

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.2839/Del/2023
[Assessment Year : 2011-12]**

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| Deepak Dudeja [Legal Heir of Late Shri Manohar Lal], CW-66, Malibu Town, Sohna Road, Gurgaon, Haryana-122018. PAN-ACEPL00503F | vs | ITO, Ward 2(4), Gurgaon. |
| APPELLANT | | RESPONDENT |
| Appellant by | Ms.Monalisa Maity, Adv. | |
| Respondent by | Shri Om Parkash, Sr.DR | |
| Date of Hearing | 22.02.2024 | |
| Date of Pronouncement | 27.02.2024 | |

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”) dated 11.08.2023 for the assessment year 2011-12. The assessee has raised following grounds of appeal:-

1. *“That based on the facts and circumstances of the case and in law, the impugned order is erroneous in so far as it is based on incorrect assumptions, conjectures and surmises.*
2. *That based on the facts and circumstances of the case and in law, the reassessment in the captioned matter is invalid because -*
 - 2.1. *The impugned assessment order has been passed without assuming jurisdiction upon the Appellant and in complete disregard of provisions of sections 147 to 151 of the Act.*
 - 2.2. *The impugned reassessment proceedings were proceeded with, without serving the notice under section 148 and*

142(1) of the Act, thereby in gross violation of statutory mandate laid down under the Act.

2.3. Neither a valid reason for reopening assessment has been recorded nor the prescribed sanctions have been taken for initiation of the impugned proceedings.

2.4. The impugned proceedings were proceeded with in complete disregard of the fact that the person against which notice under section 148 was addressed, had passed away much prior to the date of said notice.

3. That the impugned appellate order deserves to be quashed because –

3.1. The Hon'ble CIT(A) has erroneously stated that no compliance of notices were made by the Appellant, in complete disregard of the fact that the notices were not accessible to the Assessee as the data on the portal of the deceased assessee had been transferred to the legal heir without any prior official intimation to his legal heir or his authorized representative.

3.2. The Appellant had made all possible attempts multiple times to intimate the Ld. AO requesting for activation of the e-filing account of the deceased for making necessary compliances, for which the Appellant did not receive any response or action from the Ld. AO. (Relevant email correspondences and letters to the Ld. AO are duly enclosed herewith in support of our contention).

4. That the impugned addition amounting to INR 35,98,000 is erroneous in as much as:

4.1. It is trite law that mere cash deposits cannot, in silos, constitute a reason for reopening assessment without

having a plausible reasoning as to how the cash deposits are taxable income which have escaped assessment.

4.2. *The addition made by the Ld. AO would lead to the fact that cash deposits are income chargeable to tax which is contrary to various judicial precedents laid down by higher authorities.*

5. *That the impugned addition amounting to INR 2,31,173/- made to the income of the Appellant is unwarranted in as much as the same are emanating out of reassessment proceedings which are bad in law.*

6. *That the Ld. AO has erred in levying penalty under section 271(1)(c), 271(1)(b) and 271F upon a deceased person.*

7. *That the Ld. AO has erred in charging interest under section 234A, 234B and 234C upon a deceased person.*

8. *That the above grounds of appeal are without prejudice to one another.*

9. *That the Appellant craves to amend, modify, add or delete any ground of appeal.”*

2. Facts giving rise to the present appeal are that the assessee had not filed his return of income and the case was re-opened on the basis of cash deposited in the bank account. Before Assessing Authority, there was no representation on behalf of the assessee therefore, the Assessing Authority proceeded to make addition of the cash deposited in the bank account.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal on the ground that there was no representation on behalf of the assessee.

4. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

5. Ld. Counsel for the assessee submitted that the present appeal is filed by Shri Deepak Dudeja, Legal Heir of Late Shri Manohar Lal who had expired on 30.07.2016 prior to passing of the impugned assessment order. She prayed that the matter may be restored to the file of Ld.CIT(A) to adjudicate upon the merit of the case.

6. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below.

7. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessee had expired on 30.07.2016 during the course of assessment proceedings. The assessment has been passed in the name of the deceased assessee. Further, the appellate order is also passed in the name of deceased assessee whether during the course of assessment proceedings, Shri Deepak Dudeja, Legal Heir of Late Shri Manohar Lal was brought on record in terms of section 159 of the Income Tax Act, 1961 ("the Act") is not coming out from records. Therefore, looking to the totality of the facts and in the interest of principle of natural justice, the impugned order is hereby, set aside and the grounds raised by the assessee are restored to the file of Ld.CIT(A) to decide afresh in accordance with law by way of a speaking order. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 27th February, 2024.

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