

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 2103/Del/2023
Asstt. Year: 2010-11

Smt. Surinder Kaur Thapar (Legal Heir of Late Shri Amrit Singh Thapar) R-612, New Rajinder Nagar, New Delhi – 110 060 PAN AAAPT0790Q (Appellant)	Vs.	DCIT, Circle-2(1), New Delhi. (Respondent)
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Assessee by:	Shri Lalit Mohan, CA & Shri Parth Singhal, Advocate
Department by:	Shri Piyush Tripathi, Sr. DR
Date of Hearing:	15.02.2024
Date of pronouncement:	08.03.2024

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 25.05.2023 of the Ld. Commissioner of Income Tax (Appeals) NFAC, Delhi (**"CIT(A)"**) pertaining to Assessment year (**"AY"**) 2010-11.

2. The assessee has raised the following grounds:-

- “1. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred both in law and, on facts in upholding the determination of income made by the learned Deputy Commissioner of Income Tax, Circle-2(1), New Delhi of the appellant at Rs. 1,04,86,210/- as against declared income of Rs. 93,54,834/- by the appellant in an order of assessment dated 30.12.2017 u/s 147/143(3) of the Act.

2. *That the impugned order has been made on a dead person and therefore the aforesaid order is illegal, invalid and void-ab-initio and therefore, nullity*
3. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in disposing off the appeal ex-parte without granting any fair opportunity of being heard to the appellant.*
- 3.1 *That the finding that notices remained un-complied during the appellate proceedings is not based on correct appreciation of facts and circumstances of the case of the appellant and hence could not have been made a ground to deny an effective opportunity of being heard.*
- 4 *That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/143(3) of the Act without appreciating that the same were without jurisdiction and hence deserved to be quashed as such.*
- 5 *That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in sustaining an aggregate addition of Rs. 11.09.194/- representing additional income accrued for the instant year and, not disclosed by allegedly misusing the client code modification mechanism by the broker and erroneously held to be taxable u/s 68 of the Act*
6. *That the learned Commissioner of Income Tax (Appeals) has erred both in law erred both in law and on facts in upholding an addition of Rs. 22,184/-representing alleged income from commission and brought to tax u/s 69C of the Act.*
7. *That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding the levy of interest of Rs. 4.19.047/- us 234A of the Act and interest of Rs. 4,53,156/- u/s 234C of the Act which are not leviable on the facts and circumstances of the case of the appellant.”*

3. It is a case of re-assessment of the assessee individual, Shri Amrit Singh Thapar. The AY involved is 2010-11.

3.1 On the basis of information received from DIT, Mumbai that during spot verification under section 131(1A) of the Income Tax Act, 1961 (**the “Act”**) of a few brokers it was gathered that they have misused the facility of client code modification in F&O segment on NSE during financial year (**“FY”**) 2009-10 to create fictitious losses accommodation entries/credits for their clients and have admitted to receive commission and that the name of

assessee also appears as one of the beneficiary of fictitious profit/loss, notice under section 148 of the Act dated 27.03.2017 was issued after obtaining approval under section 151(1) of the Act. In response thereto, the assessee submitted that original return filed on 25.09.2010 for AY 2010-11 declaring income of Rs. 93,54,834/- be taken as return filed in response to notice issued under section 148 of the Act. Statutory notice under section 143(2) was issued and served on 28.09.2010. During the reassessment proceedings on 15.11.2017, the assessee was asked to submit details and evidence regarding genuineness of his transactions with K.K.Securities Limited during FY 2009-10.

4. On 01.12.2017 the assessee objected to initiation of re-assessment proceedings. The objections of the assessee are reproduced by the Ld. Assessing Officer (**“AO”**) at pages 2 to 9 of the order. The Ld. AO overruled the objections and completed the re-assessment on 30.12.2017 on total income of Rs. 1,04,86,210/- under section 147 r.w. section 143(3) of the Act including therein addition of escaped income of Rs. 11,09,194/- under section 68 and commission thereon @ 2% amounting to Rs. 22,184/- under section 69 of the Act.

5. Aggrieved, the assessee filed appeal before the Ld. CIT(A) who passed ex-parte appellate order sustaining the impugned additions for non-compliance of notice(s) of hearing issued to the assessee by him.

6. Dissatisfied, the assessee is in appeal before the Tribunal and all the grounds of appeal relate thereto.

7. We have heard the Ld. Representative of the parties and perused the records. The assessee, Shri Amrit Singh Thapar expired on 02.08.2020. Notice under section 148 of the Act was issued on 27.03.2017 and reassessment proceedings before the Ld. AO commenced by issue of statutory notice under section 143(2) served on him on 28.09.2017 and the

re-assessment order was passed by the Ld. AO on 30.12.2017. It is therefore obvious that the reassessment was made during the life-time of the assessee, Shri Amrit Singh Thapar. The appeal against the order of re-assessment was instituted on 20.01.2018 i.e. one and half years before the death of the assessee. Thus it was only during the course of appeal proceedings that the assessee, Shri Amrit Singh Thapar expired on 02.08.2020. There is no evidence on record to show that the information of death of the assessee was given to CIT, NFAC. From copy of submission filed by the assessee at pages 14-23 of the Paper Book it is obvious that it was during the appeal proceedings for AY 2014-15 that the fact of demise of Shri Amrit Singh Thapar was intimated to Ld. CIT NFAC Delhi by the legal heir, Smt. Surinder Kaur Thapar.

8. So far as the AY 2010-11 is concerned, it is not a case of issue of notice under section 148 of the Act to the assessee after his death. Therefore the decision of Hon'ble Delhi High Court placed at pages 4-7 of the Paper Book pertaining to AY 2013-14 is inapplicable and renders no help to the assessee.

9. On the facts and in the circumstances of the case, we deem it fit to restore the matter back to the file of the Ld. CIT(A) for decision afresh on merits in accordance with law after allowing reasonable opportunity of being heard to the assessee. The assessee shall of course, co-operate in the appeal proceeding. We order accordingly. Consequently, the order of the Ld. CIT(A) is set aside.

10. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 8th March, 2024.

sd/-

**(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

Dated: 08/03/2024

Veena

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
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Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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