

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य के समक्ष।
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं/ ITA No. 787/Ahd/2023
निर्धारण वर्ष/Assessment Year: 2017-18

Dhaval Dilipkumar Thakkar, L/h of Late Shri Dilipkumar Amrutlal Thakkar, At Narsanda, Gujarat-388120 PAN : AKXPT 6003 F	बनाम Vs.	Income Tax Officer, Ward-1, Nadiad (Formerly ITO, Ward-2, Nadiad)
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
निर्धारिती की ओर से / Assessee by :	Shri Hemant Suthar, AR	
प्रत्यर्थी की ओर से / Revenue by:	Shri Hrishikesh Hemant Patki, Sr DR	

सुनवाई की तारीख/Date of Hearing : 24/07/2024
घोषणा की तारीख /Date of Pronouncement: 30/07/2024

आदेश/ORDER

The present appeal has been filed by the assessee against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short referred to as "ld. CIT(A)"] under section 250 of the Income Tax Act, 1961 [in short referred to as "the Act"] dated 12.09.2023 pertaining to Assessment Year (AY) 2017-18.

2. The grounds raised by the assessee read as follows :-

"1. The Ld. A.O. has erred in law and in facts in issuing order u/s 143(3) in the name of dead person. The notice so issued is illegal/and invalid in law. The order passed consequent to such illegal/invalid notice is prayed to be quashed.

2. Without prejudice to the other grounds, National Faceless Appeal Centre (NFAC) has erred in law and in facts in confirming the action of the Ld. A.O. making addition of cash deposited of Rs. 13,00,000/- during demonetization period. Thus, the action of the Ld. CIT(A) is bad in law and therefore the appeal of the appellant be allowed."

3. The brief facts of the case are that, in the assessment framed u/s 143(3) of the Act, an addition of Rs.15,00,000/- was made to the income of the assessee on account of cash found deposited in the bank account of the assessee during demonetization period remaining unexplained, which was confirmed by the Id. CIT(A) - though restricted to Rs.13 lakhs only giving credit of deposit of Rs.2 lakhs on account of the fact that the assessee was a senior citizen and in view of the Government of India directions in this regard to give cash allowance of Rs.2 lakhs to senior citizens and ladies for cash deposited during demonetization period in the bank in SBNs.

4. The solitary plea of the Id. Counsel for the assessee before us was that the assessment order was not a valid order in the eyes of law since it was made on a non-existent assessee who had expired during the pendency of assessment proceedings which fact was intimated to the Assessing Officer also. In this regard, he drew our attention to the assessment order wherein the fact stands recorded in paragraph No.2 of the order regarding the intimation of the demise of the assessee. The Id. Counsel for the assessee stated that this plea was being raised for the first time in the appellate proceedings before the ITAT; that it had never been raised before the Id. CIT(A) but being a legal ground under the facts being available on record, the same needed to be admitted for adjudication.

5. The Id. DR, though admitted to the facts as stated by the Id. Counsel for the assessee, vehemently opposed the contention raised by the Id. Counsel for the assessee.

6. Having heard both the parties, it is an admitted fact that the assessment in the present case has been made on a non-existent assessee who admittedly

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had expired during the pendency of assessment proceedings and which fact was very much in the knowledge of the Assessing Officer. The assessment order clearly notes the fact that two notices issued to the assessee remained unresponded to. That against the third notice issued the assessee initially sought adjournment and thereafter a reply was filed to the AO by the son of the assessee intimating the factum of death of the assessee during the pendency of the assessment proceedings. The order reveals that the AO notes the said fact and goes on to frame assessment in the name of the deceased assessee making addition of the cash found deposited in his bank account during demonetization of Rs.15 lacs.

7. The order passed is in clear violation of law. Section 159 of the Act provides the machinery for assessment of income of a deceased person providing for continuing proceedings against the legal representative of the deceased and fixing liability on the representative to pay taxes on the income assessed to the extent of assets inherited. Section 159(2) deals with the situation where the assessee expires during the pendency of proceedings and provides for the proceedings undertaken till then to be deemed to have been undertaken on the legal representative and to be continued thereafter on the legal representative from the stage at which it stood on the death of the assessee. The relevant provisions of section 159 (1) & (2) of the Act are reproduced hereunder :

“159. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) 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), –

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- (a) any proceeding taken against the deceased before his death 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;
- (b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and
- (c) all the provisions of this Act shall apply accordingly."

8. In the present case after the intimation of the death of the assessee to the AO, no notice whatsoever was served on the legal representative. Prior to the death of the assessee there was no reply filed to the AO. Subsequent to his death, the AO was required to seek the necessary information from his legal representative for framing assessment. No such act was done by the AO. Besides the assessment is also framed on a deceased person. The Hon'ble jurisdictional High Court in the case of Chandreshbhai Jayantibhai Patel v ITO (2019) 101 taxmann.com 362 has categorically held that no order can be passed on a deceased assessee.

9. In view of the same, the assessment order is quashed as invalid, and the appeal of the assessee is allowed for the above reason.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 30/07/2024 at Ahmedabad.

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
(अन्नपूर्णा गुप्ता, लेखा सदस्य)

Ahmedabad, dated 30/07/2024

btk*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

TRUE COPY

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad