

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

आ.अपी.सं / **ITA No.628/Hyd/2023**
(निर्धारण वर्ष/Assessment Year: 2011-12)

Shri Vishnu Kumar Katuri Adilabad PAN:AGBPK5643G (Appellant)	Vs.	Income Tax Officer Ward (1) Nirmal (Respondent)
निर्धारिती द्वारा/Assessee by:	Shri K.C. Devdas, CA	
राजस्व द्वारा/Revenue by::	Smt. Sheetal Sarin, DR	
सुनवाई की तारीख/Date of hearing:	31/01/2024	
घोषणा की तारीख/Pronouncement:	31/01/2024	

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the order dated 25.10.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2011-12.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned CIT (A) NFAC in confirming the addition of Rs.95,10,000/- made by the Assessing Officer on a diseased assessee.

3. Facts of the case, in brief, are that the assessee is an individual. In this case, information was received that the assessee had invested an amount of Rs.95,10,000/- in the

Savings Bank Account No.1459115000001761 held with M/s. Karur Vysya Bank Ltd, Adilabad. Since the assessee is not assessed to Income Tax, the case of the assessee was reopened and accordingly notice u/s 148 dated 26.03.2018 was served on 27.03.2018. Subsequently, statutory notices u/s 143(2) and 142(1) were issued and served on the assessee requesting him to attend the office and furnish copy of the return along with the required information. However, the assessee neither filed any return of income nor attended the hearing despite several opportunities granted. Therefore, the Assessing Officer completed the assessment u/s 144 r.w.s. 147 of the I.T. Act determining the total income of the assessee at Rs.95,10,000/-.

4. In appeal, the learned CIT (A) NFAC upheld the order of the Assessing Officer.

5. Aggrieved with such order of the learned CIT (A) NFAC the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that in the present case, as per the assessment order, notices u/s 148 of the I.T. Act was served on the assessee on 27.03.2018 and thereafter vide notices dated 19.7.2018 and 30.8.2018, the assessee was called upon to attend the hearing. The father of the assessee had appeared before the Assessing Officer and the contentions were recorded by the Assessing Officer in Para 3 of the assessment order as under:

“3. In response to the above final show cause letter, the assessee vide his reply dated 14.12.2018 filed in the Inward Section, stated that after his son’s demise he has

received several notices u/s 148 & 142(1) of the Income Tax Act in the status of Legal heir/representative to explain the financial transactions entered by him. He has also stated that the said deposits pertain to the commission amount which has been received by his son Shri Vishnu Kumar Katturi while doing business independently in Agricultural Market Committee and the assessee is not his legal heir”.

7. It was submitted by the learned AR that the assessee namely Shri Vishnu Kumar Katturi had passed away on 7/11/2017 prior to the issuance of notice u/s 148 by the Assessing Officer and it was submitted that the notice u/s 148 was issued on 26.03.2018. It was submitted that the reopening of the assessment as well as the passing of the assessment order based on the submission of the father of the deceased assessee are non-est in the eyes of law. It was further submitted that the bank Account which was referred to in the assessment order belongs to the father of the deceased assessee and the amount deposited in the bank Account of the father of the deceased assessee were added to the income. It was submitted that feeling aggrieved by the order, the assessee (late Shri Vishnu Kumar Katturi through his father) had filed an appeal before the learned CIT (A) NFAC. Brief facts of the case in Para 11 of the Form 35 it is mentioned as under:

11	Statement of Facts	
	Facts of the case in brief (not exceeding 1000 words)	<p>1.The appellant Late Mr.Katturi Vishnu Kumar died on 07.11.2017. Mr.K.Ashok Kumar is the father of deceased appellant who received several notices under section 148 and 142(1) of the Income tax act for the assessment year 2011-12 in the status of legal heir/ representative of his deceased son Late Katturi Vishnu Kumar to explain financial transactions entered by Late Mr.Katturi Vishnu Kumar in the financial year 2010-11 relevant to the assessment year 2011-12. 2.During the course of hearing of the case, Mr.K.Ashok Kumar has submitted that he has not received any estate from his deceased son and he cannot become the legal representative/ heir as per sec.159(4) of the Income Tax Act,1961. 3. The deceased appellant had been doing business independently before his death. After his demise, his wife and children are living away from Mr.K.Ashok Kumars family due to family disputes. Mr.K.Ashok Kumar unaware of the information about the queries raised in the notice issued u/s. 142(1) to be provided. 4. The assessing officer has then taken the bank statement of Mr.K.Ashok Kumar, who is not the assessee in this case having PAN:ADFPK0151N, and made the addition based on the bank statement of Mr.K.Ashok Kumar as against the assessment framed in the name of Late Katturi Vishnu Kumar, the deceased appellant having PAN:AGBPK5643G, which is against the law. 5. The assessment order was passed in the name of deceased son (Late Katturi Vishnu Kumar) by making Mr.K.Ashok Kumar as legal representative or heir with an addition of Rs.95,10,000/- under section 69 of the Income Tax Act as unexplained amount invested in bank account of Mr.K.Ashok Kumar. 6. The assessment should have been framed in the name of Mr.Ashok Kumar (PAN:ADFPK0151N) by issuing notice under section 148, if the addition would have been based on the bank statement of Mr.Ashok Kumar but the assessment has been framed in the name of the deceased son (Late Katturi Vishnu Kumar) and later on included Mr.Ashok Kumar as the legal representative or heir and completed the assessment based on the bank statement of Mr.K.Ashok Kumar. Thus the assessment done on the wrong person is invalid under the law. 7. Hence as against the above addition of Rs. 95,10,000/- the present appeal is filed. 8. Mr. Ashok Kumar acting as legal representative of the deceased appellant for the limited purpose of filing this appeal.</p>

8. From the reading of the averments made in para 11 it is clear that the assessee has passed away on 7.11.2017 prior to the issue of notice u/s 148. It was submitted by the learned AR that the assessment is required to be quashed and for that purpose, he relied upon the decision of the Coordinate Bench of the Tribunal in ITA No.453/Hyd/2022 in the case of Shri Siva Janardhana Varma Muppala vs. Dy. CIT order dated 31.03.2023.

9. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A) NFAC.

10. We have heard the rival arguments made by both the sides and perused the orders of the AO and the learned CIT (A) NFAC. Though in a re-assessment proceeding, notice cannot be

issued in the name of the diseased person and a reopening made in the name of a diseased person per se is not maintainable in the eyes of law. Therefore, the appellate order which was based on such a reopening is bad in law and is not sustainable. In the present case, the father of the diseased assessee Shri Katturi Ashok Kumar had brought this fact before the Assessing Officer as well as the learned CIT (A) NFAC. Further, this is also verifiable from the memo of the part in Form 35 which reflects the name of the diseased son Shri Vishnu Kumar Katturi.

11. In the light of the above, we annul the assessment which has been made on a deceased person. For the above proposition, we rely on the decision of the Coordinate Bench of the Tribunal in the case of Shri Siva Janardhana Varma Muppala vs. Dy. CIT (Supra) order dated 31.03.2023 wherein it was held as under:

7. We have gone through the record in the light of the submissions made on either side. It is an admitted fact that the assessment order was passed on the name of the deceased assessee, and the name of the LR is not reflected on the face of the order. It is not in dispute that the demand under section 156 of the Act was raised against the deceased assessee, such a demand cannot be enforced against the LR of the deceased assessee because the assessment order is passed against the deceased assessee. Any order passed against the deceased person is a nullity and no consequent demand could be permitted to be enforced against any person other than the one against whom the assessment order was passed. In view of the fact that the assessment order in this case is a nullity, we find force in the argument of the learned AR and quash the assessment proceedings. Appeal is allowed accordingly.

12. In view of the above discussion, the notice issued u/s 148 on a dead person is a nullity. Consequently, the order passed

u/s 144/147 of the I.T. Act and the demand so raised are quashed.

13. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 31st January, 2024.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 31st January, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Vishnu Kumar Katturi, 9-47 Gandhi Chowk Boath, Adilabad 504304
2	Income Tax Officer Ward-1, Lalithamba Complex, Old Bus Stand Road, Nirmal 504106, Telangana
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order