

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D ': NEW DELHI
BEFORE,
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.794/Del/2023
(ASSESSMENT YEAR-2018-19)**

Late Shri Kedar Nath Gupta (through legal heir Smt. Asha Gupta) A-564, Sushant Lok-1, Gurgaon, Haryana PAN: ALQPG8831L	Vs.	DCIT International Taxation Gurgaon
(Appellant)		(Respondent)

Appellant by	Sh. Sanjeev Kapoor, CA
Respondent by	Shri Vizay B. Vasanta, CIT DR

Date of Hearing	02.05.2024
Date of Pronouncement	10.05.2024

ORDER

PER YOGESH KUMAR U.S. JM:-

This appeal is filed by the assessee against the order of Office of the Assistant Commissioner of Income Tax DCIT/ACIT, International Taxation, Gurgaon, dated 21.07.2022 for Assessment Years 2018-19.

2. The Grounds taken by the assessee is as under:

1) *That the order of the Learned Assessing Officer is bad in law and on the facts of the case.*

2) *That the assessee left for heavenly abode on 09.12.2021. The assessment proceedings are invalid because in the event of death of the assessee before the completion of the assessment proceedings, the assessing officer is required to bring the legal representative of the deceased on record and proceed from the stage where it was as on date of death of the assessee.*

3) *That the Learned Assessing Officer has erroneously made addition of Rs. 92,800,000/- u/s 69 of The Income Tax Act 1961, without appreciating that the said provision is applicable only in the instance where the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory. The assessee has declared the aforesaid investment in his regular books of account maintained by him.*

4) *That the "Flat Buyer's Agreement" for Rs. 92,800,000/- in respect of property bearing no. Flat-102 (Duplex) located in Tower named "Aziza" in the residential colony known as "Suncity", Sector -54, Gurgaon, Haryana (project known as "The Verandas") with Saluja Construction Co. Ltd. was executed on 05.09.2016 i.e. relevant to assessment year 2017-2018 and not during the assessment year 2018-2019.*

5) *That the Learned Assessing officer has wrongly assumed that the payment was made out of books, based on surmises and conjectures, without bring any evidence on record to substantiate the same. No summons u/s 131*

of the Income Tax Act 1961 were issued to Saluja Construction Co. Ltd to produce any records.

6) That there is no legal restriction or impediment against purchase of property on credit irrespective of its price.

7) That the Learned Assessing Officer has failed to appreciate that the said property has not been registered in the name of the assessee and taking possession and execution of "Flat Buyer's Agreement" does not confer a complete title in the name of the assessee.

8) That the Learned Assessing Officer has failed to appreciate the fact that the advance given to Saluja Construction Co. Ltd./Associate Company for booking other commercial space were, pursuant to execution of cancellation deeds in respect thereof, subject to adjustment against the amount payable of Rs. 92,800,000/-.

9) That the Learned Assessing officer has made the addition of Rs. 27,840,000/- (@ 30% of Rs.92,800,000/-) based on erroneous interpretation of section 40(a)(ia) of The Income Tax Act 1961. Disallowance can be made in case where the assessee has claimed such payments as expenses, and not otherwise, which in the instant case were reflected as closing inventory and not charged to the Profit & Loss account. As such the addition of Rs. 27,840,000/- to the declared income is unjust and arbitrary.

10) That the properties at S. No. 1 to 25(except for S. No.- 14,24 & 25) were either plot of land, cancelled or not in possession of the assessee. As such the provisions of section 23 (1)(a) are not applicable in the instant case. The addition of Rs.33,632,617/-is unjust and arbitrary.

11) That the assessee craves leave to add, amend or withdrawn any ground of appeal at the time or before the hearing of appeal.”

3. The Ld. Counsel for the Assessee submitted that the order impugned was passed against the dead person even after providing the information of death of the Assessee to the Ld. A.O. and Ld. DRP, therefore, the order impugned is a nullity in the eyes of law.

4. The Ld. Departmental Representative submitted that the fact of sending the e-mail reporting the death of the Assessee and the receipt of the mail by the A.O. and the Ld. DRP needs to be verified.

5. We have heard the parties perused the material available on record. In this case, the impugned assessment order has been passed on 21/07/2022 against one Mr. Sh. Kedar Nath. Prior to passing of the impugned Assessment Order, the Assessee/Sh. Kedar Nath passed away on 09/12/2021 itself. It is the case of the Assessee that the said fact of the death of the Assessee has been duly informed during the DRP proceedings on 19/02/2022 and also informed to DCIT on 25/04/2022 and even after receipt of the information of the death of the Assessee, the order of the DRP and the Assessment Order came to be passed against that person. The Assessee has also produced the copy of e-mail sent to the Department. Considering the above facts and circumstances, we

are of the opinion that the Impugned Assessment Order has been passed against dead person even after having the knowledge of death of the Assessee, therefore, the same is declared as nullity. Nevertheless, we reserve liberty to the Department of Revenue to file application for recalling this order in case the above averments of the AR/assessee in so far as sending the e-mail to A.O. and to the DRP reporting the death of the Assessee are proved contrary and also grant liberty to the Revenue take action against the Assessee in accordance with law. Ordered accordingly.

6. In the result, the Appeal of the Assessee is allowed.

Order pronounced in the open Court on 10th MAY, 2024.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated: 10/05/2024

R.N Sr.ps

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI