

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD**

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA Nos.634 & 635/Hyd/2023		
Assessment Year: 2010-11		
Veeramachineni Surendra Babu, Legal Representative of Shri Nageswara Rao Veeramachaneni, Nandigama. PAN : ACAPV9977F	Vs.	The Income Tax Officer, Ward 11(5), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Sri K. Sudhakar Reddy, Advocate.
Revenue by:		Shri T. Venkanna, Sr.AR
Date of hearing:		17.01.2024
Date of pronouncement:		23.01.2024

ORDER

PER LALIET KUMAR, J.M.

The appeals of the assessee for A.Y. 2013-14 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.10.11.2023 invoking proceedings under section 144 and the order of Income Tax Officer, Ward -11(5), Hyderabad dt.27.06.2018 passing penalty order u/s 271(1) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

“a. The Appellate Authority has failed to see that the appeal has been filed after obtaining certified copies of the order dated 29.12.2017 on 24.2.2020 and thereafter, the appeal has been filed on 07.03.2020 and in that sense, there is no delay in filing the appeals.

b. The assessment order dated 29.12.2017 itself was not served on the deceased assessee in a manner known to Law. The assessee died on 09.02.2017, much before the issue of the notice under Section 147. It is not clear as to how the Assessing Authority has chosen to observe that the assessee has failed to respond to the notice and also the subsequent notices under Section 142 and the show cause notices. There is no proof of the fact that the assessment order has been served in a manner known to Law. Therefore, the date of communication of the certified copy of the order on 24.2.2020 should be taken as the date of service and since the appeal is filed within 30 days, therefrom it ought to be entertained.

c. The Appellate Authority has not called for impugned assessment record from the Income Tax Officer, Ward-11(5) to ascertain how the notices were served and how the assessment order was served and on whom. Without verifying the factual details, the Appellate Authority erred in holding that there is a delay in filing the appeal. The appellant in the statement of facts and the grounds of appeal has clearly explained as to how in the capacity of the Legal Representative came to be aware of the assessment proceedings and how the certified copies have been applied for. There is no knowledge about the assessment order till the same was communicated on 24.2.2020. Hence, there is no delay in challenging the order dated 29.12.2017, since the Department itself has not chosen to serve the order properly.

d. The assessment order itself is non-est since it is passed in the name of the deceased person.

e. Even otherwise, it is barred by limitation since the assessment under Section 147, read with Section 143 of the Act, for the year 2010-11, as per Section 148 should be done on or before 31.03.2016, but the same has been done on 29.12.2017.

f. The Assessing and Appellate Authority has also not cared to see that the deceased assessee has filed the income tax return, vide Acknowledgement dated 16.10.2010 in ITR-5 with PAN ACAPV9977F (e-filing Acknowledgement No. 173340040161010). The P&L Accounts, Balance Sheet and Computation of Income are also available, but none of them have been considered.

g. *The appellant, at the time of filing the appeal, furnished a covering letter, in which the factum of the filing of Return by the deceased assessee, that the assessee who was diagnosed with cancer in March, 2016 and was shifted to Nandigama and demised later on 9.2.2017, was brought to the knowledge of the Appellate Authority, together with the medical reports, death certificate. The assessment order dated 29.12.2017 was post-death of the deceased assessee and hence, it is null and void. The appellant applied for certified copies on 19.2.2020 when it was sensitized by the Income Tax Officer at Vijayawada that there is an order passed with tax and penalty liabilities. The Income Tax Officer at Vijayawada furnished the certified copies on 20.2.2020, pursuant to the request of the appellant.*

h. *Without prejudice to the above contention that there is no delay and the appeal is rightly filed on certified copies within time, even assuming that there is a delay in service, the Appellate Authority ought to have seen that the delay is properly explained. Though separate application for condonation of delay, has not been filed, the factum of the reasons which led to the filing of the appeal, has been narrated in the grounds of appeals before the Commissioner of Income Tax, coupled with the documents filed at the time of hearing on 17.01.2021, 29.01.2021, 06.02.2021, 30.11.2022, 19.01.2023 & 26.06.2023 also clearly shows that the assessment order was not communicated that the appellant was not even aware of the order and hence, had to apply for certified copies and file the appeal. Therefore, in the given facts and circumstances of the case, there is no delay in filing the appeal and even assuming that there is a delay, it has been properly explained, by the appellant in the statement of facts and in the grounds of appeal.*

i. *Therefore, the Appellant prays that this Hon'ble Tribunal to allow the appeal and consequently set aside the assessment order dated 29.12.2017, which is passed in the name of the dead person and that too beyond time and contrary to record."*

3. The brief facts of the case are that the assessee, Sri Veeramachaneni. Nageswara Rao derived taxable income during the F.Y. 2009-10. On verification' filed return of income nor paid any tax for the Asst. Year 2010-11 relevant to the F.Y. 2009-10. Accordingly, the case of Sri Veeramachaneni Nageswara Rao was reopened with the prior approval of the Pr. Commissioner of Income Tax-5, Hyderabad as the income chargeable to tax has escaped assessment

within the meaning of section 147 of the Income Tax Act, 1961. Subsequently, notice u/s 148 of the Income Tax Act, 1961 was issued on 31.03.2017 and served upon the assessee. But the assessee did not respond to the said notice. Further, notices u/s 142(1) of the Act dated 09.08.2017 was issued from this office but no response from said Sri Veeramachaneni Nageswara Rao. Later, a show-cause letter was issued on 20.10.2017 proposing for assessing income on the basis of the information available with the department. Further, one more show-cause letter was issued on 17/11/2017. Finally, last & final show-cause letter was issued from this office on 15/12/2017 informing that in case of no response, the assessment would be completed ex-parte. However, the assessee has chosen not to respond as well. In view of consistent non-compliance from the assessee and also considering the time-barring nature of the assessment proceedings, the undersigned is left with no option except to complete the assessment on ex-parte basing on the information available on record. Accordingly, the Assessing Officer completed the assessment u/s 144 r.w.s. 147 of the Act on 29.12.2017 assessing the income at Rs.43,18,500/-.

4. By virtue of order passed u/s 144 r.w.s. 147 of the Act dt.29.12.2017, the undisclosed income brought to tax was at Rs.43,18,500/-. As the assessee failed to disclose accurate particulars of income, the Assessing Officer levied penalty of Rs.12,35,537/- under the provisions of section 271(1)(c) of the Act.

5. Feeling aggrieved with the assessment order dt.29.12.2017 and the penalty order dt.27.06.2018, assessee filed the captioned appeals which were later migrated to the ld.CIT(A), NFAC, Delhi, who dismissed the appeals of assessee for statistical purposes.

6. Before me, learned Authorised Representative submitted that in this case, the assessee had passed away before the issuance of notice u/s 148 of the Act on 01.12.2017. Death Certificate to that effect was filed. Furthermore, the ld. AR submitted that while filing the appeal, legal heir of the assessee appeared before the ld.CIT(A) and also informed that by the time of notice u/s 148 of the Act, assessee had died. He further submitted that assessee has filed return of income and prayed that case may be remitted back to the file of Assessing Officer.

7. Per contra, the ld.DR has not raised any objection for remanding the matter back to the file of lower authorities.

8. I have heard the rival contentions of both the parties and perused the material available on record and also the order passed by the lower authorities. On perusal of the impugned order passed by ld.CIT(A), I found that ld.CIT(A) passed an exparte order confirming the action of the Assessing Officer framed on 29.12.2017 u/s 144 r.w.s. 147 of the Act. In the present case, learned Authorised Representative submitted that legal heir of the assessee appeared before the ld.CIT(A), informed that by the time of issuance

of notice u/s 148 of the Act, assessee was no more, as he had passed away on 09.02.2017. In view of the above reasons, in my view, to meet the ends of justice, the matter has to be sent back to the file of Assessing Officer. Accordingly, the appeal of the assessee is remanded back to the file of Assessing Officer with the following directions :

- (1) The Assessing Officer shall consider whether the reopening is valid in law or not more particularly, when the assessee has filed return of income showing the income and quite contrary to this, in the satisfaction, it was recorded by the Assessing Officer mentioning that the assessee has not filed the return of income.
- (2) The Assessing Officer shall also consider the effect of serving the notice to a dead person under section 148 of the Act.
- (3) The assessee shall be at liberty to file documents, if any, as required for proving his case and the Assessing Officer shall consider the evidences, if any, filed by the assessee. Needless to say the Assessing Officer shall examine those documents / evidence filed by the assessee and also the other documents available on record.
- (4) After considering the documents filed by the assessee and the submissions made by the assessee, the Assessing Officer shall pass a detailed speaking order dealing with the contentions of the assessee.

(5) In the light of the observations made hereinabove, I have not adjudicated the other grounds on merits as I am setting aside the orders passed by the lower authorities to the file of Assessing Officer for fresh adjudication.

8.1. Thus, the appeal of the assessee is allowed for statistical purposes.

9. In the result, the appeal of assessee in ITA No.634/Hyd/2023 is allowed for statistical purposes.

ITA No.635/Hyd/2023

10. Since I have set aside the quantum appeal to the file of Assessing Officer, the penalty based on assessment order is not sustainable. Therefore, this appeal is also remanded back to the file of Assessing Officer for fresh adjudication, as directed in the main appeal. Accordingly, the appeal of the assessee is allowed for statistical purposes.

11. In the result, the appeal of assessee in ITA No.635/Hyd/2023 is also allowed for statistical purposes.

12. To sum up, both the appeals of assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 23rd January, 2024.

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 23rd January, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Veeramachineni Surendra Babu, Legal Representative of Shri Nageswara Rao Veeramachaneni, Nandigama. C/o.D.No.31-280, Ashok Nagar, Nandigama, Andhra Pradesh – 521185.
2	The Income Tax Officer, Ward 11(5), Hyderabad.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order