

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 735/Kol/2023
Assessment Year: 2010-11

Sandeep Kumar Shah {Legal Heir of Assessee viz. Puja Shah (since deceased)} P-281, CIT Road Scheme-VI(m), Kankurgachi Kolkata - 700054 [PAN : AQEPS5462N]	Vs	Income Tax Officer, Ward - 50(4), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri A.K. Tibrewal, FCA/Amit Agrawal, Advocate
Revenue by :	Shri Ankur Goyal, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 18/10/2023
घोषणा की तारीख /Date of Pronouncement: 30/11/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the Learned Commissioner of Income Tax (Appeals) - 15, Kolkata, (hereinafter the "ld. CIT(A)") dt. 27/11/2019, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2010-11.

2. The Registry has pointed out that there is a delay of 1269 days in filing of the appeal by the assessee. An affidavit along with an application for condonation of delay has been filed and perusal of the same indicates that the assessee, namely, Puja Shah expired on 04/01/2015 and the said information was passed on to the Assessing Officer during the course of assessment proceedings. The assessment order was framed on 22/12/2017. Thereafter appeal of the assessee

before the Id. CIT(A) was passed *ex-parte* on 27/11/2019. Thereafter, assessee approached the counsel, namely, Shri Pankaj Baid, for filing the appeal before the Tribunal. Appeal fees was also deposited on 22/01/2020. Thereafter, Shri Pankaj Baid, met with an accident and was confined to bed for months and the appeals could not be filed on time. Thereafter, the assessee changed the Counsel and filed the instant appeal. In the meantime, from the third week of 2020 to March, 2022, owing to Covid-19 pandemic, the limitation period for filing during this period already stood extended by the Hon'ble Apex Court. We thus, find sufficient force in the reasons for the delay in filing of the instant appeal. We also consider the objections raised by the Id. D/R but on examining the reasons, we find merit in the condonation application and accordingly condone the delay of 1269 days and admit this appeal for hearing.

3. The assessee has raised the following grounds of appeal:-

“1. That the learned Commissioner of Income Tax (Appeals)-15, Kolkata erred in passing *ex-parte* order dated 27th November, 2019 under section 250 of the Income Tax Act, 1961 dismissing the appeal of the Appellant for non-prosecution without allowing adequate opportunities of being heard.

2. That the learned Commissioner of Income Tax (Appeals)-15, Kolkata erred in not passing order and not dealing with the grounds of appeal raised by the Appellant, on the legal infirmities in the impugned reassessment order dated 22nd December, 2017 and as well as on the merits of the addition made therein, and rather dismissing the appeal filed by the Appellant in limine for non-prosecution.

3. That the learned Commissioner of Income Tax (Appeals)-15, Kolkata erred in upholding the validity of the impugned re-assessment Order, claimed to be passed under section 147/143(3) of the Act on 22nd December, 2017 in the case of the Assessee for the Assessment Year 2010-11, even though the said order was passed in the name of dead person i.e. Puja Shah (deceased) without appreciating that an order passed in the name of dead person is liable to be annulled being rendered nullity and void *ab-initio*.

4. That the learned Commissioner of Income Tax (Appeals)-15, Kolkata erred in upholding the validity of the impugned re-assessment Order, claimed to be passed on 22nd December, 2017, passed under section 147/143(3) of the Act without appreciating that the said order was barred by limitation and liable to be annulled.

5. That the learned Commissioner of Income Tax (Appeals)-15, Kolkata erred in upholding the validity of the impugned re-assessment Order, claimed to be passed under section 147/143(3) of the

Act on 22nd December, 2017 in the case of the Assessee for the Assessment Year 2010-11, even though the impugned reassessment proceedings initiated under section 147/148 of the Act suffers from various infirmities.

6. That, without prejudice to the above, the learned Commissioner of Income Tax (Appeals)-15, Kolkata failed to appreciate that the Assessing Officer had totally erred in law in making arbitrary addition of the genuine Long Term Capital Gain of Rs.41,86,459, derived by the Assessee on sale of shares of Shardaraj Tradfin Limited, as unexplained cash credit under section 68 of the Income Tax Act, 1961 on mere suspicions, surmises and conjectures and on irrelevant considerations.

7. That the impugned order passed by learned Commissioner of Income Tax is against law and facts of the case."

4. At the outset, the Id. Counsel for the assessee raised a legal plea stating that the assessment order has been framed in the name of a deceased assessee and even when information was provided to the Id. Assessing Officer, that the assessee, late Puja Shah has expired on 04/01/2015, even then the assessment has been framed in the name of the deceased person which thus renders the assessment proceedings to be invalid and deserves to be quashed.

On the other hand, the Id. D/R stated that the assessee had not informed the assessee about the death of late Puja Shah, failing which it was not possible for the Assessing Officer to know about this information and further the assessee has attended the assessment proceedings and never raised any such objection.

5. We have heard rival contentions and perused the record placed before us. The legal issue raised by the assessee that the assessment order is a nullity and *void ab initio* because the assessment order has been passed in the name of a dead person. We observe that the assessee, namely, late Puja Shah, furnished the return of income on 27/09/2010 declaring income of Rs.3,29,557/- and this return was processed u/s 143(1) of the Act. Subsequently, based on certain

information received from DDIT (Inv.), Kolkata. Notice u/s 148 of the Act dt. 31/03/2017 was issued and duly served. However, the fact that emerges out is that the assessee, namely, Puja Shah expired on 04/01/2015 and the assessee vide letter dt. 12/12/2017 has furnished the copy of death certificate to ITO, Ward -50(4), Kolkata. The legal heir of the assessee i.e., her husband Shri Sandeep Kumar Shah has placed an affidavit sworn on 19/07/2023 stating that vide letter dt. 22/12/2017, assessee informed the Assessing Officer about the death of his wife which occurred on 04/01/2015 and he stated to be the legal heir of his wife. We further notice that even when the Assessing Officer was informed about the death of Puja Shah and that Shri Sandeep Kumar Shah was the legal heir, he still framed the assessment order in the name of Puja Shah.

6. Now, whether such assessment order which is framed in the name of a deceased person is valid in the eyes of law? We are able to lay hands on the judgment of the Hon'ble High Court of Madras in the case of *Alamelu Veerappan vs. ITO* reported in [2018] 85 taxmann.com 155 (Mad.), wherein the Hon'ble Court after discussing the facts of the case in details has laid down the ratio that a notice issued in the name of a dead person is not enforceable in law. Hon'ble Court has also held that there is no statutory obligation on the part of the legal representative of deceased to immediately intimate death of the assessee or take steps to cancel the PAN registration. Before us, the facts are much stronger in favour of the assessee because the legal heir has duly informed the Assessing Officer about the death of Puja Shah

which occurred much before the issuance of notice u/s 148 of the Act on 31/03/2017. It is a settled principle that a notice issued in the name of a dead person is not enforceable in law and if such is the legal position then, the revenue cannot be held to be justified in contending that they have no knowledge about the death of the assessee. Similar view was taken by the Hon'ble Delhi High Court in the case of *Savita Kapila vs. ACIT [2020] 118 taxmann.com 46 (Del.)*. Thus in the light of the above legal settled position, since the assessment order has been framed in the name of a deceased person even when information about the death of Puja Shah was provided to the Assessing Officer by her legal heir then, under such circumstances, the assessment order framed is *non-est*, bad in law and *void ab initio*. Since the appeal of the assessee is allowed on this very legal grounds, the remaining grounds are rendered academic in nature.

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

Order pronounced in the Court on 30th November, 2023 at Kolkata.

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 30/11/2023

**SC S.P.*

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata