Tax (A) has noted that as per the Court's order dated 31.07.2009, the assessee and her sister Smt. Sanjana only received Rs. 21,355/- which was equally divided between both of them and nothing substantial has been received from the property of Shri Jethmal Binwara. The Ld. Commissioner of Income Tax (A) has also observed that no inquiry was conducted by the Assessing Officer as to who was the actual beneficiary of the transaction entered into by Shri Jethmal Binwara and further that the entire assessment has been framed in a very casual manner without establishing that the assessee being the legal heir was the only beneficiary.

5.2 On facts, we find no reason to interfere with the findings so arrived at by the Ld. Commissioner of Income Tax (A) and we also note that the issue is squarely covered in favour of the assessee by the order of ITAT, Jodhpur Bench in the case of ACIT vs. Late Shri Mangilal through the legal heir Shri Badri Prasad Bhatia (supra) wherein ITAT Jodhpur Bench held that the defect of not sending notices to all the legal representatives is not curable under the Act. The ITAT Jodhpur Bench has also noted that the issuance of notice u/s 142(1)/142(2) is different from the notice issued u/s 148 of the Act and that the processing of return u/s 143(3) simpliciter and the one processed u/s 148 of the Act after assuming jurisdiction to initiate reassessment proceedings are totally different. The Coordinate Bench further observed that the assumption of jurisdiction is a very important step under the Act, which is based on certain happenings whereas the proceedings u/s 142(1)/142(2) are quite procedural and ordinary. The proceedings under section 147/148 affect the rights of the assessee. The Bench went on to conclude that notice u/s 148, if not served to all the legal heirs of the deceased assessee, will be a defect which is not curable and, therefore, the reassessment will be null and void. Respectfully following the ratio as laid down by the ITAT, Jodhpur Bench, we approve of the action of the Ld. CIT (A) and dismiss the grounds raised by the department.

6. In the result, the appeal of the department stands dismissed.”

Since the issue of notice u/s 148 of the Act is already decided by the ld. CIT(A) by holding that the AO failed to bring on record any evidence whatsoever, which could even remotely suggest that late Smt. Sita has some benefit on account of transaction entered by late Shri Jethmal Binawara. This is as per the court order dated 31.07.2009 that the late Smt. Sita and her sister Smt. Sanjana only received Rs. 21,355/ which was equally divided between both of them. Nothing substantial has been received by the late Smt. Sita from the property of Shri Jethmal Binawara. No proper enquire was done at the assessment stage and the assessment has been made in a very causal

manner without establishing that the assessee (Late Smt. Sita) was only beneficiary and as per provision of law AO cannot tax the notional income in the hands of the assessee. The similar finding is confirmed by the ITAT, where in the Coordinate Bench in favour of the assessee (Late Smt. Sita) holding that the notice u/s 148 of the Act has not been served to the legal heirs of the deceased and the said defect is not curable. Therefore, even after taking on record the legal heirs of assessee (Late Smt. Sita) the moot question will remain same. Thus, on being consistent we do not find to deviate from the finding of the coordinate bench already recorded and the revenue here also in a very causal approach not assisted to the bench and therefore, at this stage we record the legal heirs of late Smt. Sita and confirm the earlier order. Thus, the decision of the Bench taken vide order dated 19.03.2018 will not require any reconsideration. Even though after taking on record the legal heirs presently, as per direction of the Hon'ble High Court. We do not see any scope of making any error in that finding on the judgment of the Coordinate Bench and in the light of fact as per direction of the Hon'ble jurisdictional High Court the legal heirs are placed on record and the Bench do not want to go into reconsideration about the issue of notice u/s 148 of the Act. In the light of this fact the order dated 19.03.2018 in the case of

the in ITA No. 399/Jodh/2016 is sustained after considering the direction of the Hon'ble Jurisdictional High Court.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

(RATHOD KAMLESH JAYANTBHAI)
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 09/10/2023

**Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench