

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

**आ.अ.सं./ITA No.562/SRT/2023** (AY 2012-13)

(Hearing in Physical Court)

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| Shri Prabhubhai Dullabhbbhai Patel<br>L/h Viral Prabhubhai Patel<br>2/1, Kalpana Society-1,<br>Palanpur Patiya Rander Road,<br>Surat-395009<br><b>PAN No. ACKPP 3015 G</b> | Vs | Income Tax Officer, Ward-1(3)(8), Surat, Aaykar Bhavan, Anvil Business Centre, Adajan Haizra Road, Adajan, Surat-395009 |
| <b>अपीलार्थी</b> /Appellant  |    | <b>प्रत्यर्थी</b> /Respondent   |

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| निर्धारिती की ओर से /Assessee by        | Shri Bhavin S Talati, CA |
| राजस्व की ओर से /Revenue by             | Shri Vinod Kumar, Sr-DR  |
| अपील पंजीकरण/Appeal instituted on       | 14.08.2023               |
| सुनवाई की तारीख/Date of hearing         | 22.11.2023               |
| उद्घोषणा की तारीख/Date of pronouncement | 22.11.2023               |

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

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as "NFAC/Ld. CIT(A)"] dated 19.06.2023 for the assessment year 2012-13, which in turn arises out of assessment order passed by Assessing Officer under section 143(3) r.w.s 147 of Income Tax Act, 1961 (hereinafter referred to as 'the Act' for the sake of brevity) on 27.12.2017. The assessee has raised following grounds of appeal:

*"1. That the reassessment order passed by the ld. Assessing Office (AO) and upheld by the Ld.C.I.T.(A) is against the facts of the case bad in law, illegal and needs to be quashed.*

*2. On the fact and circumstances of the case and in law, the AO erred by making reassessment on the deceased person instead of on the legal heir*

*and C.I.T.(A) also erred by upholding the assessment order passed on deceased person. Therefore, the reassessment order passed needs to be quashed.*

*3. On the facts and circumstances of the case and in law, both the ld. AO and the C.I.T.(A) failed to appreciate explanations provided by the appellant and evidences like Collector's N.A. order, Sub-Registrar's report and other evidences adduced by the appellant in support of agriculture lands. Thus, the order passed without appreciating explanations and evidences is bad in law and based only on adverse presumptions and surmises. Therefore, the reassessment order needs to be quashed.*

*3.1 The AO erred by adopting circle rate of Non-agriculture land and applied provision of Sec. 50C and ld. C.I.T(A) also erred by upholding the same and made additions u/s 50C. Thus, the application of Sec.50C for making additions is bad in law, against the valuation report of the DVO and therefore full additions needs to be deleted.*

*4. On the facts and circumstances of the case and in law, both the AO and C.I.T.(A) erred by not considering DVO's valuation report while making assessment. The A.O and C.I.T.(A) ought to accept and make assessment on the basis of value reported by the Dept. Valuation Officer. Thus additions made without considering valuation report is arbitrary and against the law and thus entire additions made in total income needs to be deleted.*

*5. On the facts and in law, both the AO and C.I.T.(A) also erred by rejecting claim of deduction made u/s 54B of the Income Tax Act, 1961 against the capital gain on sale of agriculture land.in spite of evidences adduced in support of agriculture land sold, the AO and C.I.T(A) rejected the claim. the act of the AO and C.I.T.(A) is totally against the law and facts and therefore, the claim made u/s 54B needs to be allowed.*

*6. Without prejudice to the above, the additions be reduced.*

*7. That the appellant reserves its right to add, alter, modify or delete any of the grounds of appeal hereunto taken before.”*

2. Rival submissions of both the parties heard. Record perused. The Ld. Authorized Representative (Ld.AR) for the assessee submits that action of Assessing Officer in passing assessment order under section 143(3) r.w.s. 147 is bad-in-law and Assessing Officer passed assessment order

against death person. The Assessing Officer issued show cause notice under section 148 on 31.03.2017 soon after service of notice under section 148, the assessee died and legal heirs of assessee vide their letter dated 30.06.2017 furnished copy of death certificate, to the assessing officer. The copy of application / letter dated 30.06.2017 and death certificate is filed at pages 64 to 66 of the paper book filed. The Ld. AR for the assessee submits that Assessing Officer instead of taking proper step for substituting the legal representative of the deceased-assessee, passed the assessment order against the death person. The assessment order passed against such death person is nullity and all action initiated thereto is *ab initio*. The Ld. AR for the assessee further submits that even before NFAC/Ld.CIT(A) the appeal filed by legal heirs of deceased-assessee raising objection and NFAC/Ld.CIT(A) despite bringing all such fact in their notice confirmed the action of Assessing Officer. The Ld. AR for the assessee submits that though assessment order is nullity even otherwise the assessee has a good case on merit.

3. On the other hand, Ld. Senior Departmental Representative (Ld.Sr-DR) for the Revenue after going through the application / letter dated 30.06.2017 filed by legal heirs of assessee, which is duly acknowledged by Assessing Officer and the death certificate of deceased-assessee, Ld.Sr-DR for the Revenue fully supports the order of Assessing Officer.
4. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that in the present case notice under section 148 was issued on 31.03.2017.

Further notice under section 143(2) was issued on 19.06.2017. We find that in the meantime assessee died on 13.05.2017 and Chartered Accountant of assessee intimated this fact along with copy of death certificate of assessee to the office of Assessing Officer. We find that despite intimating, the Assessing Officer completed the assessment proceedings against the deceased-assessee. It is settled position under law that assessment order passed against a death person is nullity, therefore assessment order passed under section 143(3) r.w.s. 147 on 27.12.2017 is quashed / set aside. Considering the fact that we have quashed / set aside the assessment order, therefore considering the merit of the case, have become academic in nature.

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

Order pronounced in the open court on 22/11/2023.

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| <b>Sd/-</b><br><b>(Dr ARJUN LAL SAINI)</b><br><b>[लेखा सदस्य/ACCOUNTANT MEMBER]</b> | <b>Sd/-</b><br><b>(PAWAN SINGH)</b><br><b>[न्यायिक सदस्य JUDICIAL MEMBER]</b> |
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Surat, Dated: 22/11/2023  
*Dkp. Out Sourcing Sr.P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

// True Copy //

Sr. Private Secretary /Private Secretary  
/Assistant Registrar, ITAT, Surat