

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 39/Bang/2024</b>
<b>Assessment Year : 2011-12</b>

Late Lodaya Navalbai Raichand by Legal heir Shri Sharad R Lodaya, Paras villa, Mulgund Naka, Gadag – 582 103. Karnataka. <b>PAN: ABJPR9985P</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 2, Gadag.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Smt. Preethi Patel, Advocate
Revenue by	:	Shri Kannan Narayanan, Addl. CIT (DR)

Date of Hearing	:	01-04-2024
Date of Pronouncement	:	25-04-2024

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

This appeal at the instance of the assessee is directed against the NFAC order vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1058449337(1) dated 04.12.2023 passed u/s. 250 of the IT Act, 1961.

**2. The assessee has raised the following grounds:**

<i>Grounds of Appeal</i>		<i>Tax effect relating to each ground of appeal (see note below)</i>
1.	<i>The order of the Hon'ble National Faceless Appeal Centre (NFAC), Delhi, is opposed to law and facts of the case.</i>	0
2.	<i>The Hon'ble NFAC failed to appreciate that the Notice issued u/s 148 is illegal and ab-initio void.</i>	0
3.	<i>The Hon'ble NFAC ought to have held that the requirement of issuing Notice u/s 148 of the I.T. Act to the correct person and not to the dead person is not merely a procedural requirement but a condition precedent to the Notice being valid in law.</i>	0
4.	<i>The Hon'ble NFAC ought to have held that the addition of Rs.73,00,000/- is bad in law.</i>	2706220
5.	<i>The Hon'ble NFAC ought to have appreciated that in the facts and the circumstances of the case no addition much less the sum of Rs.73,00,000/-can be made in the hands of the Appellant.</i>	0
6.	<i>The Hon'ble NFAC ought to have accepted the explanation of the Appellant and deleted the addition of Rs. 73,00,000/-.</i>	0
7.	<i>The Appellant craves for leave to add to, delete from or amend the grounds of appeal.</i>	0
<i>Total Tax Effect</i>		<i>Rs.27,06,220</i>

**3. Brief facts of the case are as under:**

Based on the enquiry conducted in the case of M/s. Raichand Pasvir Textiles Pvt. Ltd., Gadag. Based on the information received from the investigation agencies of the department correlating with information available with the department, the case was reopened u/s. 147 of the IT Act, 1961 by issuing notice u/s. 148 on 05.06.2017 of the Act. Another notice u/s. 148 was issued on 11.12.2018 manually as the system generated notice u/s. 148 dated 05.06.2017 did not mention the name of the legal heir.

**4.** The assessee failed to respond to the notices issued by assessing officer, and accordingly, proposal for completing the assessment ex-parte to the best of judgment u/s. 144 of the act was issued to the assessee on 20.12.2018, and finally on 26.12.2018. The assessee again failed to respond the said notices. The Ld.AO was left with no option, but to pass the assessment order based on the materials available on record. The Ld.AO added back the alleged share premium introduced in the books of accounts of the company to the tune of Rs. 73 Lakhs that was not declared as income in the hands of Smt. Navalibai R. Lodaya.

**5.** Aggrieved by the assessment order of the Ld.AO, the assessee preferred an appeal before the CIT(A)/NFAC.

**5.1** The NFAC rejected the legal claims and submissions on merit of the assessee on the following grounds based on the remand report.

- 1) the sanction letter of the competent authority on the record of JAO revenue has bought alleged legal heir on record.
- 2) The appellant's 2<sup>nd</sup> ground that there is no proof that the deposit in cash by M/s. Raichand Pasvir Textiles Pvt. Ltd., Gadag into bank account belongs to the assessee is rejected on the ground of remand report and want of explanation and accordingly, the Ld.CIT(A) dismissed the appeal.

**6.** Aggrieved by the order of the Ld.CIT(A)/NFAC, the assessee filed the present appeal before the *Tribunal*.

**7.** Before this *Tribunal*, the assessee has filed paper book comprising 57 pages enclosing therein copy of written submissions along with annexures, copy of reply to the remand report, copy of the decision of *Hon'ble Karnataka High Court* in case of *Mrs. Vanitha Gopal Shetty vs. ACIT* reported in 129 *taxmann.com* 163, decision of *Hon'ble Delhi High Court* in case of *Savita Kapila vs. ACIT* reported in 426 *ITR* 502 (*Delhi*) and another decision of *Hon'ble Bombay High Court* in case of *Devendra (legal heir of Vasudeo Damduji Jambhulkar) vs. Addl./JCIT & Ors.* reported in 461 *ITR* 463.

**8.** The issue that is raised before us in Ground nos. 2-3 is that, whether the Ld.CIT(A) is justified in rejecting the claim of the

assessee regarding the notice u/s. 148 to be illegal and void-ab-initio as it is served on the dead person.

**9.** Before us, the Ld.AR submitted that the order passed by the authorities below is illegal and bad in law as the Ld.AO did not have jurisdiction to pass the reassessment order due to absence of a valid notice u/s. 148. The Ld.AR submitted that the department was very much aware of the demise of the assessee and the assessment is therefore bad in law and the same cannot be cured either u/s. 159 or section 292 or section 292BB relying on the decision of *Hon'ble Delhi High Court* in case of *Savita Kapila vs. ACIT (supra)*.

**10.** The Ld.AR further relied on the catena of cases including by the *Hon'ble Supreme Court* that reassessment notice issued on the deceased person is bad in law and cannot be cured. Further, on merit the Ld.AR submitted that, there is no evidence with the department which shown that the entry of Rs. 73 Lakhs made in the name of Smt. Navalibai R. Lodaya as share premium belongs to the deceased assessee. Once the company has already admitted the same as its income and by way of filing the return which has also been accepted by the department, there cannot be the double addition and prayed to allow the appeal.

**11.** The Ld.DR supported the orders of the income tax authorities and submitted that the statement deposed by the assessee on oath before the ADIT (Inv.), Unit-1, Hubli are self-explanatory. The Ld.DR on the other hand relied on the judgment of *Hon'ble*

*Delhi High Court* in case of *Sky Light Hospitality LLP vs. ACIT* reported in *(2018) 90 taxmann.com 413* and *Hon'ble Supreme Court* in case of *Sky Light Hospitality LLP vs. ACIT* reported in *(2018) 92 taxmann.com 93*. He submitted that before the passing of the assessment order, a manual notice u/s. 148 was issued on the legal heir on 11.12.2018. He relied on the provisions of section 292BB and submitted that the notice u/s. 148 to be read as originally issued. He thus submitted that the reassessment proceedings are valid.

**12.** We have heard the rival submissions and perused the material on record. Late Navalbai R. Lodaya expired on 09.06.2011. From the record, we note that for the A.Y. 2011-12, the legal heir named Mr. Sharadkumar R. Lodaya son of Late Navalbai R. Lodaya has filed the return of income declaring taxable income of Rs.2,36,570/- under head long term capital gain on 08.02.2013.

**12.1** Based on the enquiry conducted in the case of M/s. Raichand Pasvir Textiles Pvt. Ltd., Gadag and information received from the investigation agencies of the department and other correlated information, the case of the Late Navalbai R. Lodaya was reopened u/s. 147 of the IT Act, 1961 by issuing notice u/s. 148 of the IT Act after recording the reasons and obtaining prior approval of the competent authority. The Ld.AO has noted in the order that notice u/s. 148 dated 05.06.2017 was issued and served on the assessee on 06.06.2017. And that, one more manual notice u/s. 148 was issued on 11.12.2018 as

the system generated notice u/s. 148 dated 05.06.2017 was not mentioning the name of the legal heir. So undisputedly the notice u/s. 148 dated 05.06.2017 was issued and served on the dead person. The income tax authority attempted to cure this defect by issuing manual notice u/s. 148 on 11.12.2018 mentioning the name of legal heir just before the completion of assessment proceeding on 27.12.2018. The income tax authorities were very much aware of the death of the assessee as the return itself for the A.Y. 2011-12 were filed by the legal heir Shri Sharadkumar R. Lodaya. Further, in response to question no. 23 of the statement recorded u/s. 131(1A) on 20.03.2013, the said Mr. Sharadkumar R. Lodayahad categorically stated that Smt. Navalbai R. Lodaya is no more and they were not in a position to ascertain the genuineness of the same.

**12.2.** The provision relevant for deciding the 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)	<i>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;</i>
(b)	<i>any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and</i>

(c)	<i>all the provisions of this Act shall apply accordingly.</i>
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*(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 sections 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.”*

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 been taken while the Assessee was alive. Section 159 (2) (b) is relevant as far as the present case is concerned.

**12.2.** What was sought to be done by the Ld.AO was to initiate proceedings under Section 147 of the Act against the deceased assessee. The limitation for issuance of the notice under Section 147 /148 of the act was 31/03/2018. On 05/06/2017, when the notice was issued, the assessee had already demised. Subsequently the manual notice was issued to the LR as

representative of the deceased assessee on 11/12/2018. If the Ld.AO intended to proceed against the deceased assessee, notice under Section 147 of the act, should have issued prior to 31/03/2018 to the LRs of the deceased. Beyond 31/03/2018, the revenue could not have proceeded even by issuing notice to the LRs of the Assessee.

**12.3** The manual notice u/s. 148 issued on 11.12.2018 mentioning the name of the legal heir just before the completion of assessment proceeding on 27.12.2018 is also barred by time as per provisions of section 149(1)(b) of the IT Act, 1961. The case law relied by the Ld.DR is distinguished on the ground that the assessment notice was issued in the name of erstwhile private limited company which had been converted into LLP and also held that will not invalidate reassessment proceeding as not a jurisdictional error but an irregularity and procedural / technical lapse which could be cured u/s. 292B.

**12.4** On identical facts, the decision of *Hon'ble Jurisdictional High Court* in case of *Mrs. Vanitha Gopal Shetty vs. ACIT (supra)*, has held that notice issued against a dead person as regards / affairs which ought to have been issued u/s. 159(2)(b) to the legal representatives and that revenue cannot be saved by recourse to section 292B. Further *Hon'ble Delhi High Court* in case of *Savita Kapila vs. ACIT (supra)* has on similar facts held that notice u/s. 148 of the IT Act, 1961 issued to the deceased assessee after her death is bad in law as the requirement u/s. 148 of the IT Act, 1961 of service of notice was not fulfilled in the facts of the case.

**12.4.** The argument of the Ld.DR that the defect was curable, regarding the issuance of notice, to the deceased assessee, is, therefore, untenable. The phraseology of Section 292BB precludes this argument of the Ld.DR. 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-*

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

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

**12.5.** If the original assessee had lived and later participated in the proceedings, then, by Section 292BB, the Ld.AR would have been precluded from saying that no notice was factually served upon the deceased assessee. In the present facts of the case, the assessee was deceased when the notice was issued in the name of the deceased assessee. It is inconceivable that the deceased assessee could have participated in the reassessment proceedings, to be estopped from contending that the assessee did not receive it. The plain language of Section 292BB, precludes its application and is contrary to the argument of Ld. DR. We also refer to the decision of *Hon'ble*

*Supreme Court* in the case of *CIT vs. Kurban Hussain Ibrahimji* reported in (1971) 82 ITR 821. The facts of the case was that, after completion of assessment for the assessment year 1949-50, the ITO issued two notices under section 22(2) and under section 34. While the notice under section 34 referred to the assessment year 1948-49, the notice under section 22(2) of the 1922 Act referred to the assessment year 1949-50. The assessee pointed out the discrepancy and further requested the ITO to clarify the position whether the notice was under section 34(1)(a) or 34(1)(b). The ITO did not reply but proceeded to reopen and reassess the assessee.

On appeal, the AAC treated the notice as invalid. The *Tribunal* held that the irregularity in the notice did not prejudice the assessee, but on reference, the High Court held that such irregularity vitiated the proceedings taken under the said notice. On appeal by the department before *Hon'ble Supreme Court*, it was held that;

*It is well-settled that the ITO's jurisdiction to reopen an assessment under section 34 depends upon the issuance of a valid notice. If the notice issued by him is invalid for any reason the entire proceedings taken by him would become void for want of jurisdiction. In the notice issued under section 34 the ITO sought to reopen the assessment of the assessee for the assessment year 1948-49 but in fact he reopened the assessment of the year 1949-50. Hence, the High Court was right in holding that the notice in question was invalid and as such the ITO had no jurisdiction to revise the assessment of the assessee for the year 1949-50.*

**12.6** From the above discussion we hold that, notice u/s. 148 of the act is a jurisdictional notice and existence of the valid notice u/s. 148 is a condition precedent for exercise of jurisdiction by the assessing officer to assess or reassess u/s. 147 of the act.

For want of valid notice, the jurisdiction of the assessing officer to proceed with the assessment gets affected and thus affects the validity of the entire assessment proceedings for reassessment. Consequently, in view of the above, reopening notice u/s. 148 of the IT Act, 1961 issued in the name of the deceased assessee on 05.06.2017 is null and void. Therefore we are of the view that first notice u/s. 148 on 05.06.2017 on a dead person is null and void and the second notice u/s. 148 on 11.12.2018 is barred by time.

**In the result, the appeal filed by the assessee is allowed on Ground nos. 2-3.**

As we have quashed and set aside the assessment order to be *void-ab-initio*, the alleged addition made therein does not survive at this juncture.

**Order pronounced in the open court on 25<sup>th</sup> April, 2024.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 25<sup>th</sup> April, 2024.  
/MS /

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)              |

By order

Assistant Registrar,  
ITAT, Bangalore