

आयकर अपीलीयअधिकरण, हैदराबाद पीठ, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL,
HYDERABAD "B" BENCHES, HYDERABAD

Before Shri Laliet Kumar, Hon'ble Judicial Member
And
Shri Madhusudan Sawdia, Hon'ble Accountant Member

आयकर अपील सं./ I.T.A. No.271/Hyd/2024
(निर्धारण वर्ष / Assessment Year:2017-18)

Late Basheerunnisa Begum Vs. Income Tax Officer, Sahebzadi, Represented by L.R. Ward-9(4), Sahibzadi Rasheed Unnisa Hyderabad.	
Begum, Hyderabad. PAN: AHUPS 5642K (अपीलार्थी/ Appellant)	(प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by :	Shri A.V. Raghuram, Advocate
प्रत्यर्थी की ओर से / Respondent by :	Shri Rahul Singhanian, Sr. AR
सुनवाई की तारीख / Date of Hearing :	14/05/2024
घोषणा की तारीख/Date of Pronouncement	: 17/05/2024

ORDER

PER LALIET KUMAR, Judicial Member :

This appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1061496729(1), dated 26/02/2024 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2017-18.

2. In the present appeal, the assessee has raised the following grounds of appeal:

- “1. On the facts and in the circumstances of the case, the order passed by the Ld. CIT(A) / NFAC is void ab initio as the order was passed against a person who expired on 28/07/2020.
2. The order of the Ld. CIT(A)/NFAC is violative of principles of natural justice as the notices were not served as per the provisions of section 282 of the Act read with Rule 127 of the Income Tax Rules.
3. On the facts and in the circumstances the order passed by the Ld. CIT(A)/NFAC on merits is unsustainable in facts and in law.”

3. At the outset, the Ld. Authorized Representative [AR] for the assessee has submitted that the assessee has filed an appeal before the Ld. CIT(A)-NFAC on 04/01/2020 challenging the order of the Ld. AO. However, during the pendency of the appeal, the assessee has passed away 01/09/2020 and the information to that effect was given to the Ld. CIT(A)-NFAC on 17/08/2021. Further, the Ld.AR had invited our attention to the note uploaded by the assessee giving the information about the death of the assessee which is extracted as under:

“In this regard it is respectfully submitted that assessee Basheerunissa Begum expired on 01/09/2020, leaving behind her daughter Rasheedunissa Begum as legal heir. The legal heir certificate has been obtained however, it cannot be uploaded on account of site problems which is yet to be rectified totally. Therefore, the Hon’ble Commissioner (Appeals) is requested to adjourn the case to any other date convenient to the Hon’ble Commissioner.”

The Ld. AR further submitted that despite having the information about the death of the assessee, the Ld. CIT(A)-NFAC has passed the order on 26/02/2024 in the name of the dead person i.e., Basheerunnisa Begum Sahebzadi, the assessee. It was the contention of the Ld. AR that no order can be passed in the name of the dead person as per the provisions of the Act as a dead individual is not a “person” in the eyes of law, and therefore the assessment or subsequent proceedings taken in the name of such dead person will be invalid. Therefore, the Ld. AR pleaded that it would be appropriate if the matter is remanded back to the file of the Ld. CIT(A) / AO for passing appropriate orders in accordance with law.

4. On the other hand, the Ld. Departmental Representative [DR] had submitted that the assessee has not participated in the proceedings before the Ld. AO and no information was provided by her during the assessment proceedings and therefore the Ld.AO had passed the order ex-parte as there was no cooperation by the assessee. It was further submitted by the Ld. DR that the assessee, since died, the order should have been passed in the name of the legal heirs of the assessee.

5. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. In the present case, the appeal has been preferred by Sahibzadi Rasheed Unnisa Begum, Legal Representative of Late Basheerunnisa Begum

Sahebzadi. Further, it is also not disputed that the assessee (Basheerunnisa Begum Sahebzadi) has passed away during the pendency of the appeal before the Ld. CIT(A)-NFAC and the order has also been passed against the dead person. In our considered opinion, no order can be passed against the dead person and in case, the order was required to be passed, against the legal heirs of the deceased assessee, after bring on record the legal heirs and amending Form-35. Admittedly, in the present case the death of the assessee has occurred during the pendency of the appeal. The appellate order clearly shows that the order was passed by the Ld. CIT(A)-NFAC on 26/02/2024 whereas the assessee was died on 28/07/2020. Therefore, under these circumstances, we are of the considered view that the matter is required to be remitted back to the file of the Ld. CIT(A) with a direction to pass the order after granting a reasonable opportunity of being heard to the legal heirs of the assessee in accordance with law. The assessee is also directed to file the correct Form-35 in the name of legal heirs in accordance with the rules. Needless to say that the Ld. CIT(A) shall grant proper opportunity to the legal heirs of the assessee to file any documents or evidence and in case the legal heirs file any documents or evidence the Ld. CIT(A) is directed to take them on record and decide the matter in accordance with law.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17th May, 2024.

Sd/-

**(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER**

Sd/-

**(LALIET KUMAR)
JUDICIAL MEMBER**

Dated :17.05.2024

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Late Basheerunnisa Begumj Sahebzadi, Represented by L/R. Sahibzadi Rasheed Unnisa Begum, 22-3-343/1, Osman Cottage, Purani Haveli, Hyderabad.
2. राजस्व/The Revenue – Income Tax Officer, Ward-9(4), IT Towers, AC Guards, Masab Tank, Hyderabad, Telangana-500004.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad.
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Hyderabad.