

**THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER,
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER
(Through Video Conferencing)**

**ITA Nos. 87 & 88/DDN/2023
(Assessment Years: 2013-14 & 2014-15)**

Amjad Hussain, S/o. Late Shri Ayub Khan, Village-Dhandera, roorkee, District-Haridwar, Roorkee, Uttarakhand (Appellant) PAN:AGMPH6815L	Vs. ITO, Roorkee (Respondent)
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Assessee by :	Shri Rajiv Sahani, CA
Revenue by:	Shri A. S. Rana, Sr. DR

Date of Hearing	20/08/2024
Date of pronouncement	/08/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. These appeals in ITA Nos.87 & 88/DDN/2023 for AYs 2013-14 and 2014-15, arise out of the order of the National Faceless Appeal Centre (NFAC), Delhi dated 25.07.2023 [hereinafter referred to as 'ld. CIT(A)', in short] against the order of assessment passed u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 22.12.2018 for AY 2013-14 and order dated 24.12.2018 passed by the ITO, Ward-1(3)(4), Roorkee (hereinafter referred to as 'ld. AO').
2. Identical issues are involved in both these appeals, hence, they are taken up together and disposed of by this common order for the sake of convenience. The assessee has raised the following grounds of appeal for AY 2013-14:-

"1. That in any case and in any view of the matter, Learned CIT(A), NFAC has erred in law and on facts in confirming the action of the Learned AO by dismissing the Appeal due to non submission on the grounds of appeal preferred.

2. That in any case and in any view of the matter, Learned CIT(A), 'NFAC has erred in law and on facts in not sending the Notices under Section 250 to email addresses as per the provision of Section 282 of the Income Tax Act, 1961 read with Rule 127 of the Income Tax Rules, 1962.

3. That in any case and in any view of the matter, the Learned AO has erred in law and on facts in treating the sale of inherited land in plots as" adventure in nature of trade" instead of sale of capital assets.

4. That in any case and in any view of the matter, the Learned AO erred in law and on facts in doubting the source cash received on sale of immovable properties during the Financial Year relevant to the Assessment Year 2013-14, the sale consideration(Rs.28,98,292) of which was not taken into consideration for explaining the cash deposits in the bank account by the Learned AO

5. That in any case and in any view of the matter, the Learned AO has erred in law and on facts in treating the unexplained cash deposits in bank under Section 68 of the income Tax Act, 1961.

6. That in any case and in any view of the matter, the Learned AO has erred in law and on facts in treating the Appellant as legal heir of 1/3rd share without giving effect to the law of the Muslims in respect of inheritance as per the Shariat Law.

7. That in any case and in any view of the matter, the Learned AO has erred in law and on facts in creating a tax liability on the Appellant in excess of the estate of the deceased Assessee that devolved upon the Appellant.

8. That the Appellant craves leave to add, alter, delete, amend or modify any grounds of appeal during the course of appeal proceedings."

3. The assessee has also raised additional ground which goes to the root of the matter which is as under:-

"1. That having regard to the facts and circumstances of the case, impugned assessment order passed u/s 143(3) rws 147 is bad in law since the assessment has been done in the name of one or more legal representatives rather than all the legal representatives of the deceased person."

4. There is delay of 57 days in filing of appeal by the assessee before us. The assessee has stated that the notice has been sent to different email address other than those mentioned in Form 35 by the Id CIT(A). In fact email mentioned in the income tax return form was used by the office of the CIT(A) to send the notice,

which is different from the email id mentioned in Form-35. This fact came to notice at later point of time and accordingly, noticing the same, the assessee had preferred an appeal before this tribunal along with delay condonation petition with a request to condone the delay of 57 days. Considering the reasons, we are inclined to condone the delay and admit the appeals for adjudication.

5. At the outset, the Id AR submitted that there are 7 legal heirs actually available for Late Shri Ayub Khan and that the assessment has been framed only in the hands of the 3 legal heirs by the Id AO.

6. The entire issues in dispute were already subject matter of adjudication by the coordinate bench of this Tribunal in the case of Sajid Hussain son of Late Ayub Khan Vs. ITO in ITA Nos. 85 and 86/DDN/ 2023 for AY 2013-14 and 2014-15 dated 19.08.2024. For the sake of convenience, the said order is reproduced herein below:-

"ITA No. 85/DDN/2023

2. By way of this appeal, the appellant has challenged order dated 3.11.2023 passed by Learned CIT(Appeal), NFAC, Delhi, as regards Assessment Year 2013-14. Vide impugned order, assessment order dated 27.12.2019 passed by the Assessing Officer has been upheld and the appeal filed by Sajid Hussain has been dismissed.

3. Vide abovesaid assessment order, Assessing Officer computed the total income of the assessee-Sajid Hussain at Rs. 47,52,730/-under section 147 read with section 143 of the Income Tax Act, 1961 (hereinafter referred to as "the Act", and also initiated penalty proceedings under section 271(1)(c) of the Act.

3.1 While passing assessment order, Assessing Officer made addition of Rs. 1,12,00,000/-due to unexplained cash deposit in Bank and another addition of Rs. 28,98,292/-as business income from sale of property.

3,2 Significant to note that the Assessing Officer, computed total income only to the extent of 1/3rd share of the assessee as regards the abovesaid income of Rs. 47,52, 730/-,

4. Feeling aggrieved by the assessment order, the assessee filed appeal. Since, he did not get any respite from the CIT(A), NFAC, he is before this Appellate Tribunal.

ITA No. 86/DDN/2023

5. By way of this second mentioned appeal, the appellant has challenged order dated 3.11.2023 passed by Learned CIT(Appeal), NFAC, Delhi, as regards Assessment Year 2014-15.

5.1 Vide impugned order, assessment order dated 27.12.2019 passed by the Assessing Officer has been upheld and the appeal filed by Sajid Hussain-the assessee has been dismissed.

5.2 Vide abovesaid assessment order, Assessing Officer computed the total income of the assessee-Sajid Hussain at Rs. 33,86,480/-under section 147 read with section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), and also initiated penalty proceedings under section 271(1)(c) of the Act.

5.3 While framing assessment, Assessing Officer made addition of Rs. 99,48,000/- as business income from sale of property, but computed total income only to the extent of 1/3rd share of the assessee.

6. Feeling aggrieved by the assessment order, the assessee filed appeal. Since, he did not get any relief from the CIT(A), NFAC, he is before this Appellate Tribunal.

7. Arguments heard. File perused.

8. Appellant Sajid Hussain is one of the legal heirs of late Shri Ayub Khan. During his life time, said Ayub Khan is stated to have sold 36 immovable properties. This piece of land was converted into residential land and then sold as plots. All the sale deeds pertained to one piece of land bearing khasra No.382. Ayub Khan did not file any income tax return.

8.1 Case of the department is that in this way income was found to have escaped assessment. That is how, notices were issued and assessment proceedings were initiated and concluded, with passing of the assessment against Sajid Hussain, who is one of the legal representatives of the original assessee Shri Ayub Khan.

9. Learned AR for the appellant has submitted that Shri Ayub Khan left this world intestate on 16.9.2015 and that he had sold ancestral/inherited land in the financial years 2012-13 and 2013-14; that besides Sajid Hussain appellant, other legal representatives of Shri Ayub Khan are there and this fact was brought to the notice of the Assessing Officer during assessment proceedings, but even then he framed assessment holding Sajid Hussain liable for payment of tax to the extent of 1/3d share, ignoring the provisions of law including those of Shariat as contained in The Muslim Personal Law (Shariat) Application Act, 1937, and as such the assessment order being non est deserved to be set aside, but CIT(A) dismissed the appeal filed by Sajid Hussain.

10. Another contention is that notices purported to have been issued by CIT(A), NFAC after filing of appeal, were never served upon Sajid Hussain at the email address or ID provided in column No.17 of Form No.35, and as such, the impugned order passed by CIT(A) in each appeal deserves to be set aside

11. Learned DR has referred to para 5 of the impugned orders wherein it finds mentioned that adequate opportunities were given to Sajid Hussain to submit reply

with supporting evidence as regards the grounds of appeal(s) raised in each appeal, قلم but, the assessee Sajid Hussain did not respond any of the six notices, and as such, CIT(A) was justified in disposing of the appeals.

12. No doubt, various notices are stated to have been issued by NFAC after filing of the two appeals against the impugned assessments, but, same appear to have been issued at email ID other than the one i.e. raomominkhan74@gmail.com, which finds mention in column No.17 as the address given by the appellant for communication of notices pertaining to the appeals. Department has not brought on record anything to the contrary. Therefore, it cannot be said to be a case of due service of notices by the office of NFAC upon the assessee-Sajid Hussain.

13. As regards the other ground that the Assessing Officer erred in fastening liability of the appellant to pay tax to the extent of 1/3rd share, we have repeatedly enquired from Learned AR for the appellant as to whether details of all the legal representatives of Shri Ayub Khan were or were not provided to the Assessing Officer. Learned AR has not very clearly replied our query. Had the details regarding other legal representatives of Shri Ayub Khan been furnished to the Assessing Officer, copies of the relevant application or response or written submission could be made part of record or of the Paper Book. No such document has been made available to us.

14. However, it is not being disputed on behalf of the appellant that immovable properties were sold away by Shri Ayub Khan.

15. In this situation, we find that this is a fit case where the matter deserves to be restored to the files of the Assessing Officer for framing of assessment(s) afresh after due verification on the point of total number of legal representatives of Shri Ayub Khan, in accordance with law, and on the point as to how much amount of the sale consideration fell to the share of each legal representative, so as to arrive at correct calculations, in case of their liability to pay tax, if any, as legal representatives.

16. Learned DR also submits that on the aforesaid issues the matter deserves to be verified and considered by the Assessing Officer.

Result

17. As a result, both these appeals are disposed of for statistical purposes, and matter is restored to the files of the Assessing Officer for framing of assessment(s) relating to each concerned Assessment Year i.e. 2013-14 and 2014-15, afresh, after due verification on the point of total number of legal representatives of Shri Ayub Khan, in accordance with law, and on the point as to how much amount of the sale consideration fell to the share of each legal representative, so as to arrive at correct calculations, in case of their liability to pay tax, if any, as legal representatives.

18. Of course, Learned Assessing Officer shall provide reasonable opportunity to the assessee of being heard, in accordance with law.

19. Copy of this common order be also placed in the records of ITA No.86/DDN/2023.