

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**I.T.A. Nos. 1894, 1895 & 1896/Del/2019
(Assessment Years : 2012-13, 2013-14 & 2014-15)**

Deputy Commissioner of
Income Tax,
Central Circle – 27,
New Delhi

Vs. Mayank Enterprises
4067, Naya Bazaar,
New Delhi – 110 006

PAN: AAGPG 1818 A

(Appellant)

..

(Respondent)

**Appellant by : -None-
Respondent by : Shri Subhra Jyoti Chakroborty,
CIT-D.R.**

**Date of Hearing : 13.05.2024
Date of Pronouncement : 15.05.2024**

ORDER

PER MS. MADHUMITA ROY – JUDICIAL MEMBER :

The instant bunch of appeals filed by the Revenue are directed against the order dated 04.12.2018 passed by the Commissioner of Income Tax (Appeals)-29, New Delhi under section 153C/144 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') arising out of the orders dated 29.12.2017 passed by the ACIT, Central Circle – 27, New Delhi under Section 153C read with Section 144 of the Act for A.Ys. 2012-13, 2013-14 & 2014-15 respectively.

2. We have heard the rival submissions made by the respective parties, we have also perused the relevant materials available on record. The assessee before us, contended that the assessment order passed by the Learned AO is against the dead person and hence the same is bad in law and thus liable to be quashed.

3. Brief facts leading to the case is this that a search under section 132 of the Act was carried out on 20.03.2015 in the case of M/s.Shakti Bhog Group at their business premises at 24/25, SSI Industrial Area, G.T. Karnal Road, Jahangirpuri, New Delhi, various documents whereof were seized including bills/vouchers. These papers belong to M/s. Mayank Enterprises as of the opinion of the Revenue and satisfaction note in the case of the assessee invoking Section 153C of the Act was recorded. Notice under Section 153C of the Act was also served upon the assessee on 12.05.2017. However, since no compliance was made, the assessment was finalized upon making addition against the assessee to tune of Rs.2,04,07,123/- which was deleted by the First Appellate Authority. Hence, the instant appeal before us.

4. The facts is this that the proprietor of the said Mayank Enterprises namely Rajeev Garg died on 10.03.2015 and this particular fact of his death was brought to the notice of the Learned AO by and under a letter dated 02.06.2017. In spite of the same, the Learned AO issued notice on 12.05.2017 under Section 153C of the Act. As the person upon whom the

notice was served since died, the notice returned as un-served. Even after that, the Assessing Officer proceeded with and finalized assessment on 29.12.2017 upon making addition of Rs.2,04,07,123/-.

5. Being aggrieved by and/or justified with the same, the assessee preferred appeal before the First Appellate Authority and raised issues against the maintainability of such proceedings, which has been made and finalized against a dead person. Before the First Appellate Authority number of judicial pronouncements were relied upon by the assessee which is appearing from pages 6 to 20 of the order passed by the Learned CIT(A).

6. Upon considering the entire records placed before us and order passed by the authorities below, it appears that even during the course of search on 20.03.2015, the assessee was no more, expired on 10.03.2015. The same was also brought to the notice of the Assessing Officer as already been noted above. The said Rajeev Garg, was the proprietor of Mayank Enterprises and therefore, this said Mayank Enterprises is not separate legal entity but part of the individual i.e. Shri Rajeev Garg. As it is a settled principle of law that no notice could be served under a dead person and if served, the same would be void, the assessment proceedings, which was initiated on the basis of a notice since served upon a dead person, the same is not sustainable in the eyes of law; the entire proceedings is, therefore, *void ab initio* and liable to be quashed.

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The order passed by the Learned CIT(A) quashing the assessment order on this ground, therefore, found to be just and proper so as to warrant interference. The same is therefore, upheld.

7. In the result, Revenue's appeals, are found to be devoid of any merit and thus dismissed.

This Order pronounced in Open Court on 15/05/2024

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Dated 15/05/2024

Priti Yadav, Sr.PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI