

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.2388/Del/2023
[Assessment Year : 2010-11]**

Sumeet Kachwaha, [Legal Heir of Late Smt. Kushal Kachwaha], 1/6, Shanti Niketan, New Delhi-110021. PAN-AALPK7161K	vs	ITO, Ward No.33(1), E-2 Block, Civic Center, New Delhi-110001.
APPELLANT		RESPONDENT
Appellant by	Shri Jatin Prothi, CA	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	05.12.2023	
Date of Pronouncement	12.12.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the Legal Heir of the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre ("NFAC") dated 29.06.2023 for the assessment year 2010-11.

2. The Legal Heir of the assessee has raised following revised grounds of appeal:-

1. *"That the Ld.CIT(A) has erred in not quashing the assessment order as made by the Ld.AO in the name of deceased assessee consequent to the notice u/s 148 also issued in the name of deceased assessee. The assessment order being unlawful, deserves to be quashed.*
2. *That the assessment as made and the order of the Ld.CIT(A) are against law of the case involved.*
3. *That the grounds of appeal as herein are without prejudice to each other.*

4. *That the appellant respectfully craves leave to add, amend, alter and/or forego any ground(s) at or before the time of hearing.”*

3. At the outset, apropos to grounds of appeal, Ld. Counsel for the assessee submitted that the impugned order is *ex-facie*, illegal and nullity as the notice issued u/s 148 of the Income Tax Act, 1961 (“the Act”) as well as the impugned assessment order has been passed against a dead person. It is contended that Late Smt. Kushal Kachwaha had expired on 01.11.2009. It is contended that the factum of death was duly brought to the notice of Revenue Authority even prior to the issuance of notice u/s 148 of the Act.

4. Ld. Sr. DR opposed these submissions and submitted that it was incumbent upon the Legal Heir of the assessee to bring the factum of death of the assessee.

5. I have heard Ld. Authorized Representatives of the parties and perused the material available on record. Looking to the material available on record, the notice issued by the Assessing Officer (“AO”) for re-opening of the assessment is invalid on account of fact that same was addressed to a deceased person. Interestingly, another appellate order dated 22.09.2020 is on record and in Form No.35, the factum of death of the deceased assessee on 01.11.2009, is mentioned and it is also stated that the notice issued by the AO was not received by the Legal Heir of the Late assessee. Both of the authorities below did not deal with the issue regarding notice u/s 148 of the Act dated 27.03.2017 was issued against the dead person and also the impugned assessment order dated 30.11.2017 was passed against a dead person. Therefore, in view of these undisputed facts i.e. Late Smt. Kushal Kachwaha

had expired on 01.11.2009 itself and the factum of death was duly brought to the notice of the Revenue Authority as stated by the Ld. Counsel for the assessee. Therefore, respectfully following the judgment of Hon'ble Delhi High Court rendered in the case of ***Davinder Singh Thapar vs ACIT [2022] 141 taxmann.com 4 (Delhi)***. The notice issued u/s 148 of the Act dated 27.03.2017 and the assessment order dated 30.11.2017 are held to be bad in law hence, quashed. Grounds raised by the Legal Heir of the assessee are accordingly, allowed.

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

Order pronounced in the open Court on 12th December, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI