

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 311/JP/2024  
निर्धारण वर्ष/Assessment Year : 2017-18

Late Shri Rajeev Mathur Through L/h Mrs. Shobha Mathur C-8, Hari Nagar, Shastri Nagar, Jaipur	बनाम Vs.	The ITO Ward 4 (5) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABUPM 0253A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Yogesh Kumar Parwal, CA  
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 02/05/2024  
उदघोषणा की तारीख / Date of Pronouncement: 28 /05/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 17-01-2024, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2017-18 raising following grounds of appeal.

Ground No.1: The Ld. CIT(A), NFAC has erred on facts and in law in passing the order in name of assessee ignoring the fact that assessee expired in the year 2020 which was intimated by assessee's wife Shobha Mathur while seeking adjournment on

27.12.2022 & 30.08.2023 and thus the order so passed in the name of deceased is illegal & bad in law.

Ground No. 2: The Ld. CIT(A), NFAC has erred on facts and in law in dismissing the appeal filed by the assessee by holding that assessee is not interested in pursuing the appeal without providing adequate opportunity of hearing.

Ground No.3 : The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.30,79,500/- u/s 69A of the IT Act, 1961 on account of unexplained cash deposit in the bank account. ‘’

2.1 The brief facts of the case are that the assessee is engaged in fishery business and filed the return of income in which net profit was declared u/s 44AD of the Act. However, the AO during the assessment proceedings observed that the assessee made cash deposits of Rs.30,79,500/- and thus statutory notices for seeking his reply were issued and accordingly made addition u/s 69A of the Act.

2.2 Aggrieved by the addition, the assessee preferred an appeal before the ld. CIT(A) who dismissed the appeal filed the assessee.

2.3 Now the assessee is in appeal before this Bench. At the very outset, the ld AR appearing on behalf of the assessee submitted that the assessee in fact expired on 2020 and it was submitted vide its submission that 27-12-2022 that the assessee had expired due to COVID-19 but ignoring the said fact, the ld. CIT(A) dismissed the appeal as the notice issued by him to the assessee remained un-complied with.

2.4 Now at this stage, the ld.AR submitted that since the fact that assessee had expired was submitted before the ld. CIT(A) but still the order was passed in the name of the assessee instead of passing order through legal heir of the assessee. Thus the order passed by the ld. CIT(A) is illegal and bad in law. In support thereof, the judgement of Hon'ble Allahabad is relied upon in the case of Bashir (Dead) through Lrs. & Another vs State of U.P. & Others.

2.5 On the other hand, the ld. DR appearing on behalf of the Department relied upon the order passed by the Revenue Authorities.

2.6 After having heard the counsel of both the parties at length and after perusal of the orders passed by the Revenue Authorities and taking into consideration the facts and documents submitted before the Bench, the Bench found that it is an undisputed fact that during the pendency of the appeal before the ld. CIT(A), it was intimated that the assessee had expired but still order was passed against the assessee. Therefore, while relying upon the Judgement in the case of Bashir (Dead) through Lrs. & Another vs State of U.P. & Others, I am of the view that the order passed against the dead person is nullity and void ab initio and the same are not sustainable in law and thus set aside. However, the L/R of the deceased i.e. wife of the assessee has at no stage submitted the death certificate or has not filed the list of L/R before the ld. CIT(A) and even not amended Form 35. Therefore, in these circumstances and in my view, the matter needs to be restored back to the file of

LATE SHRI RAJEEV MATHUR THROUGH LEGAL HER SHOBHA MATHUR VS ITO, WARD 4(5), JAIPUR  
the ld. CIT(A) with the direction to the assessee to file necessary details of L/R and  
to amend the necessary Forms and at the same time the ld. CIT(A) is directed to  
take on record L/R of the deceased and may continue the proceedings against the  
L/R from the stage at which it stood on the date of the death of the deceased and to  
decided the appeal accordingly.

3.3 Before parting, the Bench may make it clear that its decision to restore the  
matter back to the file of the ld. CIT(A) shall in no way be construed as having any  
reflection or expression on the merits of the dispute, which shall be adjudicated by  
the ld. CIT(A) independently in accordance with law.

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

Order pronounced in the open court on 28 /05/2024.

Sd/-  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28 /05/2024

\*Mishra

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

1. The Appellant- Late Shri Rajeev Mathur Thru: L/h Mrs. Shobha Mathur, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 4(5), Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 311/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar