

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member  
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 393/Ahd/2024  
Assessment Year 2017-18**

Rinju Adityakumar Gogoi L/H of Late Aditya Kumar Gogoi, 303, Chandan Residency, Makarpura Road, Makarpura, Vadodara-390009 Gujarat <b>PAN: ADAPG3424D (Appellant)</b>	Vs	Income Tax Officer, Ward-4(1)(4), Vadodara  <b>(Respondent)</b>
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**Assessee Represented: Shri Sakar Sharma, A.R.  
Revenue Represented: Smt. Trupti Patel, Sr.D.R.**

Date of hearing : 09-05-2024  
Date of pronouncement : 14-05-2024

**आदेश/ORDER**

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

This appeal is filed by the Assessee as against the appellate order dated 16.01.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2017-18.

2. The brief facts of the case is that the assessee is an individual and deriving pension income from ONGC. For the Asst. Year 2017-18, the assessee filed his Return of Income on 01.08.2017 declaring total income of Rs.26,450/-. The return was taken up for scrutiny assessment as huge cash deposit of Rs.25,86,500/- made during demonetization period and issued a show cause notice u/s. 143(2) dated 24.09.2018. The assessee filed a reply on 03.10.2018. Thereafter a notice u/s. 142(1) dated 10.05.2019 was issued asking various details and a reminder sent on 14.11.2019.

2.1. In response, it is informed through assessee's email id that the assessee died on 23.11.2018 and enclosed copy of the death certificate. On further enquiry by the department, the assessee son through email dated 07.12.2019 provided details legal heir of the assessee namely Ms. Rinju Adityakumar Gogoi, who was the spouse of the deceased assessee. Thereafter the legal heir participated in the assessment proceedings by filing reply on 13.12.2019, 21.12.2019 and 24.12.2019 explaining the cash deposits made by the assessee in his bank accounts. The Assessing Officer was not satisfied with the replies and treated the entire cash deposits in the bank accounts as unexplained money u/s. 69A of the Act and taxed u/s. 115BBE of the Act @ 60% and demanded tax thereon. Further the Assessing Officer framed the assessment order dated 27.12.2019 in the name of the "dead person" namely Adityakumar Gogoi. The assessee filed an appeal before Ld. CIT(A). The appeal was dismissed thereby confirming the addition made by the Assessing Officer.

3. Aggrieved against the same, the legal heir of the assessee is in appeal before us raising the following Grounds of Appeal:

*1. The Ld. CIT (A) erred on facts and in law in upholding assessment order passed u/s 143(3) in the name of dead person to be valid assessment despite legal heir was informed well before completion of assessment together with death certificate.*

*2. The Ld. CIT (A) erred on facts and in law in upholding addition of Rs. 23,78,000/- made u/s 69A r.w.s. 115BBE by treating appellant to be owner of cash deposited bank accounts even though amount so deposited in the bank account do not belong to the appellant but belonged to third parties.*

*3. The Ld. CIT(A) erred on facts and in law in upholding addition of Rs. 2,08,500/- made u/s 69A r.w.s. 115BBE by treating the same to be unexplained investment even though source of cash deposit in the bank account was explained.*

*4. The Ld. CIT (A) erred on facts and in law in upholding the action of the Assessing Officer invoking deeming provisions u/s 69A and applying higher rate of taxation thereon u/s 115BBE without appreciating that appellant was subjected to search and seizure action much before the introduction of Taxation Laws (Second Amendment) Act, 2016 w.e.f. 15-12-2016 and therefore, higher rate of taxation was not applicable in the case of the appellant as held by Hon'ble Indore Bench of the Tribunal.*

4. Ld. Counsel Shri Sakar Sharma appearing for the Legal heir of the assessee submitted that the very basic assessment order is invalid in law since the same was passed on a dead person, in spite of informing the Assessing Officer, the death of the assessee on 23.11.2018. During pendency of the appeal, the Ld. CIT(A) also informed the death of the assessee, by his legal heir but order passed on a dead person. Therefore prayed the assessment order is liable to be quashed and relied upon Co-ordinate Bench of this Tribunal in the case of Devendrasinh Ramsinh Rana Vs. ITO in ITA Nos. 310 & 311/SRT/2023 vide order dated 30.08.2023 and Rajkot Bench decision in the case of Smt. Bhavnaben K. Punjani Vs. PCIT reported in 159 taxmann.com 650.

5. Per contra, Ld. Sr. D.R. Smt. Trupti Patel appearing for the Revenue supported the orders passed by the Lower Authorities and requested to uphold the addition made thereon.

6. We have given our thoughtful consideration and perused the materials available on record as well as the Paper Book filed by the assessee. It is seen from the assessment order, the legal heir of the assessee replied vide email letter dated 07.12.2019, the details of legal heir. Further the legal heir also participated in the assessment proceedings by making reply on 13.12.2019, 21.12.2019 & 24.12.2019. However while framing the assessment order and issuing demand notice u/s. 156 of the Act, the Ld. A.O. has mentioned only the name of the deceased assessee and not that of the legal heir who was on record before the Assessing Officer. It is well settled principle of law, when the A.O. did not substitute the name of the legal heir and proceed to make an assessment in the name of the deceased person, is in valid in law as held by the Hon'ble Supreme Court in the case of PCIT Vs. Maruti Suzuki India Ltd. reported in (2019) 416 ITR 613 (SC) wherein it is held as follows:

*“Despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the assessee in the circumstances cannot operate as an estoppel against law.”*

7. This ratio of the judgment was followed by Jurisdictional High Court in the case of Krishnaawtar Kabra Vs. ITO reported in (2022)

140 taxmann.com 423 (Guj.), Utpala Pradeep Jain (L/H of Late Pradeep R Jain) Vs. ACIT reported in (2023) 295 taxmann.com 322 (Guj.) and Chandreshbhai Jayantibhai Patel Vs. ITO reported in 413 ITR 276 (Guj.).

8. Respectfully following the above judicial precedents, we are of the considered view the assessment order passed by the Assessing Officer on a dead person is not valid in the eyes of law and liable to be quashed.

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

Order pronounced in the open court on 14 -05-2024

**Sd/-**  
**(NARENDRA PRASAD SINHA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 14/05/2024**

**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