

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.781/Del/2022
Assessment Year 2017-18

Ramesh Chand (through legal heir Smt. Anju Bala) H.No. 1005, Sector-19 Faridabad, Haryana	Vs.	ITO, Ward-2(2) Faridabad, Haryana
TAN/PAN: AGXPC5675N		
(Appellant)		(Respondent)

Applicant by:	Shri Rakesh Jain, Advocate		
Respondent by:	Shri P.N. Barnwal, CIT-DR		
Date of hearing:	06	05	2024
Date of pronouncement:	06	08	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal by the assessee is directed against the revisional order passed by the Principal Commissioner of Income Tax, Faridabad ('Pr.CIT' in short) dated 30.03.2022 under Section 263 of the Income Tax Act, 1961 (the Act) whereby the assessment order passed by the Assessing Officer (AO) dated 17.10.2019 under Section 143(3) of the Act concerning Assessment Year 2017-18 was sought to be set aside for *de novo* assessment in terms of supervisory directions.

2. As per the captioned appeal, the assessee has challenged the revisional order passed by the Pr.CIT by invoking Section 263 of the Act.

3. When the matter was called for hearing, the ld. counsel for the assessee submitted at the outset that the assessment order has been drawn in the name of deceased-Mr. Ramesh Chandra. The assessment order was passed on 17.10.2019

whereas the assessee had died on 16.06.2018. The Id. counsel also adverted our attention to notice issued under Section 143(2) dated 09.08.2018 in the name of deceased Shri Ramesh Chandra. The notice issued under Section 143(2) could not be issued in the name of the deceased after his death on 16.06.2018. Thus, the notice issued under Section 143(2) empowering the AO to frame assessment under Section 143(3) of the Act itself is *void ab initio*. Thus, in the light of the judgments rendered in the case of *Savita Kapila vs. ACIT (2020) 108 CCH 0049 (Del)*; *Rajendra Kumar Sehgal vs. ITO in W.P. (C) 11255/2017 order dated 19.11.2018*, the assessment order itself is bad in law and not executable. Consequently, the revisional order passed on such *prima facie* non-est order is not sustainable in law. The Id. counsel further addressed us on merits to contend that the assessment order is neither erroneous nor prejudicial to the interest of the Revenue and therefore, the jurisdiction under Section 263 was never conferred upon the Pr.CIT.

4. The Id. CIT-DR for the Revenue, on the other hand, referred to the judgment rendered in the case of *Smt. Swaran Kanta vs. CIT, (1989) 176 ITR 291 (P&H)* to submit that the return of income filed by the deceased do not get invalidated when the widow was impleaded and the notice was issued to her as legal heir of the assessee.

4.1 The Id. CIT-DR thus submitted that the revision of the assessment order so passed is capable of being revised under Section 263 of the Act.

5. We have carefully considered the rival submissions.

6. As pointed out on behalf of the assessee, the assessment order was drawn in the name of Late Mr. Ramesh Chandra who was deceased at the time of framing of the assessment order on 17.10.2019. This being so, in the light of the judgments rendered by Hon'ble Jurisdictional High Court in the case of *Savita Kapila (Supra)* and *Rajendra Kumar Sehgal (supra)*, the assessment order framed in the name of deceased is apparently not sustainable in law. Consequently, the

revisional action of a non-existent assessment order is not permissible in law. Thus, without going into the merits of the plea towards lack of prerequisites for the purposes of Section 263, we hold that the revisional action under challenge is outside the sanction of law.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 06 August, 2024.

Sd/-
[SUDHIR KUMAR]
JUDICIAL MEMBER

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: August, 2024
Prabhat