

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE SMC BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.376/Ind/2024
(Assessment Year: 2009-2010)

Smt. Shakuntala (Legal Heir of Dr. Kamlesh Kumar Uniya), New Civil Hospital, Narsingharh, Dist. Rajgarh, Biaora	Vs.	ITO, Rajgarh
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AACPU6224C		
Assessee by	Shri Harsh Vijaywargiya, AR	
Revenue by	Shri Ashish Porwal, SR.DR	
Date of Hearing	27.08.2024	
Date of Pronouncement	28.08.2024	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 19.05.2023 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC) Delhi for A.Y.2009-10.

2. There is a gap of about 11 months in filing the present appeal from the date of impugned order. The assessee has filed an

affidavit of the legal heir of the deceased assessee along with death certificate of the assessee. The Ld. AR has submitted that after filing the appeal before CIT(A) on 12.08.2015 assessee expired on 26.02.2018, therefore the assessee could not participate in the proceedings before CIT(A) and consequently the ex-parte order was passed. Ld. AR further submitted that the assessee was suffering from ailments and undergoing medical treatment and therefore he could not even appear before the A.O and consequently the A.O has also passed the best judgment order u/s 144 of the Act r.w.s. 147 of the Act. Ld. AR submitted that the legal heir of the assessee were not aware about the impugned order passed by CIT(A) and finally when the A.O has initiated the recovery proceedings in pursuance of the impugned order passed by CIT(A), the legal heir has filed the present appeal. Ld. AR has prayed that the delay in filing the present appeal may be condoned and the appeal of the assessee may be decided on merits.

3. On the other hand Ld. Departmental Representative has not raised any objection to the condonation of delay in view of the fact that after filing the appeal before CIT(A) the assessee expired.

4. I have considered the submissions of the Ld. AR as well as Ld. DR and the affidavit filed by the legal heir along with the death certificate. The assessee filed the appeal before CIT(A) on 12.08.2015 which was subsequently migrated to National Faceless Centre in terms of the CBDT notification dated 25.09.2020. Ld. CIT(A) has passed impugned ex-parte order on 19.05.2023 therefore, the non- appearance on behalf of the assessee due to the death during the pendency of the appeal and even before migrated to the faceless appeal centre is a reasonable cause for not filing the appeal within the period of limitation before the Tribunal. Hence the delay in filing the appeal is condoned.

5. Assessee has raised following grounds of appeal:

"1.That on the facts and in the circumstances of the case Ld. AO and Ld. CIT (A) has erred in making addition in the form of cash deposits from undisclosed sources amounting to Rs. 16,85,000 without affording any opportunity of being heard to the deceased assessee and against the principles of natural justice.

2.That the impugned order so-passed in this regard by Ld. AO and Ld. CIT(A) is illegal and wrong.

3. That the assessee craves leave to add, amend, alter or delete any of the grounds of appeal and all the grounds are without prejudice to each other."

6. The Ld. AR has submitted that the A.O has made addition on account of cash deposited in the bank account of the assessee. The assessee has explained the source of the cash deposit as sale of the property by the son of the assessee vide sale deed dated 07.09.2009 placed at page 4-12 of the paper book. He has pointed out that due to the illness of the assessee he could not present before A.O as well as before the CIT(A) and finally expired therefore, the matter may be remanded to the record of the A.O for fresh adjudication after verification and examination of the necessary record and details in support of the source of cash deposit made in the bank account.

7. On the other hand Ld. Departmental Representative fairly submitted that since the assessment order is passed on the basis of best judgment and CIT(A) has also dismissed the appeal of the assessee ex-parte therefore, in view of the death of the assessee the matter may be remanded to the A.O for fresh adjudication after verification and examination of the relevant records.

8. I have considered the rival submissions and carefully perused the orders of the authorities below. The A.O has passed ex-parte

best judgment assessment order when there was no response on behalf of the assessee to the notices issued by the A.O and made the addition of Rs.16,85,000/- on account of unexplained deposit in bank account. The CIT(A) has dismissed the appeal filed by the assessee while passing the ex-parte order as there was no response to the various notices issued by it. The legal heir of the assessee has filed the present appeal as the assessee died after filing the appeal before CIT(A). Ld. AR has pointed out that the assessee died after a prolonged illness of 3-4 years as stated in the affidavit filed by the wife of the deceased assessee. Therefore, in the facts and circumstances of the case when the assessee was suffering from ailments and finally died in the month of February, 2018 therefore, in the interest of justice that the legal heir of the assessee be given an appropriate opportunity to explain the source of deposits made by the deceased assessee. Accordingly, the impugned order of CIT(A) is set aside and the matter is remanded to the record of the A.O for fresh adjudication after verification and examination of the relevant records as well as considering the explanation of source of deposit. Needless to say the legal heir of the assessee be given an appropriate opportunity before passing the fresh order.

9. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28.08.2024.

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 28.08.2024

Dev/Sr. PS

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

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*