

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1109/Ahd/2023  
Assessment Year 2017-18**

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| Vijaybhai Laxmichand<br>Demla<br>L/H of Late Shri<br>Laxmichand Pahlumal<br>Demla L.I.G. 6,<br>Shastrinagar,<br>Bhavnagar,<br>Gujarat-364001<br><b>PAN: ABQPD3053K<br/>(Appellant)</b> | Vs | Income Tax Officer,<br>Ward-1(1),<br>Bhavnagar<br><br><b>(Respondent)</b> |
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**Assessee Represented: Shri Abhimanyu Singh Bhati, A.R.  
Revenue Represented: Shri Urjit B Shah, Sr.D.R.**

Date of hearing : 06-03-2024  
Date of pronouncement : 20-03-2024

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by one of the legal heir of the deceased assessee as against the appellate order dated 31-10-2023 passed by Commissioner of Income Tax [Appeals], National Faceless Appeal Centre [NFAC], Delhi arising out of the assessment order passed under section 144 of the Income Tax Act, 1961 [herein after referred as the Act] relating to the assessment year 2017-18.

2. The brief facts of the case is that the appellant before us is one of the legal heirs of Late Shri Laxmichand Pahlumal Demla, who was engaged in the business of stationary and regularly filing his Return of Income till Asst. Year 2016-17. Due to age factor (76 years), he wound up the business activity during the Financial Year 2014-15 thereby he has not filed his Return of Income for the Asst. Year 2017-18 being below taxable income. The assessee deceased on 28.01.2019.

2.1. During the demonetization period (namely 08.11.2016 to 30.12.2016), the assessee made cash deposit of Rs.7,00,000/- in Bank of Baroda, Rs.2,00,000/- in Andhra Bank and Rs.3,83,000/- in State Bank of India. The assessee was issued with notices u/s. 142(1) on 13.03.2018 and 03.06.2019 whereby the assessee was asked to furnish the explanation regarding cash deposits made in his bank accounts during the demonetization period. As there was no response, a final show cause notice dated 25.09.2019 asking for explanation for the cash deposits made during the demonetization period. The assessee's one of the legal heir namely Shri Laxmichand Pahlumal Demla informed the Assessing Officer, the death of his Father on 28.01.2019 and also disclosed the details of six legal heirs of his father Late Shri Laxmichand Pahlumal Demla and refuse to accept any responsibility on the Income Tax proceedings, since there are other five legal heirs also there. Further he do not have any details or documents in his possession of the deceased father. He filed a detailed letter which was acknowledged by the Assessing Officer on 19.12.2019. However the Assessing Officer proceeded with making assessment treating Vijay

Laxmichand Demla as the sole legal heir as per Section 159 of the Act by observing as follows:

*4. The assessee's legal heir Vijay Laxmichand Demla submitted that the assessee i.e. Laxmichand Pahlumal Demla has expired on 28.01.2019 and the legal heir submitted Death Certificate of the assessee. The legal heir i.e. Vijay Laxmichand Demla was issued a letter dated 03/12/2019 in which he was informed about the provisions of section 159 of the IT Act and assessee's legal heir is deemed to be an assessee in this case.*

*5. The assessee's legal heir has failed to furnish any details like nature of income earned, details of bank account(s), details of cash deposits made in the bank account(s), sources of cash deposits, details of cash deposits made during demonetization period, along with sources thereof. The assessee's legal heir has denied that he does not have any documents of his father in his possession and refused to accept any responsibility in the matter vide his letter received in this office dated 12/12/2019. But the department after perusal of the bank statement of the assessee i.e. Laxmichand Pahlumal Demla found out that he had transferred amount of Rs. 2,00,000/- through Cheque (Cheque No. 726813) in the account of Shri Vijay Laxmichand Demla (Legal Heir) bearing A/c No. 176710100001963 in Andhra Bank. Therefore addition is proposed to be made u/s 69A of the IT Act.*

2.2. Thus the Assessing Officer made an addition of Rs.27,65,420/- under section 69 as unexplained income and charged to tax the same u/s. 115BBE of the Act at 60% and demanded tax thereon. The A.O. also initiated penalty proceedings u/s. 272A(1)(d) for non-compliance of notice and Penalty u/s. 271F for non-filing of Return of Income.

3. Aggrieved against the assessment order, the one of the legal heir of the assessee filed an appeal before Ld. CIT(A) specifically raising Ground No. 4 that the Assessing Officer failed to bring on record all the legal Representatives of the deceased assessee. However the Ld. CIT(A) given two opportunities of hearing on 27.01.2021 and 24.07.2023 thereby without adjudicating the primary issue of non-

impleading legal heirs, dismissed the assessee appeal thereby confirmed the tax demand raised by the Assessing Officer.

5. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal as well as Additional Grounds of appeal as follows:

*1. The learned Commissioner of Income-tax (Appeals) erred in law and on facts in dismissing the appeal of the Appellant.*

*2. The learned Commissioner of Income-tax (Appeals) erred in law and on facts in failing to provide sufficient opportunity to the appellant.*

*3. The learned Commissioner of Income-tax (Appeals) erred in law and on facts in summarily dismissing the grounds No. 3 to 5 of the Appellant without recording in the order points for determination, decisions and reasons thereon as specified in provisions of section 250(6) of the Income Tax Act, 1961.*

*4. The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming the addition to the tune of Rs.27,65,420/- as income from undisclosed sources.*

#### **Additional Ground of Appeal**

*1. The Ld. Commissioner of Income Tax (Appeals) erred in law and on facts in upholding the jurisdictional defective Assessment Order dated 17.12.2019 passed without bringing on record all the legal heirs (representatives) despite being intimated about the same by the Appellant.*

6. Ld. Counsel Shri Abhimanyu Singh Bhati appearing for the assessee submitted before us copy of the letter dated 03.12.2019 filed by the assessee before the Ld. A.O., which reads as follows:

*"In response to the above referred notice received by me on 06.12.2019, I would like to submit and respond as under.*

*1. My father Late Shri Laxmichand Demla died on 28/01/19 It seems that the above notice has been served upon me for the scrutiny assessment of my father Late Shri Laxmichand Demla for the assessment year 2017-18.*

*2. In this matter, I wish to bring to your notice that my father had six sons. That means myself and my five brothers, details of whom are given hereunder, are the legal heirs of Late Shri Laxmichand Demla.*

- A. Satyavan Laxmichand Demla, presently residing at Ahmedabad*
- B. Rajesh (Raju) Laxmichand Demla, presently residing at Ahmedabad*
- C. Anil Laxmichand Demla, presently residing at Bhavnagar*
- D. Sunil Laxmichand Demla, presently residing at Bhavnagar*
- E. Prakash Laxmichand Demla, presently residing at Bhavnagar*
- F. Vijay Laxmichand Demla, presently residing at Bhavnagar*

*3. I hereby wish to inform you that I am not the sole legal heir of Late Shri Laxmichand Demla, neither I have any details/documents of my father in my possession. I refuse to accept any responsibility in the matter solely.*

*Kindly take the above facts on your record and oblige.*

6.1. The Ld. Counsel placed on record, settled principle of law on the assessment of legal representatives by the Hon'ble Gujarat High Court in the case of Chootharmal Wadhuram Vs. CIT reported in (1971) 80 ITR 360, wherein it was held that the deceased had admittedly more than one legal representatives and notice for reassessment was served only on one of them, proceedings were invalid in the absence of material to show that such legal representative represented the entire estate of the deceased with the consent, express or implied, of the other legal representatives.

7. Per contra, the Ld. Sr. D.R. Shri Urjit B. Shah appearing for the Revenue supported the order passed by the Lower Authorities and requested to uphold the same.

8. We have given our thoughtful consideration and perused the materials available on record. It is undisputed fact for the Asst. Year 2017-18, the assessee has not filed his Return of Income, since there is no taxable income in his hands and also for the

reasons of wound-up of his business activities. However during demonetization period, the assessee made cash deposits in his three Bank Accounts for which notice u/s. 142(1) was issued first time on 13.03.2018 and thereafter on 03.06.2019. In the meanwhile, the assessee Shri Vijay Laxmichand Demla died on 28.01.2019. Thereafter the final show cause notice was issued by the Ld. A.O. on 25.09.2019, one of the legal heir namely Shri Vijay Laxmichand Demla filed a detailed letter dated 03.12.2019 that his deceased father has six sons and given their details. Further he refused to accept any responsibility, since he is not sole legal heir for the estates of his deceased father and also he was not in possession of any details/documents regarding his father's cash deposits. However the Ld. A.O. though considered the above submission of the assessee but treated Shri Vijay Laxmichand Demla as sole legal heir and proceeded with the assessment.

9. In our considered view, the Assessing Officer when put to notice about the death of the assessee and the details of the six legal heirs of the deceased assessee, Ld. A.O. ought not have proceeded with only one of the legal heir namely Shri Vijay Laxmichand Demla in spite of his specific objection. Sub-section (4) of Section 159 of the Act reads as follows:

*“159. Legal Representatives*

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.....  
.....

*(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.”*

10. Admittedly the legal heir Shri Vijay Laxmichand Demla is not only the legal heir on the estate of the deceased. Thus the Assessing Officer having not included all the legal heirs of the deceased assessee and framed the assessment only against one of the legal heir is against the provisions of law and the assessment is invalid in law. Thus the entire assessment is hereby quashed.

11. This view of ours is supported by the Jurisdictional High Court in the case of Chooharmal Wadhuram (cited supra) held as follows:

*“Where a person dies leaving more than one legal representatives, the ITO must proceed to assess the total income of the assessee by serving notice under s. 22(2) or s. 34, as the case may be, on all the legal representatives. If the notice is served on only one legal representative, there would be no complete representation of the estate or, to use the words of Salmond. "of the person of the deceased". One only out of several legal representatives would not represent the whole interest of the deceased and if the whole interest of the deceased is not represented before the ITO, it is difficult to see how the ITO can proceed to assess the total income of the assessee. The assessment must on principle and authority be made on those who represent the whole interest of the assessee-his entire estate-and assessment on only one of them who partially represents the estate of the deceased, cannot be regarded as sufficient to bind the estate of the deceased. E. Alfred vs. First Addl. ITO (1957) 32 ITR 401 (Mad): TC44R 305, Muniyammal vs. Third Addl. ITO (1960) 38 ITR 664 (Mad), CIT vs. N.A. Mandagi (1967) 63 ITR 173 (Mys): TC44R 322 and First Addl. ITO vs. Mrs. Suseela Sadanandan (1965) 57 ITR 168 (SC): TC44R 209 relied on.”*

12. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 20-03-2024

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 20/03/2024**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue

3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद