

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.39/RJT/2022
Assessment Year: 2018-19**

Deputy Commissioner of Income Tax, Central Circle-1, Rajkot.	Vs.	Smt. Kanchan Kiran Sorathiya, L/h. & W/o. Late Kirankumar Lalji Sorathiya, 20-21, Madhuban Park, Sorathia Naka, Anjar, Gujarat. [PAN – AHGPS 9721 D]
(Appellant)		(Respondent)
Assessee by	Shri Kapil Sanghavi, AR	
Revenue by	Shri Shramdeep Sinha, CIT (DR)	
Date of Hearing	11.10.2023	
Date of Pronouncement	22.12.2023	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the Revenue against the order dated 22.12.2021 passed by the CIT(A)-11, Ahmedabad for the Assessment Year 2018-19.

2. The Revenue has raised the following grounds of appeal:-

- “1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in considering the facts of the case and in ignoring that while uploading order in assessment module of ITBA application of Income Tax Department, the system automatically fetches the name of the assessee as per PAN Database. Hence, the name of the deceased assessee appeared on the assessment order.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the facts that there is no dispute that any proceedings which could have been taken against the deceased if he had survived*

may be taken against the legal representative in terms of section 159(2)(b) of the Act.

3. *Ld. CIT(A) failed to appreciate the fact that the legal representative of the deceased is for the purpose of the Act, deemed to be an assessee as per Section 159(3) of the IT Act and order even though addressed to the deceased assessee shall be deemed to be addressed to the legal heir.*
4. *Ld CIT(A) failed to appreciate the fact that the legal heir has been duly addressed in the Show Cause Notice dated 06.04.2021 which is not disputed even in the order of the CIA which very aptly establishes that the assessment proceeding was well within conformity with the intent and purpose of the Act as required u/s.292B of the Act.*
5. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the facts that the object and purpose behind Section 292B is to ensure that technical pleas on the ground of mistake, defect or omission should not invalidate the assessment proceedings when no confusion or prejudice is caused due to non-observance of technical formalities.*
6. *The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and the case may be decided on merit.”*

3. The assessee i.e. Kirankumar Lalji Sorathiya filed his return of income on 27.08.2018 declaring total income at Rs.2,55,810/-. The case of the assessee i.e. Kirankumar Lalji Sorathiya was selected for scrutiny through CASS for complete scrutiny and notice under Section 143(2) of the Income Tax Act, 1961 was issued on 23.09.2019 which was served to the assessee. During the assessment proceedings, prior to notice under Section 142(1) of the Act dated 16.03.2021, the assessee i.e. Kirankumar Lalji Sorathiya died on 12.10.2020. The assessee's Legal Heir Smt. Kanchan Kiran Sorathiya filed submissions during the assessment proceedings and show cause notice dated 06.04.2021 proposing addition of Rs.12,44,42,825/- was issued and served upon the assessee. The deceased assessee was given notice upto 09.04.2021 to file his details and explanations. The Assessing Officer held that since the assessee did not file reply against show cause notice and no explanation was offered, therefore, addition of Rs.12,44,42,825/- was made under Section 69B of the Act.

4. Being aggrieved by the Assessment Order, the Legal Heir of the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the Legal Heir of the assessee/assessee.

5. The Ld. DR submitted that the CIT(A) ignored the aspect that while uploading order in assessment module of ITBA application of Income Tax Department, the system automatically fetches the name of the assessee as per PAN Database. Hence, the name of the deceased assessee appeared on the Assessment Order. The Ld DR further submitted that there is no dispute that any proceedings which could have been taken against the deceased if he had survived may be taken against the Legal Representative in terms of Section 159(2)(b) of the Act. The Ld. DR further submitted that the Legal Representative of the deceased for the purpose of the Act, deemed to be an assessee as per Section 159(3) of the Act and order even though addressed to the deceased assessee shall be deemed to be addressed to the Legal Heir. The Ld. DR further submitted that the CIT(A) failed to appreciate the fact that the Legal Heir has been duly addressed in the show cause notice dated 06.04.2021 which is not disputed even in the order of CIT(A) which very aptly establishes that the assessment proceeding was well within conformity with the intent and purpose of the Act as required under Section 292B of the Act. The Ld. DR further submitted that the CIT(A) erred in ignoring the fact that the object and purpose behind Section 292B is to ensure that technical pleas on the ground of mistake, defect or omission should not invalidate the assessment proceedings when no confusion or prejudice is caused due to non-observance of technical formalities. The Ld. DR was confronted with the decision of Hon'ble Punjab And Haryana High Court in the case of Swaran Kanta vs. CIT, 176 ITR 291 which is in favour of the Revenue and held that the title of the Assessment Order which was not correctly worded would not make the Assessment Order invalid and the Assessment Order as passed by the Income Tax Officer was a valid assessment.

6. The Ld. AR submitted that the decision of Hon'ble Punjab And Haryana High Court is on a slightly different footing and in that case during the course of assessment proceedings the assessee died and notice was issued to the Legal Heir of the deceased and in her presence the assessment was finalised. The Ld. AR further submitted that in the decision of Hon'ble Punjab And Haryana High Court, in

the Assessment Order fact of death of the original assessee and bringing on record the Legal Heir, issue of notice to her and taking proceedings in her presence were noticed/noted. The Ld. AR further submitted that in the present assessee's case on the very beginning of the Assessment Order, the date of hearing mentioned is 25.10.2019 i.e. before the death of the assessee on 12.10.2020. Hence, from the face of the Assessment Order it is clear that no hearing was granted to the Legal Heir of the deceased assessee. The Ld. AR further pointed out that Assessment Order mentioned at page no.12 that it is requested to register as Legal Heir of the deceased assessee on Income Tax India e-filing portal for effectively attending the Income Tax related affairs of the deceased assessee. Hence, nowhere in the Assessment Order it is mentioned that assessment proceedings were completed on the Legal Heir of the deceased assessee. The Assessing Officer issued show cause notice dated 06.04.2021 on 07.04.2021 asking for submission on 09.04.2021. In April 2021, 2nd wave of COVID-19 were going on. The Ld. AR further submitted that had the Assessing Officer intended to complete assessment proceedings with the Legal Heir of the deceased assessee, he would not have given such unrealistic timeline for compliance of notice. Legal Heir of the assessee would need reasonable time to give response to the assessment proceedings of deceased assessee as he/she is not the person who has carried out transaction. Ld. AR further submitted that letter for recovery of demand dated 27.01.2022 was also issued in the name of deceased assessee without mentioning about the Legal Heir. Notice for penalty proceedings under Section 274 was also issued in the name of deceased assessee without mentioning about the Legal Heir. The Assessing Officer has recognised Legal Heir only after CIT(A) order while passing appeal effect order under Section 250 of the Act dated 28.01.2022. The Ld. AR submitted that the decision of Punjab And Haryana High Court will not be applicable in assessee's case as the Assessing Officer has not directly acknowledged Smt. Kanchan Kiran Sorathiya as Legal Heir of late Shri Kirankumar Lalji Sorathiya and has not given any hearing of the Legal Heir. The Ld. AR further submitted that Smt. Kanchan Kiran Sorathiya was registered as Legal Heir of the assessee on 24.12.2020 on Income Tax Portal. However, notice under Section 142(1) dated 16.03.2021 i.e. after approximately three months was issued by Assessing Officer in the name of the deceased assessee. Hence, the Assessing Officer has not followed procedure under Section 159 of the Act. In the assessment order, the Assessing Officer has not mentioned

anything about death of original assessee and completed the assessment proceedings against the Legal Heir. The Ld. AR further submitted that the Assessing Officer has nowhere recognised Legal Heir even post assessment while issuing letter for recovering outstanding demand or show cause notice under Section 274 read with Section 271AAC (1). In case of Smt. Swran Kanta (supra), the Assessing Officer recognised the Legal Heir and completed the assessment proceedings in accordance with Section 159 of the Act. In the present case, from the records, the Assessing Officer only mentioned name of Legal Heir in show cause notice, but nowhere in show cause and notice or Assessment Order the Assessing officer has mentioned that the assessment proceedings will be completed against Legal Heir. Even after assessment proceedings, the Assessing Officer has not recognised the Legal Heir in letter of recovery of demand as well as show cause notice for penalty. The Assessing Officer has recognised Legal Heir only after CIT(A) has given order against the Revenue. The Ld. AR further submitted that the following decisions wherein assessment order in the name of deceased person/non-existent person is held to be invalid and non-curable under Section 292B of the Act.

- 1) PCIT vs. Maruti Suzuki India Limited, 107 Taxmann.com 375
- 2) Spice Infotainment Limited vs. CIT (2012) 247 CTR (Delhi HC) 500
- 3) T. Pilani S-463-HC-2019 (Madras)
- 4) Dimension Apparels Pvt. Ltd. TS-610-HC-2014 (Delhi)
- 5) Norton Motors TS-10-HC-2004 (P&H)

7. We have heard both the parties and perused all the relevant material available on record. It is to note that the Ld. DR submitted that mentioning of the deceased assessee in the Assessment Order can be rectified under Section 292B and, therefore, the assessment is a valid assessment, but from the perusal of the records, it is seen that the Assessing Officer despite having knowledge of the deceased assessee, except mentioning in the show cause notice, the name of the Legal Heir has not incorporated the deceased assessee either in the Assessment Order or in the subsequent demand notice or show cause notice for imposing/proposing to impose penalty under Section 271AAC(1) of the Act. In the decision of Hon'ble Punjab And Haryana High Court in the case of Swaran Kanta (supra), the Assessing Officer therein has acknowledged the Legal Heir of the deceased

assessee and, therefore, the Hon'ble Punjab And Haryana High Court has held that the title of the Assessment Order which was not correctly worded would not make the Assessment Order invalid as was sought to be declared by the Revenue Authorities and the Tribunal was fully justified in restoring the order of assessment in exercising power under Section 292B of the Act. But in the present case, the Assessing Officer, despite having knowledge, has not recognised the Legal Heir while passing the final order as well as the subsequent demand order/notice and notices relied to imposing of penalty. From the perusal of records, it can be seen that the Assessing Officer has passed the Assessment Order in the name of deceased person which is non-existent person and when the order passed on the non-existent person despite represented by the Legal Heir, the same cannot be curable under Section 292B of the Act. The Assessing Officer has consciously chose the name of the deceased assessee. In the eyes of law, if the assessee is deceased and Assessing Officer is very well aware about the same, then order has to be passed in the name of the Legal Heir of the deceased assessee. But the Assessing Officer chose otherwise and, therefore, this defect is not curable as later on notices for demand as well as for imposing of penalty was issued in the name of the deceased assessee and thus the Assessment Order itself becomes void-ab-initio. The CIT(A) has taken proper cognisance of the same and allowed the plea of the assessee and held the Assessment Order invalid. There is no need to interfere with the findings of the CIT(A). Appeal of the Revenue is thus dismissed.

8. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on this 22nd December, 2023.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 22nd day of December, 2023

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Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Rajkot Bench, Rajkot*