

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 281/Ind/2023
(AY: 2016-17)

| | | |
|-------------------------------|---------------------|---|
| Income-tax Officer, Raisen | बनाम/ Vs. | Late Smt. Sudha Agrawal, (L/H: Manmohan Agrawal) 19/1, Shreeji Enterprise, Near SBI, Sagar Road, Yashwant Nagar, M.P. (PAN: ABFPA4355G) |
| (Revenue/Appellant) | | (Assessee/Respondent) |

Cross-Objection No.01/Ind/2024
(Arising out of I.T.A. No. 281/Ind/2023)
(AY:2016-17)

| | | |
|---|---------------------|-------------------------------|
| Late Smt. Sudha Agrawal, (L/H: Manmohan Agrawal) 19/1, Shreeji Enterprise, Near SBI, Sagar Road, Yashwant Nagar, M.P. (PAN: ABFPA4355G) | बनाम/ Vs. | Income-tax Officer, Raisen |
| (Assessee/Cross-Objector) | | (Revenue/Respondent) |

| | |
|-------------|----------------------------|
| Revenue by | Shri Ashish Porwal, Sr. DR |
| Assessee by | Shri Anil Khandelwal, CA |

| | |
|-----------------------|------------|
| Date of Hearing | 16.04.2024 |
| Date of Pronouncement | 06.06.2024 |

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 22.06.2023 passed by Commissioner of Income-tax (Appeal)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 07.12.2018 passed by ITO, Raisen

["AO"] u/s 143(3) of the Income-tax Act, 1961 ["the Act"] for assessment-year ["AY"] 2016-17, the revenue has filed captioned appeal and the assessee has filed captioned cross-objection.

2. The original assessee was 'Smt. Sudha Agarwal' who expired on 28.10.2016 and presently being represented by legal heir Shri Manmohan Agarwal, husband of deceased assessee. The revenue/appellant originally filed appeal-memo (Form No. 36) in the name of 'Income-tax Officer, Raisen Vs. Smt. Sudha Agarwal' but subsequently filed revised appeal-memo in the name of 'Income-tax Officer, Raisen Vs. Late Smt. Sudha Agarwal (through Legal Heir Shri Manmohan Agarwal)'. The revised form is taken on record.

3. The background facts leading to present matters are such that the original assessee 'Late Smt. Sudha Agarwal' filed her return of AY 2016-17 on 12.09.2016 declaring a total income of Rs. 7,89,800/- (with an agricultural income of Rs. 1,06,052/-). The case of assessee was selected for scrutiny-assessment vide notice dated 04.07.2017 u/s 143(2). Ultimately, the AO passed assessment-order on 07.12.2018 assessing total income at Rs. 2,56,62,810/- after making addition of long-term capital gain. Aggrieved, the assessee carried matter in first-appeal and challenged AO's order on twin-counts of invalidity as well as merit. The CIT(A) decided assessee's appeal vide order dated 22.06.2023 allowing both claims of assessee and thereby giving full relief. Now, the revenue has come in appeal and the

assessee has come in cross-objection. The grounds taken by parties are as under:

Revenue's appeal:

- (i) *On the facts and circumstances of the case, the Ld. CIT(A) has erred that the legal heir of the assessee has never intimated the department about the demise of the assessee Smt. Sudha Agrawal and participated in the proceedings without making objection of notice issued u/s 143(2) of the Income-tax Act, 1961 and notice issued u/s 142(1) of the Income-tax Act, 1961.*
- (ii) *On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the relief to the assessee on the facts that the assessee has purchased only a piece of land and invested the whole amount of capital gain in the said piece of land and did not invest in a residential property as per the requirement of the section 54F of the Income-tax Act, 1961.*

Assessee's Cross-Objection:

1. *On the facts and in the circumstances of the case, ground no.(i) of the Department's appeal memo did not arise from the order of Ld. CIT(A) for assessment year 2016-17, which is irrelevant, and deserves to be dismissed.*
2. *On the facts and in the circumstances of the case, the fact of intimation about the death of Sadhna Agrawal is recorded in the order of Ld. CIT(A) at para no. 1.2 and para no. 6.3 which is not disputed by the department.*
3. *On the facts and in the circumstances of the case, Ld. CIT(A) has decided the validity of notice issued u/s 143(2) and subsequent assessment under provisions of section 159 which is not disputed by the department.*
4. *On the facts and in the circumstances of the case, Ld. CIT(A) has recorded in the order that the property was a residential plot, as stated in purchase deed (not a piece of land as stated in Ground No. (ii) which is false.)*
5. *On the facts and in the circumstances of the case, Ld. CIT(A) was fully justified in accepting exemption u/s 54F considering the totality of facts and in the interest of justice.*

4. The above grounds raised by both sides are *qua* the validity/invalidity of assessment as also on merits of addition. We would first take-up the validity/invalidity issue which goes to the root of matter. While the revenue claims that the CIT(A) has erred in holding the assessment-proceeding done by AO as invalid, the assessee claims that the CIT(A) has passed a proper order declaring the assessment-proceeding as invalid.

5. At first, we may take note of certain dates which would be relevant in subsequent discussion:

- | | |
|--|--------------|
| (a) Date of filing ITR by assessee | - 12.06.2016 |
| (b) Date of death of assessee | - 28.10.2016 |
| (c) Date of notice u/s 143(2) | - 04.07.2017 |
| (d) Date on which the legal heir informed to AO about death of assessee: | |
| - As being claimed by legal heir | - 15.09.2017 |
| - As being claimed by revenue | - 25.08.2023 |
| (e) Date of assessment-order | - 07.12.2018 |

6. Now, we extract the relevant portion of order passed by CIT(A) in this regard:

6. Decision:

6.1 I have considered the grounds of appeal, the statement of facts, the submissions made during the appellate proceedings and the details mentioned in the assessment order.

6.2 Request for admission of additional grounds of appeal

As reproduced at para 2.1 above, the appellant has filed additional grounds of appeal on 19.08.2019. The appellant states that since the additional grounds of appeal relate to legal arguments and impact the very validity of the assessment proceeding, the same may be admitted. The additional grounds of appeal have been perused. It is seen that the additional grounds of appeal are mainly reworded original grounds of appeal, with minor additions of facts already on record. Hence the additional grounds of appeal are hereby admitted.

6.3 The additional grounds no. 1 and 2 and the original ground of appeal no. 1 relate to notice being issued in the name of a deceased person. It is further contended that the assessment is null and void as it has been made in the name of a deceased assessee, without bringing the name of the legal heir on record, as is required u/s 159 of the Act. The relevant facts, as evident from the assessment order and submissions of the appellant (through legal heir) are that the case of the deceased appellant was selected for scrutiny through CASS and notice u/s 143(2) was issued on 04.07.2017. The appellant has already expired on 28.10.2016 i.e before the initiation of the assessment proceedings. These facts were brought to the notice of the A.O on 15.09.2017. However, the AO did not bring the legal heir on record and carried on the assessment proceedings and completed the assessment in the name of deceased appellant.

6.4 The appellant (through legal heir) has relied upon the following judicial pronouncements in her support:

ITO, Raisen vs. Late Smt. Sudha Agrawal (L/H: Manmohan Agarwal)
ITA No. 281/Ind/2023 and C.O.No. 01/Ind/2024 - A.Y.2016-17

1. Laxmibai Karanpuria v Asst. CIT (2011) 17 ITJ 236 (Tri-Indore)
2. Chandreshbhai Jayantibhai Patel v ITO 413 ITR 276 (Guj) 10-12-2018

The case law relied upon by the appellant (through legal heir) have been carefully perused. In the case of Chandreshbhai Jayantibhai Patel (supra), the issue before the Hon'ble High Court of Gujarat was whether a notice issued u/s 148 in the name of a deceased assessee is a valid notice. The Hon'ble High Court struck down the notice. The relevant extracts of the decision are reproduced below:

5.1 It was further submitted that in this case, the notice has been issued to a dead person and hence, such notice is null and void. To initiate proceedings under section 147 of the Act, issuance of notice under section 148 of the Act to the heirs and legal representatives of the deceased is mandatory, in the absence of which the proceedings cannot be continued by issuance of notices under section 142(1) of the Act against the heirs. Reliance was placed upon the decision of this court in Rasid Lala v. ITO [2017] 77 taxmann.com 39, wherein the notice under section 148 of the Act was issued to the assessee long after he had passed away.

5.2 The learned advocate for the petitioner also placed reliance upon the decision of the Madras High Court in the case of Alamelu Veerappan v. ITO [2018] 257 Taxman 72/95 taxmann.com 155, wherein the court held thus:

"16. The settled legal principle being that a notice issued in the name of the dead person is unenforceable in law. If such is the legal position, would the Revenue be justified in contending that they, having no knowledge about the death of the assessee, are entitled to plead that the notice is not defective. In my considered view, the answer to the question should be definitely against the Revenue.

17. This Court supports such a conclusion with the following reasons: Admittedly, the limitation period for issuance of notice for reopening expired on 31.3.2017. The impugned notice was issued on 30.3.2017 in the name of the dead person. On being intimated about the death, the Department sent the notice to the petitioner -his spouse to participate in the proceedings. This notice was well beyond the period of limitation, as it has been issued after 31.3.2017. If we approach the problem sans complicated facts, a notice issued beyond the period of limitation i.e.

31.3.2017 is a nullity, unenforceable in law and without jurisdiction. Thus, merely because the Department was not intimated about the death of the assessee, that cannot, by itself, extend the period of limitation prescribed under the Statute. Nothing has been placed before this Court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased assessee to immediately intimate the death of the assessee or take steps to cancel the PAN registration.

18. In such circumstances, the question would be as to whether Section 159 of the Act would get attracted. The answer to this question would be in the negative, as the proceedings under Section 159 of the Act can be invoked only if the proceedings have already been initiated when the assessee was alive and was permitted for the proceedings to be continued as against the legal heirs. The factual position in the instant case being otherwise, the provisions of Section 159 of the Act have no application.

19. The Revenue seeks to bring their case under Section 292 of the Act to state that the defect is a curable defect and on that ground, the impugned notice cannot be declared as invalid.

20. The language employed in Section 292 of the Act is categorical and clear. The notice has to be, in substance and effect, in conformity with or according to the intent and purpose of the Act. Undoubtedly, the issue relating to limitation is not a curable defect for the Revenue to invoke Section 292B of the Act."

6. Vehemently opposing the petition, Mrs. Mauna Bhatt, learned Senior Standing Counsel for the respondent submitted that in this case, the assessee did not file return of income. When the assessee passed away, the department not being aware of his death, issued the notice under section 148 of the Act in his name, which was duly received by the petitioner who is the heir and legal representative of the deceased and hence, there is due service of such notice. Reference was made to sub-section (7) of section 2 of the Act, which defines "assessee", to submit that the same includes every person who is deemed to be an assessee under any provision of the Act. Referring to section 159 of the Act, it was pointed out that by virtue of sub-section (3) thereof, the legal representative of the deceased shall, for the purposes of the Act, be deemed to be an assessee. It was submitted that in view of sub-section (2) of section 159, for the purpose of making an assessment including reassessment under section 147 of the Act of the income of the deceased and for the purpose of

levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1) thereof, any proceeding taken against the deceased shall be deemed to have been taken against the legal representative, and therefore, the proceedings undertaken against the petitioner are legal and valid. It was submitted that therefore, under section 159(2)(b) of the Act, the legal heir steps into the shoes of the assessee and the proceeding can be continued against him.

12. In the backdrop of the aforesaid facts, it is an admitted position that the notice under section 148 of the Act was issued to a dead person. The petitioner being the heir and legal representative of the deceased, upon receipt of the notice, immediately raised objection against the validity of the impugned notice and did not submit to the jurisdiction of the Assessing Officer by filing a return of income, but kept on objecting to the continuation of the assessment proceedings pursuant to the impugned notice. The Assessing Officer, however, instead of taking corrective steps under section 292B of the Act and issuing notice to the heirs and legal representatives, insisted on continuing with the proceedings pursuant to the impugned notice which was issued in the name of a dead person.

14. Thus, clause (a) of sub-section (2) of section 159 of the Act provides for the eventuality where a proceeding has already been initiated against the deceased before his death, in which case such proceeding shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased. In the present case, the proceeding under section 147 of the Act had not been initiated against the deceased before his death, and hence, clause (a) would not be applicable in the facts of this case.

15. Clause (b) of sub-section (2) of section 159 of the Act provides that any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative. The present case would, therefore, fall within the ambit of section 159(2)(b) of the Act and, hence, the proceeding can be taken against the legal representative. Now, it cannot be gainsaid that a proceeding under section 147 of the Act of reopening the assessment is initiated by issuance of notice under section 148 of the Act, and as a necessary corollary, therefore, for taking a proceeding under that section against the legal representative, necessary notice under

ABFPA4355G- SI
ITB/NFAC/3250/2023

section 148 of the Act would be required to be issued to him. In the present case, the impugned notice under section 148 of the Act has been issued against the deceased assessee. In the opinion of this court, since this is not a case falling under clause (a) of sub-section (2) of section 159 of the Act, the proceeding pursuant to the notice under section 148 of the Act issued to the dead person, cannot be continued against the legal representative.

18. The question that therefore arises for consideration is whether the notice under section 148 of the Act issued against the deceased assessee can be said to be in conformity with or according to the intent and purposes of the Act. In this regard, it may be noted that a notice under section 148 of the Act is a jurisdictional notice, and existence of a valid notice under section 148 is a condition precedent for exercise of jurisdiction by the Assessing Officer to assess or reassess under section 147 of the Act. The want of a valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects the validity of the proceedings for assessment or reassessment. A notice issued under section 148 of the Act against a dead person is invalid, unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection. Therefore, where the legal representative does not waive his right to a notice under section 148 of the Act, it cannot be said that the notice issued against the dead person is in conformity with or according to the intent and purpose of the Act which requires issuance of notice to the assessee, whereupon the Assessing Officer assumes jurisdiction under section 147 of the Act and consequently, the provisions of section 292B of the Act would not be attracted. In the opinion of this court, the decision of this court in the case of *Rasid Lala (supra)* would be squarely applicable to the facts of the present case. Therefore, in view of the provisions of section 159(2)(b) of the Act, it is permissible for the Assessing Officer to issue a fresh notice under section 148 of the Act against the legal representative, provided that the same is not barred by limitation; he, however, cannot continue the proceedings on the basis of an invalid notice issued under section 148 of the Act to the dead assessee."

6.5 The facts of the present case are similar to the facts in the case of **Chandreshbhai Jayantibhai Patel (supra)**. In the case of Chandreshbhai Jayantibhai Patel (supra), the Department had sought to bring before the Hon'ble High Court that the fact of the death of the assessee was informed to the Department only after the proceeding has been initiated. However, the Hon'ble Gujarat High Court held that any proceeding initiated after the death of the appellant is null and

void and that the department should have reinitiated the proceedings by bringing the legal heir on record. In the instant case also, the fact that the appellant had passed away came to the knowledge of the department only on 15.09.2017, after the notice u/s 143(2) had already been issued. However, the fact remains that on the date when the notice was issued the appellant had already expired. Thus, notice u/s 143(2) cannot be held to be a valid notice. Respectfully following the Gujarat High court decision referred to above, it is hereby held that the notice u/s 143(2) issued in the name of the deceased appellant is not a valid notice. **Hence, the subsequent assessment proceedings are also held as null and void.** The additional grounds of appeal no. 1 and 2 and the original ground of appeal no. 1 are hereby **allowed.**

7. Thus, the CIT(A) has noted these crucial facts in Para 6.3 of his order, namely (i) the AO initiated scrutiny proceeding through notice u/s 143(2) dated 04.07.2017 to the deceased assessee who had already expired on 28.10.2016, and (ii) the legal heir informed to AO about death of assessee on 15.09.2017 but the AO did not bring the legal heir on record and carried assessment proceedings and completed assessment in the name of deceased assessee. Ultimately, relying upon decision in ***Chandreshbhai Jayantibhai Patel 413 ITR 276 dated 10.12.2018 (Guj HC)***, the CIT(A) accepted that the notice dated 04.07.2017 u/s 143(2) issued by AO to a deceased person was invalid and therefore the assessment-proceeding was null and void. The CIT(A) has also made an observation that the factum of death of assessee came to the knowledge of department on 15.09.2017 but still the department did not re-initiate proceedings of scrutiny by bringing legal heir on record.

Intimation of death of assessee:


8. So far as the intimation to AO/department regarding death of assessee is concerned, Ld. AR contended that the legal heir applied to AO/department on 15.09.2017 on designated e-filing portal and the AO/department approved legal heir's request on 27.09.2017 after rigorous verification in terms of their procedure. Thus, the legal heir had informed the AO/Department about death of assessee on 15.09.2017 during assessment-proceeding itself. Ld. AR filed following document downloaded from e-filing webportal of Income-tax Department to show this:

ITO, Raisen vs. Late Smt. Sudha Agrawal (L/H: Manmohan Agarwal)
ITA No. 281/Ind/2023 and C.O.No. 01/Ind/2024 - A.Y.2016-17

AC

8/2/2019

Details of Deceased PAN

 **e-Filing** *Anywhere Anytime*
Income Tax Department, Government of India

Downloads Feedback Accessibility Options Contact Us Help

Welcome **MAN MOHAN AGRAWAL (Individual)** Logout
Last Login: 02/08/2019 12:59:47
Idle Session Timer 1 4 3 0

Dashboard My Account e-File e-Proceeding e-Nivaran Compliance Worklist Profile Settings

Details of Deceased PAN

Deceased Assessee details

PAN of Deceased ABFPA4355G
Name of the Deceased (As per PAN) SUDHA AGRAWAL ✓
Date of Death 28/10/2016 ✓

Details of Bank account of the legal heir

Bank Account Number
Account Type
IFS Code
Bank Name

Legal Heir Details

Heir PAN AAYPA3947Q
Heir Full Name MAN MOHAN AGRAWAL
Heir Date of Birth 20/04/1959
Comments approved
Approval Date 27/09/2017 ✓

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https://portal.incometaxindiaefiling.gov.in/e-Filing/MyAccount/ViewMyLegalHeirDetails.html?ID=27781575&transactionNo=4607195585&serialNo=0

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AR
AR

9. Per contra, Ld. DR for revenue submitted that the legal heir did not inform the AO about death of assessee during assessment-proceeding.

10. In order to verify the rival claims of parties, the revenue was directed to clarify the exact position from its record. In response, the AO filed report dated 01.04.2024 accompanied by certain documents, the same are scanned and re-produced for an immediate reference:



OFFICE OF THE
INCOME TAX OFFICER, RAISEN
PATANDEV, SAGAR ROAD, RAISEN - 464551
E-mail id: raisen.ito@incometax.gov.in : Tel: 07482-222620

F.No.ITO/Raisen/Late Sudha Agrawal/ITAT/520-522

Date: 01.04.2024

To,

The Income Tax Officer,
O/o Commissioner of Income Tax(DR)
Income Tax Appellate Tribunal,
CGO Building, 2nd Floor, A-wing, White Church Road,
Indore-452001

Sir,

Sub: Appellate proceeding in the case of Smt. Sudha Agrawal, ITA No.
281/IND/2023, for the A.Y. 2016-17, PAN: ABFPA4355G.
- reg.

Kindly refer to your letter F.No. CIT(DR)/ITAT/IND/2023-24/335 dated
12.03.2024 on the above mentioned subject.

2. In this connection kindly find enclosed herewith revised grounds of Appeal in
form No. 36 vide which Sh. Man Mohan Agrawal, PAN: AAYPE3947Q who is the
legal heir of the assessee i.e. late Smt. Sudha Agrawal, PAN: ABFPA4355G has been
brought as legal heir of the assessee on record.

3. Further, Honourable ITAT, Indore has directed the undersigned to clarify whether
the Assessing Officer had knowledge of death of assessee as the legal heir updated PAN
of the deceased assessee on 02.08.2019 on the e-filing portal. In this regard, it is most
respectfully submitted that the appellant as per form no. 35(acknowledgement number:
404721751030119) has filed appeal in the name of Sudha Agrawal. Furthermore, order
under section 250 of the 'Act' dated 22.06.2023 also passed in the name of Late Shri
Sudha Agrawal.

4. Shri Manmohan Agrawal vide letter dated 25.08.2023 has requested this office first
time to bring his name as legal heir of late Smt. Sudha Agrawal. After getting approval
from Range head, vide letter F.No. Addl. CIT/R-4/BPL/Sudha Agrawal/2023-24/573
dated 07.11.2023, Sh. Manmohan Agrawal was added to be legal heir in the ITBA
System.

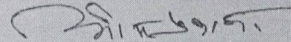
21/11/2023

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4. Lastly, I could not find any document on record regarding demise of assessee Late Smt. Sudha Agrawal, copy of reply of 142(1) notice is attached herewith for ready reference wherein the word late has not been used before Sudha Agrawal by the AR of the assessee. Submitted for kind information and further necessary action.

Yours faithfully,

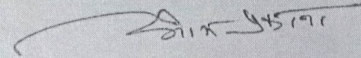


(Om Parkash)

Income Tax Officer, Raisen

Copy to: The Income Tax Officer (Tech.) O/o Pr. Commissioner of Income Tax-1,
Bhopal for kind information.

(ii) The Joint Commissioner of Income Tax, Range-4, Bhopal for kind information.



Income Tax Officer, Raisen 01/04/24

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सेवा में

25 AUG 2023 230

~~श्रीमान आभकर उच्चरधिकारी महोदय~~
वामदेव (म.प्र.)

महोदय

विषय: स्व. सुधा अग्रवाल के जीआलदेवर

के अल्प वी मुझे अर्थात् मनमोहन अग्रवाल को
आभकर विद्या वामदेव के कार्ड पर लाने के
संबंध में।

महोदय, निवेदन है कि स्व. श्रीमती सुधा अग्रवाल
की मृत्यु 2016 में हो चुकी है तथा उनकी
वसीयत के अनुसार मैं मनमोहन अग्रवाल
किम NO: AAYPA3947 R (जी.प्रति) कंपनी
का कानूनी उत्तराधिकारी हूँ इस सम्बन्ध में
वसीयत की प्रति आनलाइन एवं ऑफलाइन रूप
में करा चुका हूँ। अतः महोदय निवेदन है कि मेरा
नाम व मेरा PAN NO: एव. श्रीमती सुधा अग्रवाल
की उच्चरधिकारी के अपने दर्ज करों का
कार्य करें।

आभकर वामदेव

श्री अमित
मनमोहन अग्रवाल
अभि 2016
दिनांक:-
25/08/2023
8.23

Manmohan Agrawal



11 NOV 2023

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भारत सरकार/

Government of India
वित्त मंत्रालय (राजस्व विभाग)

/Ministry of Finance (Department of Revenue)

कार्यालय अपर आयकर आयुक्त, परिक्षेत्र-4 Office of the Addl. Commissioner of
Income tax, Range-4 कमरा नं. 215, द्वितीय तल, आयकर भवन, होशंगाबाद रोड, भोपाल,
पिन-462011 Room No. 215, 2nd Floor, Aayakar Bhawan, Hoshangabad Road, Bhopal
E-Mail: bhopal.addlcit4@incometax.gov.in

F. No. Addl. CIT/R-4/BPL/Sudha Agrawal/2023-24/573 Dated: 07.11.2023

To,
The Income Tax office,
Raisen

Subject: Request to approve legal heir detail in the case of Late Smt. Sudha Agrawal (ABFPA4355G) online from ITBA-reg.

Please refer to the above subject.

In this regard, Please find enclosed herewith the letter F.No. ITO/Raisen/Sudha Agrawal/2023-24/193 dated 03.11.2023 received from O/o the ITO/Raisen regarding for Sh. Manmohan Agrawal, husband of Late Smt. Sudha Agrawal has claimed that he is the legal heir of late Smt. Sudha Agrawal who expired on 28.10.2016 vide application dated 25.08.2023 and 26.09.2023 and claimed refund for the A.Y. 2016-17.

In this regard, necessary approval is hereby accorded to legal heir online from ITBA.


(Dr. Satyapal Singh Meena)
Addl. Commissioner of Income Tax
Range-4, Bhopal

श्री. आदर्श
24.11.2023
उप. आयुक्त
परिक्षेत्र-4
भोपाल

11. Thus, in Para 4 of above report, the AO claims that the legal heir requested to bring him on record for the first time vide letter dated 25.08.2023 and thereafter legal heir's name was added in the ITBA system on 07.11.2023 with the approval of Range head. Thereafter, in next para, the AO has reported that he could not find any other document on record regarding demise of assessee. In short, the AO claims that the assessee informed to him on 25.08.2023.

12. Replying to revenue's point, Ld. AR submitted that the true position is different. He submitted that the legal heir made request to AO/department as early as on 15.09.2017 immediately after receipt of notice dated 04.07.2017 u/s 143(2). The AO/Department noted certain defects in assessee's request like non-submission of death-certificate, etc. and informed to legal heir in the e-filing portal. Thereafter, when the legal heir removed defects, the AO/department approved legal heir's request immediately on 27.09.2017. During hearing, Ld. AR agreed to file some more documents to show this entire exercise and after conclusion of hearing, filed following documents:

8/2/2019

 **e-Filing** *Anywhere Anytime*
Income Tax Department, Government of India

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Welcome **MAN MOHAN AGRAWAL (Individual)**
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For Your Information

Person's Details (Who requested you to 'Add as Representative')


| | |
|---------------|--------------------------|
| PAN | ABFPA4355G |
| Name | SUDHA AGRAWAL |
| Reason | Any Other reason (DEATH) |
| Mobile Number | +91 -9826322094 |
| E-mail ID | agrawalsec658@gmail.com |
| Start Date | 15/09/2017 |
| End Date | 31/12/2017 |
| Attachment | |

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AKR
A.R.

8/2/2019

Details of Deceased PAN

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Details of Deceased PAN

| | |
|--|---|
| Deceased Assessee details | |
| PAN of Deceased | ABFPA4366G |
| Name of the Deceased (As per PAN) | SUDHA AGRAWAL |
| Date of Death | 28/10/2016 |
| Details of Bank account of the legal heir | |
| Bank Account Number | |
| Account Type | |
| IFS Code | |
| Bank Name | |
| Legal Heir Details | |
| Heir PAN | AAYPA3947Q |
| Heir Full Name | MAN MOHAN AGRAWAL |
| Heir Date of Birth | 20/04/1959 |
| Comments | <p>Dear Taxpayer, Your request for adding Legal heir is not approved as the will document submitted is not a registered will. Alternatively, you may submit any of the following approved documents. 1. The legal heir certificate issued by court of law or 2. The legal heir certificate issued by the Local state revenue authorities or 3. The surviving family members certificate issued by the local state revenue authorities or 4. The Family pension certificate issued by the State/Central government Kindly make a fresh request attaching any of the aforesaid document along with a. PAN card copy of the deceased b. PAN card copy of self (legal heir) Copy of the death certificate. All these PDF documents shall be placed in a folder and zipped and uploaded. With Regards Team - e-filing.</p> |

<https://portal.incometaxindiaefiling.gov.in/e-Filing/MyAccount/ViewMyLegalHeirDetails.html?ID=1128924955&transactionNo=4574888305&serialNo=1>

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13. Thus, Ld. AR submitted, the legal heir made intimation to AO/department on 15.09.2017 itself. So far as the subsequent application dated 25.08.2023 filed to AO is concerned, Ld. AR submitted that the same was filed only to receive refund from income-tax department for AY 2016-17 under consideration after disposal of first-appeal on 22.06.2023 in favour of assessee because otherwise the refund of assessee was not given. Ld. AR submitted that alongwith request dated 25.08.2023, the legal heir also filed will of the deceased assessee to demonstrate his entitlement to refund. The above letter dated 07.11.2023 issued by the office of Addl. Commissioner of Income-tax, Range-4, Bhopal is clearly acknowledging “.....*Sh. Manmohan Agrawal, husband of late Smt. Sudhar Agrawal who expired on 28.10.2016 vide application dated 25.08.2023 and 26.09.2023 and claimed refund for the A.Y. 2016-17*”. This way, Ld. AR showed that the application dated 25.08.2023 was a 2nd step undertaken by legal heir to obtain refund but the fact remains that 1st intimation of death of assessee to AO/Department was made as early as on 15.09.2017 approved by AO/department on 27.09.2017.

14. After a careful consideration of above submissions of parties, we agree that the legal heir has intimated the AO/department on e-filing portal about death of assessee on 15.09.2017.

Validity of assessment-proceeding:

15. Ld. DR for revenue contended that the legal heir has participated in assessment-proceeding without raising any objection against the notices issued by AO. Therefore, the legal heir has himself enabled the AO to make assessment in the name of deceased assessee. In such a situation, the CIT(A) is wrong in entertaining legal heir's claim that the assessment-proceeding is null and void. Therefore, the CIT(A)'s order must be set aside and the AO's order be upheld.

16. Per contra, Ld. AR submitted that the assessee 'Late Smt. Sudha Agrawal' filed return on 12.09.2016 during her life time. Thereafter, she expired on 28.10.2016. After her death, the AO issued notice u/s 143(2) on 04.07.2017 to deceased assessee which ultimately culminated into passing of assessment-order dated 07.12.2018. Ld. AR submitted that the CIT(A), following the decision of Hon'ble Gujrat High Court in ***Chandreshbhai Jayantibhai Patel (supra)***, has rightly held that the notice issued to a dead person is nullity. Therefore, in the first place, the notice u/s 143(2) dated 04.07.2017 by which the AO had acquired jurisdiction to conduct assessment-proceeding, was itself invalid. That apart, when a request was made to the AO/department for addition of legal heir on 15.09.2017 which request is approved also on 27.09.2017 and this entire exercise has happened before expiry of time-limit for issuance of notice u/s 143(2) [admittedly, the time-limit was available upto 30.09.2017], the AO could very well re-initiate proceeding on legal heir by re-issuing notice u/s 143(2) in the name of legal heir in terms of section 159(2)(b) but that was also not

done. Therefore, in the situation, the case of assessee is very much covered by the decision in **Chandreshbhai Jayantibhai Patel (supra)** relied by Ld. CIT(A). Ld. AR pointed that section 159(2)(a) cannot help the revenue because that section could be applied had the proceeding u/s 143(2) been taken against deceased person before death, which is not the situation in present case.

17. To support the above proposition, Ld. AR also relied upon **Savita Kapila Vs. ACIT (2020) 118 taxmann.com 46 (Delhi HC)**, relevant paras are as under:

“THE SINE QUA NON FOR ACQUIRING JURISDICTION TO REOPEN AN ASSESSMENT IS THAT NOTICE UNDER SECTION 148 SHOULD BE ISSUED TO A CORRECT PERSON AND NOT TO A DEAD PERSON. CONSEQUENTLY, THE JURISDICTIONAL REQUIREMENT UNDER SECTION 148 OF THE ACT, 1961 OF SERVICE OF NOTICE WAS NOT FULFILLED IN THE PRESENT INSTANCE.

25. In the present case the notice dated 31st March, 2019 under [Section 148](#) of the Act, 1961 was issued to the deceased assessee after the date of his death [21st December, 2018] and thus inevitably the said notice could never have been served upon him. Consequently, the jurisdictional requirement under [Section 148](#) of the Act, 1961 of service of notice was not fulfilled in the present instance.

26. In the opinion of this Court the issuance of a notice under [Section 148](#) of the Act is the foundation for reopening of an assessment. Consequently, the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. [See [Sumit Balkrishna Gupta Vs. Asstt. Commissioner of Income Tax, Circle 16\(2\), Mumbai & Ors.](#), (2019) 2 TMI 1209 - Bombay High Court].

27. In [Chandreshbhai Jayantibhai Patel Vs. The Income Tax Officer](#), 2019 (1) TMI 353 - Gujarat High Court has also held, “the question that therefore arises for consideration is whether the notice under [Section 148](#) of the Act issued against the deceased assessee can be said to be in conformity with or according to the intent and purposes of the Act. In this regard, it may be noted that a notice under [Section 148](#) of the Act is a jurisdictional notice, and existence of a valid notice under Section 148 is a condition precedent for exercise of jurisdiction by the Assessing Officer to assess or reassess under [Section 147](#) of the Act. The want of valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects

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the validity of the proceedings for assessment or reassessment. A notice issued under [Section 148](#) of the Act against a dead person is invalid, unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection." Consequently, in view of the above, a reopening notice under [Section 148](#) of the Act, 1961 issued in the name of a deceased assessee is null and void.

ALSO, NO NOTICE UNDER SECTION 148 OF THE ACT, 1961 WAS EVER ISSUED UPON THE PETITIONER DURING THE PERIOD OF LIMITATION. CONSEQUENTLY, THE PROCEEDINGS AGAINST THE PETITIONER ARE BARRED BY LIMITATION AS PER SECTION 149(1)(b) OF THE ACT, 1961.

28. Also, no notice under [Section 148](#) of the Act, 1961 was ever issued to the petitioner during the period of limitation and simply proceedings were transferred to the PAN of the petitioner, who happens to be one of the four legal heirs of the deceased assessee vide letter dated 27 th December, 2019. Therefore, the assumption of jurisdiction qua the Petitioner for the relevant assessment year is beyond the period prescribed and consequently, the proceedings against the petitioner are barred by limitation in accordance with [Section 149\(1\)\(b\)](#) of the Act, 1961.

29. In [Smt. Sudha Prasad](#) (supra) the petitioner had challenged the assessment order and demand notice only. Neither non-issuance of notice was challenged nor the issue of proceedings being barred by limitation was raised or decided. Consequently, [the said judgment](#) is inapplicable to the present case and is therefore, of no help to the revenue.

AS IN THE PRESENT CASE PROCEEDINGS WERE NOT INITIATED / PENDING AGAINST THE ASSESSEE WHEN HE WAS ALIVE AND AFTER HIS DEATH THE LEGAL REPRESENTATIVE DID NOT STEP INTO THE SHOES OF THE DECEASED ASSESSEE, SECTION 159 OF THE ACT, 1961 DOES NOT APPLY TO THE PRESENT CASE.

30. [Section 159](#) of the Act, 1961 applies to a situation where proceedings are initiated / pending against the assessee when he is alive and after his death the legal representative steps into the shoes of the deceased assessee. Since that is not the present factual scenario, [Section 159](#) of the Act, 1961 does not apply to the present case.

31. In *Alamelu Veerappan Vs. The Income Tax Officer, Non Corporate Ward 2(2), Chennai, 2018 (6) TMI 760 - Madras High Court*, it has been held by the Madras High Court, "In such circumstances, the question would be as to whether [Section 159](#) of the Act would get attracted. The answer to this question would be in the negative, as the proceedings under [Section 159](#) of the Act can be invoked only if the proceedings have already been initiated when the assessee was alive and was permitted for the proceedings to be continued as against the legal heirs. The factual position in the instant case being otherwise, the provisions of [Section 159](#) of the Act have no application." In [Rajender Kumar Sehgal](#) (supra), a Coordinate bench of this Court has held, "This court is of the opinion that the absence of any provision in the Act, to fasten revenue liability upon a deceased individual, in the absence of pending or previously instituted proceeding which is really what the present case is all about, renders fatal the effort of the revenue to impose the tax burden upon a legal representative."

THERE IS NO STATUTORY REQUIREMENT IMPOSING AN OBLIGATION UPON LEGAL HEIRS TO INTIMATE THE DEATH OF THE ASSESSEE.

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32. This Court is of the view that in the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the income tax department. After all, there may be cases where the legal representatives are estranged from the deceased assessee or the deceased assessee may have bequeathed his entire wealth to a charity. Consequently, whether PAN record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In *Alamelu Veerappan (supra)* it has been held "nothing has been placed before this Court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased assessee to immediately intimate the death of the assessee or take steps to cancel the PAN registration."

33. The judgment in [Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited](#) (supra) offers no assistance to the respondents. In [Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited](#) (supra) the Supreme Court was dealing with [Section 170](#) of the Act, 1961 (succession to business otherwise than on death) wherein notice under [Section 143\(2\)](#) of the Act, 1961 was issued to non-existing company. In that case, Department by very nature of transaction was aware about the amalgamation. However, [the said judgment](#) nowhere states that there is an obligation upon the legal representative to inform the Income Tax Department about the death of the assessee or to surrender the PAN of the deceased assessee. The relevant portion of [the said judgment](#) is reproduced hereinbelow:-

"35. In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B.

xxxx xxxx xxxx xxxx

39. In the present case, 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 appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in *Spice Entertainment* on 2 November 2017. The decision in *Spice Entertainment* has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in *Spice Entertainment*.

34. Consequently, the legal heirs are under no statutory obligation to intimate the death of the assessee to the revenue.

SECTION 292B OF THE ACT, 1961 HAS BEEN HELD TO BE INAPPLICABLE VIZ-A-VIZ NOTICE ISSUED TO A DEAD PERSON IN [RAJENDER KUMAR SEHGAL](#) (SUPRA), [CHANDRESHBHAI JAYANTIBHAI PATEL](#) (SUPRA) AND [ALAMELU VEERAPPAN](#) (SUPRA).

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35. This Court is of the opinion that issuance of notice upon a dead person and non-service of notice does not come under the ambit of mistake, defect or omission. Consequently, [Section 292B](#) of the Act, 1961 does not apply to the present case.

36. In [Skylight Hospitality](#) (supra) notice was issued to Skylight Hospitality Pvt. Ltd. instead of Skylight Hospitality LLP. In that factual context, this Court had observed, "Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated April 11, 2017. They had objected to the notice being issued in the name of the company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was relied and dealt with by them." The Supreme Court while dismissing the SLP had also observed "In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under [Section 292B](#) of the Income Tax Act."

37. In any event, [Section 292B](#) of the Act, 1961 has been held to be inapplicable viz-a-viz notice issued to a dead person in [Rajender Kumar Sehgal](#) (supra), [Chandreshbhai Jayantibhai Patel](#) (supra) and [Alamelu Veerappan](#) (supra). In all the aforesaid cases, the judgment of [Skylight Hospitality](#) (supra) had been cited by the revenue.

IN [RAJENDER KUMAR SEHGAL](#) (SUPRA) A COORDINATE BENCH OF THIS COURT HAS HELD THAT SECTION 292BB OF THE ACT, 1961 IS APPLICABLE TO AN ASSESSEE AND NOT TO A LEGAL REPRESENTATIVE.

38. This Court is also of the view that [Section 292BB](#) of the Act, 1961 is applicable to an assessee and not to a legal representative. Further, in the present case one of the legal heirs of the deceased assessee, i.e. the petitioner, had neither cooperated in the assessment proceedings nor filed return or waived the requirement of [Section 148](#) of the Act, 1961 or submitted to jurisdiction of the Assessing Officer. She had merely uploaded the death certificate of the deceased assessee. In [Commissioner of Income Tax-VIII, Chennai Vs. Shri M. Hemanathan](#), 2016 (4) TMI 258 - Madras High Court it has been held "In the case on hand, the assessee was dead. It was the assessee's son, who appeared and perhaps cooperated. Therefore, the primary condition for the invocation of Section 292BB is absent in the case on hand. Section 292BB is in place to take care of contingencies where an assessee is put on notice of the initiation of proceedings, but who takes advantage of defective notices or defective service of notice on him. It is trite to point out that the purpose of issue of notice is to make the noticee aware of the nature of the proceedings. Once the nature of the proceedings is made known and understood by the assessee, he should not be allowed to take advantage of certain procedural defects. That was the purpose behind the enactment of Section 292BB. It cannot be invoked in cases where the very initiation of proceedings is against a dead person. Hence, the second contention cannot also be upheld."

39. Even a Coordinate Bench of this Court in [Rajender Kumar Sehgal](#) (supra) has held "If the original assessee had lived and later participated in the proceedings, then, by reason of Section 292BB, she would have been precluded from saying that no notice was factually served upon her. When the notice was issued in her name- when she was no longer of this world, it is inconceivable that she could have participated in the reassessment proceedings, (nor is that the revenue's case) to be estopped from contending that she did not receive it. The plain language of Section 292BB, in our opinion precludes its application, contrary to the revenue's argument."

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40. Consequently, the applicability of [Section 292BB](#) of the Act, 1961 has been held to be attracted to an assessee and not to legal representatives.

CONCLUSION

41. To conclude, the arguments advanced by the respondent are no longer *res integra* and have been consistently rejected by different High Courts including this jurisdictional Court. In view of consistent, uniform and settled position of law, to accept the submissions of the respondent would amount to unsettling the „settled law“. In fact, in [Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited](#) (supra), the Supreme Court speaking through Hon“ble (Dr.) Justice Dhananjaya Y. Chandrachud has succinctly observed as under:-

“40. We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.”

42. Keeping in view the aforesaid, the present writ petition is allowed and the impugned notice dated 31st March, 2019 and all consequential orders/proceedings passed/initiated thereto including orders dated 21st November, 2019 and 27th December, 2019 are quashed.”

18. Ld. AR submitted that it is also a settled law that participation by assessee in illegal proceeding cannot validate the proceeding.

19. With above submissions, Ld. AR claimed that (i) the notice dated 04.07.2017 issued in the name of deceased person was invalid, consequently the entire assessment-proceeding was also invalid and (ii) the AO has passed final assessment-order dated 07.12.2018 in the name of deceased assessee “Sudha Agarwal” and does not bear any reference of legal heir even after information of death of assessee in AO’s knowledge, therefore also the assessment-order is invalid.

20. We have considered rival submissions of both sides and perused the case-record including the orders of lower-authorities in the light of judicial decisions cited before us. We have already discussed the facts of case as also the judicial rulings at length in foregoing paragraphs. Therefore, it would be unnecessary to repeat the same. Suffice it to say that the AO issued notice dated 04.07.2017 u/s 143(2) acquiring jurisdiction for scrutiny-assessment on the 'deceased assessee' who had already expired on 28.10.2016, therefore the notice was invalid. The legal heir informed the AO on 15.09.2017 about death of assessee, this intimation was before 30.09.2017 being the last date upto which notice u/s 143(2) could be re-issued to legal heir but the AO did not issue any notice to the legal heir. Therefore, on these facts, the assessment-proceeding done by AO has become invalid as held in the decisions of Hon'ble Gujrat High Court and Delhi Court cited above. Consequently, the CIT(A) was very much correct in declaring the entire assessment-proceeding as null and void. We do not find any error in CIT(A)'s order and uphold the same.

21. Since we have agreed with CIT(A) that the assessment-proceeding is null and void, there is no necessity to go into other grounds of assessee' cross-objection and revenue's appeal. Those grounds are kept open unadjudicated at this stage.

22. Resultantly, revenue's appeal is dismissed and assessee's cross-objection is allowed.

Order pronounced in open court on 06/06/2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/ Dated : 06.06.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore