

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 536/Ahd/2019
(निर्धारण वर्ष / Assessment Year : 2012-13)

Smt. Varshaben Paras Jani L/h of Shri Paras C. Jani 22, Parikh Colony Society, B/h. Navnirman High School, Ranip, Ahmedabad - 382480	बनाम/ Vs.	Assistant Commissioner of Income Tax Circle - 5(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : APJPJ2047N		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Hardik Vora, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Sudhendu Das, CIT. DR

Date of Hearing	21/02/2024
Date of Pronouncement	23/02/2024

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed at the instance of the assessee is directed against the order dated 30.01.2019 passed by the Commissioner of Income Tax (Appeals)-5, Ahmedabad [‘the CIT(A)], arising out of the order dated 20.02.2015 passed by the ACIT, Circle - 5(1), Ahmedabad, under Section 143(3) r.w.s. 263

of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2012-13.

2. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

3. The brief facts leading to this case is this that the assessment order under Section 143(3) r.w.s. 263 of the Act was passed by the ACIT, Circle -5(1), Ahmedabad on 02.11.2017 in the name of the deceased person, namely, Late Paras Chinubhai Jani who died on 07.06.2017 as is evident from the Death Certificate submitted by the Ld. AR before us, which was already made known to the Ld. AO by and under the letter dated 29.09.2017 by the Ld. Counsel while asking for adjournment in order to enable him to receive the authority letter from the wife and legal heir of the assessee, namely, Varshaben P. Jani was not in town at that particular point of time. In that view of the matter, the case made out by the assessee is this that as the order passed by the Ld. AO admittedly in the name of a deceased person, the entire proceeding is vitiated and, thus, liable to be quashed. It was further brought to our notice that the Ld. CIT(A) while dealing with this particular ground agitated before him observed that as the legal and jurisdiction notice was issued on alive person and during assessment proceedings, since, the assessee died, it seems that the assessment order mentioning the name of the deceased instead of legal heir is a curable mistake under Section 292BB of the Act. In

rebuttal, it was submitted by the Ld. AR that the provision of Section 292BB of the Act is not applicable to the instant case in hand, in view of this particular fact that Section 292BB speaks about the service of notice and not finalization of the assessment in the name of a deceased person. Once the order dated 02.11.2017 issued under Section 143(3) r.w.s. 263 of the Act in the name of the deceased person particularly, even after having the knowledge of the death of the assessee, the order become non-est in the eye of law and thus liable to be quashed. He further relied upon the judgment passed by the Jurisdictional High Court in case of Krishnaawtar Kabra L/H of Jagannath Rampal Kabra vs. ITO in R/Special Civil Application No.1515 of 2022, dated 29.03.2022, wherein it has been decided that issuing notice upon the deceased assessee is as good as no valid notice in the eye of law resulting in irregularity, which is not curable. The Ld. DR has failed to controvert such submission made by the Ld. AR.

4. On the basis of the fact narrated hereinabove, we have further considered the judgment passed by the Krishnaawtar Kabra (supra). We find that while dealing with this particular aspect of the matter, Hon'ble Court was pleased to observe as follows:

“9. At the outset we may observe that as per scheme of the Act the AO gets jurisdiction under the Act for assessment upon suo moto filing of return by the assessee or by issue of notice requiring him to file the return. In the present case, there is no scope/opportunity for filing a voluntary return for escapement of income and the only provision under which return can be filed is on issue of a notice under Section 148. Indisputably, the assessment proceedings for escaped income were initiated by issue of notice under Section 148 of the Act and therefore the AO was vested with jurisdiction over the case. However, issuing notice upon the deceased assessee is as good as no valid notice in eye of law resulting in irregularity, which is not curable. It would be a nullity, as it hits upon the inherent jurisdiction of AO. On a bare reading of the provision, it is evident that issuance of valid

notice confers power upon the AO to assume jurisdiction for initiation of proceedings for assessment of escapement of income. It is a cardinal proposition in law that not issuing notice at all or issuing that beyond statutory period or issue of an invalid notice under Section 148 does affect the jurisdiction of AO and would make the assessment/reassessment "null and void" because the notice under this section is not a mere procedural requirement but a condition precedent to assume jurisdiction and to make a valid assessment/reassessment. Absence of such a notice would make the assessment invalid and without jurisdiction in view of the decisions of Y Narayana Chetty v. ITO, 35 ITR 388 (SC); CIT v. Thayaballi Mulla Jeevaji Kapasi, 66 ITR 147 (SC); CIT v. Kurban Hussain Ibrahimji Mithiborwala, 82 ITR 821 (SC); Nayalchand Malukchand Dagli v. CIT, 62 ITR 102 (Guj); Madanlal Agarwal v. CIT, 144 ITR 745 (All); PN Sasikumar v. CIT, 170 ITR 80 (Ker); and Electro Steel Castings Ltd. 264 ITR 410 (Cal)-SLP Dismissed 266 ITR (St.) 104 (SC). The existence of a valid section 148 notice being a condition precedent for the exercise of the jurisdiction by the Assessing Officer to assess or reassess under Section 147, it does not confer any right to the assessee, which he could abandon. Want of a notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and failure to give the requisite notice shall deprive the Assessing Officer of his jurisdiction as held in Ghansham Dass (1964) 51 ITR 557 (SC); Brij Bushan Lal v. CIT 81 ITR 497 (Punj); T.A. George v. Ag. ITO 153 ITR 721 (Ker); and CIT v. Hindusthan Steel Ltd, The Income Tax Officer and Ors. vs. Sukhini P. Modi and Ors. (19.01.2007 - ITAT Ahmedabad) : MANU/IB/5013/2007.

10. We have therefore, no hesitation in coming to the conclusion that the impugned notice dated 31.03.2021 admittedly, being issued upon deceased - assessee is void ab initio and the consequential proceedings and the orders passed thereon are any without jurisdiction and are therefore, hereby quashed and set aside. The writ application succeeds to the aforesaid extent."

5. We find that the assessee before us is on a better footing. Though the notice was served upon the assessee, since deceased, the order of assessment under Section 143(3) r.w.s. 263 of the Act was issued in the name of the deceased, knowing fully well that the assessee already died on 07.06.2017 fact of which was made known to the Ld. AO by and under letter dated 29.09.2017 enclosing death certificate of the assessee. The same is also annexed to the paper book filed before us. Further that, when the assessee sought for adjournment on 29.09.2017 requesting for some time to represent the matter before the Ld. AO, the Ld. AO should have given further opportunity to bring on record the legal heir of the assessee and to proceed with the matter strictly in

accordance with law. The duty incumbent upon the Ld. AO is evidently failed to have been performed in its proper perspective. Thus, taking into consideration the entire aspect of the matter as the assessment order issued under Section 143(3) r.w.s. 263 of the Act is found to have been issued in the name of the deceased assessee, the same, in our considered opinion, is non-est in the eye of law and, thus, liable to be quashed. Taking inspiration from the ratio laid down by the Hon'ble Jurisdictional High Court in the case of Krishnaawtar Kabra (supra), we do not hesitate to quash the assessment order passed under Section 143(3) r.w.s. 263 of the Act.

6. In the result, the appeal preferred by the assessee is allowed.

This Order pronounced on 23/02/2024

Sd/-

(WASEEM AHMED)

ACCOUNTANT MEMBER

Ahmedabad; Dated 23/02/2024

S. K. SINHA

True Copy

Sd/-

(MADHUMITA ROY)

JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad