

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 446/Ind/2023
Assessment Year: 2008-09

Dhruv Sachdev, (L/H of Late Shri Arun Sachdev), A-253, Old Minal Residency, J.K. Road, Bhopal	<u>बनाम/</u> Vs.	Income-tax Officer, 5(2), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN of Dhruv Sachdev : EHLPS0746F PAN of Late Shri Arun Sachdev : ADOPS9500L		
Assessee by	None	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	02.05.2024	
Date of Pronouncement	03.05.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 13.09.2023 passed by Ld. Commissioner of Income-tax (Appeal), N.F.A.C., Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 26.02.2016, passed by the ITO, 5(2), Bhopal ["AO"] u/s 147 read with section 144 of the Income-tax Act, 1961 for Assessment-Year 2008-09, the assessee has filed this appeal on following grounds:

- “(1) The order passed on 13.09.2023 by Hon’ble Commissioner of Income-tax (Appeals)-NFAC is bad in law and in facts.

Hon’ble Commissioner of Income-tax (Appeals)-NFAC passed an order dated 13.09.2023, when no appeal was pending before him and the matter was already decided on 12.01.2023 by Commissioner of Income-tax (Appeals)-NFAC.

Assessee requests that the order passed on 13.09.2023 by Hon’ble Commissioner of Income-tax (Appeals)-NFAC needs to be set-aside and quashed as the same is against the law, legal procedures and jurisprudence.

2. Legal Heir [L/H] filed the appeal before the Commissioner of Income-tax-2, Bhopal on 13.04.2016 and filed submissions during the course of hearing, during the course of hearing, it was instructed to the L/H to file the same appeal digitally also filed submissions through digital mode, L/H followed the instruction and while filing online appeal attached the copy of Manual Appeal filed in form no. 35 confirming it is the one and same appeal filed by the L/H filed on 13.04.2016. The case was shifted to CIT(A), NFAC, on 12.01.2023, the order was passed by Commissioner of Income-tax (Appeals)-NFAC and appeal of the assessee was allowed in full.

Another order against the same assessment order was passed by Hon’ble Commissioner of Income-tax (Appeals)-NFAC on 13.09.2023 dismissing the appeal filed by the assessee. Order passed by Commissioner of Income-tax (Appeals)-NFAC on 13.09.2023 needs to be set aside and quashed as the same is against the law, legal procedures and jurisprudence.”

2. None appeared on behalf of the assessee when the case was called nor any adjournment application filed. The case was passed over and taken up at the end of board but still nobody appeared on behalf of assessee. However, the assessee has filed written submission which is held in case file. Ld. DR for Revenue pointed out that the case can be decided on the basis of material held on record. Therefore, the hearing is proceeded and the matter is being disposed of.

3. We need to narrate only limited facts that are necessary for understanding and adjudication of case. 'Shri Dhruv Sachdev', appellant in present case, is the legal heir of 'Late Shri Arun Sachdev'. In this case, the AO passed assessment-order after making an addition of Rs. 3,00,000/- on account of unexplained investment in mutual funds. Aggrieved, the assessee filed first appeal to CIT(A) and now came up in next appeal before us. From the Grounds of Appeal re-produced above and also Written-Submission filed by assessee, it appears that the CIT(A) has passed two orders while deciding first-appeal of the assessee. The first-order was passed on 12.01.2023 and the second-order is again passed on 13.09.2023. While the first-order was in favour of assessee, the second-order is against assessee. The assessee is impugning the second-order in present appeal. The assessee has filed copies of (i) first Order dated 12.01.2023 to show that the CIT(A) has already allowed assessee's appeal and deleted addition made by AO and also (ii) a consequential Order dated 13.01.2023 passed by AO giving effect to the said order of CIT(A) and reducing demand to Rs. Nil. For the sake of immediate reference, these orders are being scanned and reproduced here:



भारत सरकार / GOVERNMENT OF INDIA
वित्त मंत्रालय / MINISTRY OF FINANCE
आयकर विभाग / INCOME TAX DEPARTMENT
राष्ट्रीय पहचानविहीन अपील केन्द्र / NATIONAL FACELESS APPEAL CENTRE (NFAC)
दिल्ली / DELHI

To, ARUN SACHDEV A-253 MINAL RESIDENCY ,J. K. ROAD INDRAPURI BHOPAL 462021 ,Madhya Pradesh India
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PAN: ADOPS9500L	AY: 2008-09	Dated: 12/01/2023	D/N & Order No : ITBA/NFAC/S/250/2022-23/1048674239(1)
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Order u/s 250 of Income Tax Act,1961

Instituted on 13/04/2016 from the order of ITO BHOPAL dated 14/03/2016

Appeal No	CIT (A), Bhopal- 2/10271/2016-17 (Manual Appeal Register Number: IT-53/16-17)
Status/Deductor Category	Individual
Residential Status	Resident
Nature of Business	Others
Section under which the order appealed against was passed	147r.w.s144
Date of Order under which the order appealed against was passed	14/03/2016
Income/Loss Assessed (in Rs .)	0
Tax/Penalty/Fine/Interest Demanded (in Rs.)	114910
Present for the appellant	Not Applicable
Present for the Department	Not Applicable

1. The appeal was filed by the appellant M/s Arun Sachdev (PAN ADOPS9500L) on 13.04.2016 against the order dated 26.02.2016 passed under section 147 r.w.s 144 of the Income-tax Act, 1961 by the AO, for the assessment year 2008-09.
2. Subsequently, the appeal was migrated to the National Faceless Appeal Centre

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.

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in terms of the Notification No. 139/2021/F.No.370142/66/2021-TPL dated 28.12.2021 issued in this regard. Notice u/s 250 of the Income tax Act, 1961 were issue to the appellant on 23.12.202, 22.03.2021 and 09.01.2023 fixing the date for filing details / submissions on 07.01.2021, 06.04.2021 and 17.01.2023.

3. The brief facts of the case are that the case of appellant was reopened u/s 148 by the AO on the basis of certain AIR information of investment of Rs. 3,00,000/- in mutual fund. In the absence of any compliance from the assessee, the AO added Rs. 3,00,000/- on account of unexplained investment by passing an order u/s 147 r.w.s. 144 on 26.02.2016. Aggrieved by the addition the appellant has filed this appeal.

4. The primary facts in this case remains that the assessee who was an employee of Oriental College of Science and Technology in Bhopal had earned a salary income of Rs. 3,81,819/- during the A.Y. 2008-09, and expired due to heart failure on 22.09.2013. It is also an admitted fact that the impugned noticed u/s 148 for reopening of case was issued in the name of assessee that is Shri Arun Sachdev on 20.03.2015, that is nearly after one and a half year the death of assessee. It is submitted by the appellant, in the capacity of Legal Heir of assessee, that the notice issued in the name of assessee Shri Arun Sachdev after the death of assessee is not valid and accordingly the assessment framed consequently is bad in laws.

5. I have gone through the facts of the case and my observation is that a notice under section 148 can only be issued in the name of an alive person. In case the assessee is dead and notice is issued in his or her name, then the same is non-est in the eyes of law. An order passed in continuity of such a notice is also invalid and liable to be annulled. The sin qua non for acquiring jurisdiction to reopen an assessment is that notice under section 148 should be issued to a correct & alive person and not to a dead person. Consequently, the jurisdictional requirement under section 148 of the Income Tax Act 1961 of service of notice in case if not fulfilled renders the entire proceedings null and void. There is no statutory liability on legal heir to intimate the death of the assessee to Income Tax Department. Section 159 does not apply in such cases when notice under section 148 is issued in the name of dead person. It is also held that Section 292BB is applicable to an assessee and not to a legal representative.

6. This identical issue came up before the Hon'ble Delhi High Court in the case of Rajender Kumar Sehgal vs Income Tax Officer Ward 56(1), wherein the Hon'ble High court made an elaborate analysis of the provisions of section 159 as well as of section 292BB under para 6 to 12 of their order pronounced on 19.11.2018. The relevant portion of the

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same is reproduced as below:

"6. The provision relevant to decide the first issue is Section 159 of the Act, which reads as follows:

"159. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or re-computation under section

147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),-

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(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.

(5) The provisions of sub-section (2) of section 161, 162 and 167 shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability."

7. After noticing the facts of the case, **the Division Bench, in Vipin Walla (supra)** (where again the reassessment notice was issued in the name of the deceased

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and no notice was issued to the legal representative), held that:

"11. Section 159 (2) of the Act makes a specific reference to a reassessment proceeding under Section 147 of the Act. While Section 159 (2) (a) of the Act talks of a proceeding already taken against an Assessee 'before his death'. Section 159 (2) (b) of the Act envisages any proceeding which could have been taken against the deceased if he had survived. It permits such a proceeding to be taken against the LRs of the deceased Assessee even if it had not taken while the Assessee was alive. Section 159 (2) (b) is relevant as far as the present case is concerned.

12. What was sought to be done by the ITO was to initiate proceedings under Section 147 of the Act against the deceased Assessee for AY 2008-09. The limitation for issuance of the notice under Section 147 /148 of the Act was 31st March 2015. On 27th March 2015, when the notice was issued, the Assessee was already dead. If the Department intended to proceed under Section 147 of the Act, it could have done so prior to 31st March 2015 by issuing a notice to the LRs of the deceased. Beyond that date it could not have proceeded in the matter even by issuing notice to the LRs of the Assessee."

8. This court sees no reason to disagree with the decision in Vipin Walia (supra); the summation of the principle applicable, given the plain words of the statute are unexceptionable. The revenue's argument that the "defect" was curable, in regard to the issuance of notice, to a deceased individual, is, in the opinion of this court, untenable. The phraseology of Section 292BB precludes the contention. That provision reads as follows:

"292BB. Notice deemed to be valid in certain circumstances.--Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was--

(a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

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9. *If the original assessee had lived and later participated in the proceedings, then, by reason of Section 292BB, she would have been precluded from saying that no notice was factually served upon her. When the notice was issued in her name- when she was no longer of this world, it is inconceivable that she could have participated in the reassessment proceedings, (nor is that the revenue's case) to be estopped from contending that she did not receive it. The plain language of Section 292BB, in our opinion precludes its application, contrary to the revenue's argument.*
10. *As far as Pankajbhai Rameshbhai Zalavadiya (supra) is concerned, this court notices that the judgment is an authority on the proposition that rejection of an application under Order XXII Rule 4 CPC without adjudicating its merits is not per se a bar for impleadment of the legal heirs and successors of a party under Order-I Rule 10(2) CPC. This court is of opinion that the absence of any provision in the Act, to fasten revenue liability upon a deceased individual, in the absence of pending or previously instituted proceeding which is really what the present case is all about, renders fatal the effort of the revenue to impose the tax burden upon a legal representative.*
11. *As far as the second argument, with regard to the clarification is concerned, this court is unpersuaded by the revenue's argument. The petitioner's objection that the transaction with an entity attributed to the deceased was unsupported by the books furnished to the revenue, was straightaway rejected. However, the "reasons to believe" are premised upon such a transaction with one Varun Capital Services Ltd. (as is evident from the table at Appendix B to that document). After rejection, of the objection, which meant that according to the revenue, such a transaction was indeed recorded in the deceased's books, the revenue attempted to "correct" the "error" by changing the name of the entity (with whom the suspect transaction occurred). This court is of opinion that such "correction" is neither innocuous nor innocent; it was clearly aimed at improving what was a fatally defective "reasons to believe" and mask the reality, to wit, that the revenue authorities utterly failed to apply their minds to the facts and circumstances of the case. On the last issue, i.e the fatality attached to the completed reassessment in the absence of a notice under Section 143 (2), this court notices that the omission renders the assessment (or reassessment as in this case) void a proposition of law enunciated in Asstt. CIT v. Hotel Blue Moon (2010) 321 ITR 362.*
12. *In view of the foregoing conclusions, the impugned reassessment notice and all consequent proceedings- including the reassessment order-have to be and are,*

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hereby quashed. The writ petition is accordingly allowed, but without order on costs."

7. The above position was again reiterated by the Hon'ble Delhi High Court in the case of **Mrs Sripathi Subbaraya Manohara L/H Late Sripathi Subbaraya Gupta versus PCIT, Delhi** in writ petition no. **WP(C) 2678/2020 & CM 9286/2020**, wherein it was held that notice issued in the name of dead person is invalid. In this Writ Petition the Hon'ble Court has followed its own order in the case of **Mrs Savita Kapila v. ACIT (WP(C) 3258/2020**.

8. Considering the totality of the facts and circumstances of the case and the legal dictum laid down by the courts, the impugned reassessment notice u/s. 148 and all consequent proceedings including the reassessment order is hereby quashed. In the result appeal **is allowed**.



Dhruv S. Sachdev



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX
OFFICER
ITO,2(5), BHOPAL/

To,
ARUN SACHDEV
A-253 MINAL RESIDENCY, J. K. ROAD INDRAPURI
BHOPAL 462021, Madhya Pradesh
India

PAN: ADOPS9500L	Assessment Year: 2008-09	Dated: 13/01/2023	DIN & Letter No : ITBA/COM/F/17/2022-23/1048686924(1)
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Sir/ Madam/ M/s,

Subject: Give Effect to Orders - Letter for verification - Order of CIT (Appeals)

GIVING EFFECT TO THE ORDER U/s 250 OF THE Hon'ble CIT(A) NFAC,
Delhi, PASSED VIDE DIN AND ORDER NO. ITBA/NFAC/S/250/2022-23/
1048674239(1), Dated 12.01.2023

Consequent upon Hon'ble Commissioner of Income Tax (Appeals), NFAC Delhi's
Appellate Order No. **ORDER NO. ITBA/NFAC/S/250/2022-23/ 1048674239(1)**, Dated
12.01.2023, income of the assessee is computed as under:-

Income as per assessment Order dtd.:26.02.2016	= Rs. 3,00,000/-
Relief given by Ld. CIT(A), NFAC Delhi's Order dated 12.01.2023	=Rs. 3,00,000/-
Income after giving effect of Order Dated:12.01.2023	=Rs. Nil/-

Issue necessary computation and revised demand notice.

OM PARKASH

Note: If digitally signed, the date of digital signature may be taken as date of document.
Aaykar Bhawan, 48, ARERA HILLS, HOSHANGABAD ROAD, BHOPAL, Madhya Pradesh, 462011
Email: BHOPAL.ITO2.5@INCOMETAX.GOV.IN.

Therefore, the limited prayer by assessee is such that the second-order dated 13.09.2023 passed by CIT(A) is 'not-est' when the assessee's appeal had already been decided vide first-order dated 12.01.2023.

4. Ld. DR for Revenue agrees to the prayer of assessee but, however, requests that the matter may be remanded back to CIT(A) to verify the facts cited by assessee and take a considered view.

5. We find merit in the prayer of Ld. DR. Accordingly, we remit this case back to the file of CIT(A) for carrying out necessary verification and then take a decision. Needless to mention that if it is found by CIT(A) that there are two orders passed at his level, the second order dated 13.09.2023 which is impugned in this appeal shall become non-est.

6. Resultantly, this appeal is allowed for statistical purposes.

Order pronounced in open court on 03.05.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER
Indore

दिनांक /Dated : 03.05.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore