

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA No.223/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2011-12)

Meena Kovoov Hyderabad PAN:BLHPK5744G (Appellant)	Vs.	Income Tax Officer Ward 4(1) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by: Shri Kumar Pal Tated, CA		
राजस्व द्वारा / Revenue by: Smt. Sheetal Sarin, DR		
सुनवाई की तारीख / Date of hearing: 05/06/2024		
घोषणा की तारीख / Pronouncement: 10/06/2024		

आदेश/ORDER

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the order dated 05/01/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2011-12.

2. The grounds raised by the assessee read as under:

1.	The order passed by the Ld. CIT(A) is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.
2.	The Ld. CIT(A) erred in upholding the assessment order without appreciating the fact that the assessment order passed under section 144 r.w.s. 147 of the Act is void ab initio vis a vis provisions of section 159 of the Act
3.	The Ld. CIT(A) ought to have appreciated the fact that the assessment order is invalid as it is passed under the PAN of a deceased person.
4.	The Ld. CIT(A) erred in ignoring the fact that the assessing officer has erred in concluding assessee as legal representative under section 159 of the Act without appreciating the fact that assessee is not a "legal representative" as defined under section 2(29) of the Income Tax Act, 1961.
5.	The Ld. CIT(A) ought to have appreciated the fact that the assessee is not a legal representative as envisaged under clause 11 of section 2 of Code of Civil Procedure, 1908.
6.	The Ld. CIT(A) erred in passing the appellate order without appreciating the grounds of appeal and statement of facts submitted before it which is not correct and bad in law
7.	The Ld. CIT(A) ought to have appreciated the fact that the assessee has not inherited any estate from her father and therefore the provisions of section 159 are not attracted in the case of the assessee.
8.	The AO erred in making an addition of Rs. 3,03,41,561/- as Long Term Capital Gains
9.	The assessee may add, alter: or modify or substitute any other points to the grounds of appeal at any time before or at the time of hearing of the appeal.

3. Facts of the case, in brief, are that the assessee is one of the legal heirs of Sri Late K. Laxman Rao, who has entered into a joint development agreement on 4.12.2010 for a consideration of Rs.2,37,68,000/-. The assessee has not declared Income under head Capital gains in

the return filed during the year. In the month of February 2018 the assessee has received notice under 148 and further in June 2018 the AO has received notice u/s 142(1) seeking further information. During the proceedings the assessee has passed away in September 18. In the month of November, 2018 the AO has issued show-cause notices to the Legal heirs treating them as Legal representatives and made them party to proceedings. The legal representatives has replied to the said notices over email and submitted reply in physical copies on 07-12-2018. However, the AO has not given opportunity of being heard to the aggrieved assessee and passed order u/s 144 and determined liability of 1.75 crs and issued demand notice u/s 156. The aggrieved assessee has resorted to file an appeal against the order of the Assessing Officer but could not succeed.

3. In appeal, the learned CIT (A) NFAC dismissed the appeal of the assessee on the ground that the assessee was granted sufficient opportunities to pursue its appeal.

4. Aggrieved with such order of the learned CIT (A) NFAC, the assessee is in appeal before the Tribunal.

5. The learned Counsel for the assessee submitted that AO ought not to have solely relied on the JDA and two other sale deed documents executed in 2010 and held that the appellant along with her two sisters are the Legal Heirs. It is the

submission of the AO ought not to have held that the property in question, which was given for JDA in 2010, was ancestral property of the deceased-assessee and thereby the present assessee and her two married sisters as Legal Heirs to the assets of the deceased-assessee and the property in question, which was given for JDA in 2010, became the self-acquired property of the deceased-assessee through family settlement/partition dated 1-4-1978 reduced to writing into agreement dated 5-5-1978, which was confirmed by the Civil Court in Judgement and Decree dated 25-4-1995. The AO ought to have seen that as per section 50 of Civil Procedure Code, if the Judgement Debtor dies, the legal heirs are not personally liable to pay such decretal amount and their liability is only to the extent of the property of the deceased which has come to their hands and in the present case, the daughters of the deceased have not inherited any property from their father and hence they are not at all liable for the alleged tax liability of their father. The AO has not followed the principles of natural justice and without hearing and without giving reasonable opportunity to the legal heirs, he cannot pass orders and the Assessing Officer has not issued proper and valid notices to the other legal heirs/daughters of the deceased. It is the submission of the assessee, that if given an opportunity, the assessee would be in a position to explain the details before the learned CIT (A) NFAC.

6. The learned DR, on the other hand, submitted that sufficient opportunity was given by the Assessing Officer and learned CIT (A) NFAC to the assessee to pursue the appeals before the authorities below and the assessee failed to avail the opportunities. Hence, the order of the learned CIT (A) NFAC should be upheld and the grounds raised by the assessee should be dismissed.

7. We have heard the rival arguments made by both the sides and perused the material available on record. It is the grievance of the learned Counsel for the assessee that the authorities below have not understood the issue properly and dismissed the appeal of the assessee. If given an opportunity, the assessee would be in a position to explain its case with documentary evidence before the learned CIT (A) NFAC. Considering the totality of the facts of case and in the interest of natural justice, the appeal of the assessee is set aside to the file of the learned CIT (A) NFAC with a direction to grant one last opportunity to the assessee to explain the issue with documentary evidence before the learned CIT (A) NFAC. The assessee is also hereby directed to appear before the learned CIT (A) NFAC on the appointed date and time without seeking any adjournment under any pretext. We hold and direct accordingly.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 10th June, 2024.

Sd/-

Sd/-

(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 10th June, 2024

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 4(1) Hyderabad
3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order