

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 2141/DEL/2016
Assessment Year: 2009-10**

Late Sh. Pitam Singh, Through L/H Sh. Jitendra Singh, Vill. Atur, Tehsil/distt. Ghaziabad. PAN- BHHPK0688K	<u>Vs</u>	Income-tax Officer, Ward-2(1), Ghaziabad.
APPELLANT		RESPONDENT
Assessee represented by	Sh. Akhilesh Kumar, Adv. & Sh. Ankit Kumar, Adv.	
Department represented by	Ms. Raja Rajeshwari R, Sr. DR	
Date of hearing	16.11.2023	
Date of pronouncement	16.11.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, preferred by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), Ghaziabad, dated 15.02.2016, pertaining to the assessment year 2009-10. The assessee has raised following grounds of appeal:

“1. Because, learned commissioner of income tax erred, in sustaining the validity of notice u/s 148, issued in the individual capacity instead of HUF, on the basis that issue was not raised in assessment and assessee failed to prove the said claim by way of return etc. against the facts on the record like properties under question are ancestral etc.

2. Because, without prejudice to above and as an alternative, learned commissioner of income tax wrongly upheld the validity of proceeding etc.

u/s 159 without appreciating that being notice u/s 142(1) and consequent order is framed in name of dead person (may be th. L/H) rendering all the proceedings void ab initio and order illegal.

3. Because, without prejudice to above and as a second alternative, being notices u/s 142(1) and consequent order is framed only with reference to younger son of assessee instead of substituting all the legal heir rendering all the proceedings void ab initio and order illegal.

4. Because, without prejudice to above and as an alternative, learned commissioner of income tax erred in not appreciating that the notice issued u/s 148 of Act is beyond jurisdiction being without any reason to believe' and 'satisfaction' of AO or of the superior authority and is issued in a mechanical manner without any application of mind merely to verify AIR information and to conduct roving enquiries and hence subsequent proceedings and consequent order is illegal.

5. Because, 'reason' recorded are non-existent as source of deposit was known to Id. AO and ultimately no addition is sustained on a/c of said deposits, hence order of Ld. CIT(A) making additions on different issues instead of quashing order is illegal.

6. Because, learned commissioner of income tax erred in making addition of capital gain which was never considered hence order is beyond jurisdiction.

7. Because, without prejudice to above and as an alternative, learned commissioner of income tax also erred, firstly in not allowing the cost of improvement and further not allowing the deduction u/s 54B of the Act against the settled law on the issue.

Therefore, in terms of above grounds, it is hereby prayed that the notice u/s 148 and assessment framed may kindly be quashed though only as an alternative it is also prayed that the addition made by ld. CIT(A) of Rs. 54,03,513/- may kindly be quashed.”

2. Facts, in brief, are that the AO was having information that Pitam Singh had made cash deposits aggregating to Rs. 61,87,600/-. The case was reopened u/s 147

of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) and thereafter as Pitam Singh expired, the proceedings were continued against the legal heir Shri Jitendra Singh and thereafter the AO issued notices but there was no compliance. Thus, the AO made addition ex parte to the assessee amounting to Rs. 61,87,600/- and assessed the income at Rs. 61,87,600/-. Aggrieved against this the legal heir of deceased assessee preferred appeal before the learned CIT(A) who also sustained the addition. Aggrieved, the assessee through legal heir is in appeal before this Tribunal.

3. Apropos to the grounds of appeal learned counsel for the assessee submitted that the AO failed to verify the correct facts and the notice was issued in the individual name instead of HUF. The assessee is not only one legal heir of late Shri Pitam Singh. The AO should have verified and issued notice to all the legal heirs. He submitted that no meaningful opportunity was granted to the assessee. Therefore, matter may be remitted to the file of Assessing Authority.

4. On the other hand, learned DR opposed the submissions and supported the orders of authorities below.

5. We have heard rival submissions and perused the material available on record. Looking to the facts and submissions before us there is no dispute with regard to the fact that the present appeal has been filed through legal heir. It is the contention of the legal heir that the assessment ought to have been made in the name of HUF as the amount which was deposited in the bank account was out of the sale consideration of HUF property. Furthermore, the AO should have made the verification regarding other legal heirs.

6. Considering the contentions made on behalf of the legal heir that before the Assessing Authority there was no meaningful and effective representation on behalf of the assessee, it would subserve the interest of justice if the matter is

remitted to the file of Assessing Officer for decision afresh. Accordingly, orders of authorities below are set aside and the matter is restored to the file of AO who would verify and decide the objections raised by the assessee. We are not expressing any view on the merit of the case. The AO without any influence would decide the issues after verifying the true and correct facts of the case. We order accordingly. Grounds are allowed for statistical purposes.

7. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 16th November, 2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER
MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI