

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.2516/Del/2024  
[Assessment Year : 2016-17]**

Madan Lal Kochar (Through Sahil Kochar), M/s. Satish Aggarwal & Associates, 4/5B, 1 <sup>st</sup> Floor, Asaf Ali Road, New Delhi-110002. <b>PAN-ACMPK7272L</b>	vs	Pr.CIT-12, New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Satish Aggarwal, CA	
<b>Respondent by</b>	Shri Siddharth B.S.Meena, Sr.DR	
<b>Date of Hearing</b>	02.09.2024	
<b>Date of Pronouncement</b>	05.09.2024	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee is directed against the order passed by Ld. Pr. CIT, Delhi-12 dated 26.03.2024 for the assessment year 2016-17.

2. The assessee has raised following grounds of appeal:-

- (1) *“That the order passed by the Learned Principal Commissioner of Income Tax-12, Delhi under section 263 of the Act, is arbitrary, biased and bad in law and in facts of the case.*
- (2) *That the Learned Principal Commissioner of Income Tax has grossly erred in passing an order u/s 263 on a deceased person which order is a nullity and void ab-initio.*
- (3) *Without prejudice to ground no. 2, the assumption of jurisdiction by the Learned Principal Commissioner of Income Tax under section 263 of the Act is bad in law as the order passed by the Assessing*

*Officer was neither erroneous nor prejudicial to the interest of the revenue.*

- (4) That the Learned Principal Commissioner of Income Tax has grossly erred in passing an order under section 263 of the Act without making independent enquiry herself before assuming jurisdiction under section 263 of the Act, which order is not sustainable in law and facts of the case.*
- (5) That the Learned Principal Commissioner of Income Tax has grossly erred in passing a pre-mediated order under section 263 of the Act without affording a fair and adequate opportunity to the assessee and in summarily dismissing the submissions made by the assessee during the course of proceedings under section 263 of the Act which order is not sustainable in law and facts of the case.*
- (6) That the Learned Principal Commissioner of Income Tax has grossly erred in assuming jurisdiction under section 263 of the Act misleading herself in incorrectly stating that the assessee failed to furnish the narration of bank transactions despite specific requirement of the Assessing Officer whereas the Assessing Officer vide his questionnaire dated 29.12.2021 had only directed the assessee to furnish the copy of bank statements which was duly furnished resulting in the PCIT assumption of jurisdiction under section 263 of the Act on the basis of foundational defect consequent to which the order passed under section 263 is not sustainable in law and facts of the case.*
- (7) That the Learned Principal Commissioner of Income Tax has grossly erred in assuming jurisdiction under section 263 of the Act on the reckoning that the Assessing Officer does not seem to have made adequate inquiry as no such mention of the enquiry is found in the assessment order leading her to the incorrect conclusion that the order is erroneous and pre-judicial to the interest of revenue against the settled judicial precedents in which invocation of provisions of*

*section 263 of the Act has not been held sustainable.(8) Without prejudice to the above grounds that the assumption of jurisdiction under section 263 of the Act by the Learned PCIT is bad in law since the order passed by the Assessing Officer was neither erroneous nor pre-judicial to the interest of revenue, the PCIT has grossly erred in directing the AO to make further enquiry and verification on the below mentioned issues.*

*8.1) Directing the AO to make further enquiry on the creditworthiness of the parties from whom unsecured loan had been availed by the assessee and to establish the genuineness of the receipt of loan and repayment of loan transaction ignoring the fact that the assessee had furnished confirmations from the loan creditors, affidavit from the loan creditors confirming the transactions of loan to the assessee, copy of bank statement evidencing the receipt and repayment of loan on incorrect appreciation of facts on record and submissions made during the course of proceedings under section 263 of the Act which direction is unsustainable in law and facts of the case.*

*(9) That the appellant craves leave to add, alter or delete the above grounds of appeal at the time of hearing.”*

3. Facts giving rise to the present appeal are that in this case, assessment u/s 147 r.w.s 144B of the Income Tax Act, 1961 (“the Act”), was framed vide order dated 24.03.2022 with DIN ITBA/AST/S/147/2021-22/1041932307(1), thereby assessing the income of the assessee at INR 5,30,190/-. Subsequently, vide impugned order dated 26.03.2024, Ld.Pr.CIT revised the assessment order therefore, he set aside the assessment order for want of proper inquiry and verification.

4. Aggrieved against the order of Ld. Pr. CIT, the Legal Heir of deceased assessee is in appeal before this Tribunal, challenging the correctness of action of Ld.Pr.CIT who by way of impugned order, has passed an order against a dead person, without bringing Legal Heir on record. Despite the fact of death was duly intimated to Ld.Pr.CIT.

5. Apropos to the grounds of appeal, Ld. Counsel for the assessee submitted that the impugned order has been passed by Ld. Pr.CIT against the dead person and such order is *ex-facie, ab-initio* void. He further re-iterated the submission as made in the written synopsis. For the sake of clarity, the relevant contents of the written synopsis are reproduced as under:-

- 1) *“The assessment of the assessee was completed by the National Faceless Assessment Center vide order dated 24.03.2022 under section 147 r.w.s. 144B of the Act at returned income of Rs. 5,30,190/- on being satisfied with the reply of the assessee made during the assessment proceedings.*
- 2) *The proceedings under section 263 of the Act were initiated by the PCIT vide show-cause notice dated 05.01.2024 to show cause to the assessee (who had expired on 12.09.2023) as to why the assessment may not be reframed under section 263 of the Income Tax Act, 1961 in view of the order having been passed without making proper enquiry and verification before completion of assessment. (Copy of Show-Cause Notice issued by the PCIT dated 05.01.2024 is enclosed at page 1-4 of the P.B).*
- 3) *The assessee expired on 12.09.2023 which information was given by the assessee to the PCIT, vide his communication dated 17.01.2024 in spite of which the order under section 263 has been passed on a dead person which is null and void. (Copy of Death*

*Certificate enclosed at page no.- 74 of the P.B.) Refer para 7.1-page no. 4 of the PCIT order wherein the PCIT has acknowledged the fact of assessee filing a copy of death certificate of late Sh. Madan Lal Kochar.*

- 4) *The assessee has advocated ground number 1 and 2 of Grounds of Appeal that the order passed u/s 263 of the Act is illegal and bad in law. The show-cause notice dated 05.01.2024 issued under section 263 of the Act on deceased assessee and the order passed on a deceased person, information of which was furnished to the PCIT during the course of proceedings under section 263 of the Act, are null and void.*
- 5) *Reference is invited to the latest decision of Delhi ITAT pronounced on 20.06.2024 in the case of Smt. Sangeeta Saini v. ITO ITA NO.7829/DEL/2017 (A.Y.2009-10) (Copy enclosed at page no. 5-12 of the P.B.) wherein the tribunal has held that in view of the assessee having informed the PCIT of the death of the assessee and the PCIT having taken cognizance of the said information in her order, the order passed under section 263 was invalid and bad in law.*

*In the above case, the ITAT held that the subsequent assessment order passed pursuant to the order under section 263 also was, therefore, bad in law.*

- 6) *Reference is also invited to another decision of Delhi ITAT in the case of Late Sh. Jp Aggarwal Through L/H Sh. Vishwanath Aggarwal vs ITO, Ward- 44(5), New Delhi in ITA no. 3133/DEL/2019 (Copy enclosed at page no. 13- 25 of the P.B.) wherein the Delhi Tribunal quashed the notice and order passed under section 263 order on a deceased person.*
- 7) *In the case of Late Sh. Jp Aggarwal Through L/H Sh. Vishwanath Aggarwal vs ITO, Ward-44(5), New Delhi in ITA no. 3133/DEL/2019, the PCIT issued notice under section 263 in the*

*name of dead person and the order under section 263 also was passed in the name of a dead person.*

8) *The Tribunal vide Para 8 of its order held that as per the provisions of section 263, the PCIT is not empowered to pass an order under section 263 in the hands of the legal representative after the death of the assessee. It further held in Para 10 that following the decision of Gujrat High Court in the case of Bhupendra Bhikhalal Desai v. ITO [2021] 130 taxmann.com 196 (Gujarat) (Copy enclosed at page no. 57-73 of the P.B.) the order passed under section 263 in the hands of dead assessee is null and void.*

9) *Refer para 10 of the ITAT order which reads as under:*

*Quote:*

*Thus, in light of the decision of the Hon'ble Gujarat High Court (Supra), it can be said that the action of the PCIT by passing order u/s 263 of the Act in the hands of the deceased is outside the scope of law provided w/s 159 of the Act.*

*Unquote:*

10) *The Delhi Tribunal in the above case also referred to the question whether in such circumstances proceedings under section 159 of the Act could be invoked against the representative assessee. It held that the provisions of section 159 of the Act are applicable only if the proceedings had been initiated when the assessee was alive.*

11) *Reference is also invited to the decision of jurisdictional Delhi High Court in the case of Savita Kapila v. ACIT [2020] 118 taxmann.com 46 (Delhi) (Copy enclosed at page no. 26-25 of the P.B.) considering the issue of whether the representative of the deceased is required to intimate to the department the fact of the demise of the assessee, the court held that no duty is cast upon a legal representative to intimate factum of death of the assessee to the department.*

- 12) *The court in above case went on to state that irrespective of the fact whether PAN was updated or not or whether the department was made aware by the legal representative of the death is not relevant while quashing the order against a dead person.*
- 13) *The court held that there is no statutory obligation on the part of the legal representative of the deceased assessee to intimate the death of the assessee or to get the PAN registration cancelled.*
- 14) *The observations of the jurisdictional Delhi High Court in the case of Savita Savita Kapila v. ACIT [2020] 118 taxmann.com 46 (Delhi) are being reproduced for ready reference to submit that the notice and the order passed by the PCIT under section 263 is a nullity and should be quashed.*

*Quote:*

*32. "This Court is of the view that in the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the income tax department. After all, there may be cases where the legal representatives are estranged from the deceased assessee or the deceased assessee may have bequeathed his entire wealth to a charity. Consequently, whether PAN record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In Alamelu Veerappan (supra) it has been held*

*"nothing has been placed before this Court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased assessee to immediately intimate the death of the assessee or take steps to cancel the PAN registration."*

*Unquote*

- 15) *Refer the decision of Ahmedabad Bench in the case of Hiraben Babubhai Patel v. PCIT in ITA appeal No. 700/Ahd/2019 wherein it was held by the Ahmedabad ITAT that since at the time when the notice under section 263 had been issued, the assessee had already expired, and the fact was brought to the notice of the PCIT, the notice issued / order passed in the name of a dead person is not a valid notice/ order. (Copy of judgement is enclosed at page no. 33-41 of the P.B). Refer para 6.10 of the order at page 40-41 of the P.B.*
- 16) *The Tribunal in the case of Hiraben Babubhai Patel v. PCIT in ITA appeal No. 700/Ahd/2019 relied on the decisions of Supreme Court and Gujrat High Court in below mentioned cases to hold that the order passed under section 263 was not valid having been passed on a deceased person.*
- 17) *In the case of ITO v. Bhupendra Bhikhalal Desai [2021] 131 taxmann.com 40 (SC) (Copy enclosed at page no. 42 of the P.B.), the original assessee, namely 'B', passed away on 23-4-2017. The Assessing Officer issued a notice under section 153C in name of 'B' on 29-3-2019. After receiving said notice legal heir informed Assessing Officer that his father, B had passed away and requested to drop proceedings as notice was issued to a dead person. The Supreme Court held that the notice issued on a dead person was not valid.*
- 18) *The SLP filed by the revenue before the Hon'ble Supreme Court against above judgement of High Court was also dismissed by the Supreme Court. Copy enclosed in the paper book at page 42 of the P.B.*
- 19) *In the case of ITO v. Durlabhbai Kanubhai Rajpara [2020] 114 taxmann.com 482 (SC) (Copy enclosed at page no. 43-46 of the P.B.), pursuant to summons issued in name of assessee's father under section 131(1A). assessee brought to notice of Revenue Authorities that his father had already died. Despite knowing said fact,*

*Assessing Officer issued notice in name of assessee's father under section 148 seeking to reopen assessment. The notice u/s 148 was held bad in law and was quashed.*

- 20) *The attempt of the department to invoke the provision of section 292B of the Act in view of the participation of the assessee in the proceedings was also held invalid.*
- 21) *In the case of Chandreshbhai Jayantibhai Patel v. ITO 101 taxmann.com 362 (Gujarat) (Copy enclosed at page no. 47-56 of the P.B.), the Gujarat High Court held that where original assessee died and thereafter Assessing Officer issued notice under section 148 in his name to reopen assessment and petitioner being heir and legal representative of deceased raised an objection that assessee had already expired and, therefore, notice in his name was not valid, merely because petitioner had informed Assessing Officer about death of assessee and asked him to drop proceedings, it could not be construed that petitioner had participated in proceedings and, therefore, provisions of section 292B would not be attracted and notice under section 148 was to be treated as invalid.*
- 22) *In the case of Urmilaben Anirudhhasinhji Jadejav. ITO117 taxmann.com 504 (Gujarat), the Gujarat High Court held that reopening notice under section 148 issued against a dead person would be a nullity and; proceedings pursuant to a reopening notice issued to a dead person could not be continued against legal representatives.*
- 23) *The Hon'ble Apex Court in the case of PCIT v. Maruti Suzuki India Ltd 107 taxmann.com 375 has held that assessment order passed in the name of non-existing entity would be without jurisdiction and was to be set aside.”*

6. Ld. Counsel for the assessee submitted that the factum of death of assessee has been duly recorded by the Ld.Pr.CIT in para 7.1 of the impugned

order. He submitted that Late Shri Madan Lal Kochar, the deceased assessee died on 12.09.2023 and proceedings u/s 263 of the Act were initiated against the deceased assessee. He drew my attention to the notice dated 05.01.2024 enclosed in the Paper Book at pages 1 to 4. He further submitted that impugned order *ab-initio* void and thus, cannot be upheld.

7. On the other hand, Ld. Sr. DR for the Revenue fairly conceded the fact that the order has been passed in the name of Late Shri Madan Lal Kochar who passed on 12.09.2023 and the proceedings u/s 263 of the Act was issued on 05.01.2024.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The Revenue has not controverted the fact that Late Shri Madan Lal Kochar died on 12.09.2023 and the due intimation was given by the assessee to Ld. Pr. CIT vide communication dated 17.01.2024. Admittedly, the Revenue has not proceeded against the Legal Heir of the assessee. Ld. Pr. CIT did not take any step for bringing the Legal Heir of the assessee on record and failed to proceed against him. The relevant contents of the order of Ld. Pr. CIT is reproduced as under:-

7.1 *“In reply, it is mentioned that Sh. Madan Lal Kochar (the assessee) passed away on 12.09.2023. A copy of his death certificate is enclosed. Sh. Sahil Kochar, legal heir of the assessee mentioned that he is presently living in USA for last more than 20 years, there is no one in India, who can come and attend the aforesaid hearing. He is a US citizen holding American passport and visits India once in a while. The last time he visited India was when his father passed away in Sept. 23. Since he has no idea whatsoever about his income*

*tax matters, he is in consultation with his Chartered Accountant in India.”*

9. Ld. Counsel for the assessee during the course of hearing, has relied upon various case laws. To buttress the contention that the proceedings against the dead person is nonest. The Co-ordinate Bench of this Tribunal in **ITA No.7829/Del/2017** in the case of **Smt. Sangeeta Saini vs ITO** order dated **28.06.2024** has held as under:-

10. *“In additional ground of appeal the assessee has assailed validity of order passed u/s 263 of the Act in the name of a dead person. The Id. Counsel for assessee has pointed that the assessee has informed about the death of Nirmal Kant Saini to the CIT vide letter date 12.02.2014, 24.02.2014, 12.03.2014 and 20.03.2014. The said communications are at pages 25 to 28 of the paper book. A perusal of aforesaid letters show that in initial three letters though it was not specifically mentioned that Nirmal Kant Saini had died but from reading of the said communications it can be gathered that Nirmal Kant Saini had died and the legal heir Smt. Sangeeta Saini, wife of late Nirmal Kant Saini is in the process of gathering documents. However, in the letter dated 20.03.2014 it was expressly mentioned that Nirmal Kant Saini expired on 21.01.2013 and his death certificate was also placed on record. The CIT has taken cognizance of the said letter and in para 2 of the order passed u/s. 263 of the Act dated 21.03.2014 has recorded this fact. The relevant extract of the said order is reproduced here in under:*

2 *“The case was posted for hearing u/s. 263 of IT Act on 20.03.2014, wherein Sh. Rakesh Malhotra, authorized representative attended and filed reply. In his reply assessee has stated as under that the assessee Sh. Nirmal Kant Saini had expired on 21.01.2013.*

*Thus, from the reading of the above observations by the CIT, it is explicitly clear that it was in the knowledge of CIT that Shri Nirmal Kant Saini had expired, still the CIT passed order u/s. 263 of the Act in the name of 'Nirmal Kant Saini'. It is not the case of revenue that the Department was not informed about the death of Shri Nirmal Kant Saini in proceedings u/s 263 of the Act. The Hon'ble Apex Court in the case of PCIT vs Maruti Suzuki India Ltd 107 taxmann.com 375 has held that assessment order passed in the name of non-existing entity would be without jurisdiction and was to be set aside. In the instant case, the CIT after having knowledge of death of Nirmal Kant Saini was mandatorily required to pass an order in the name of legal heir of the deceased, whereas, the order was passed in the name of Nirmal Kant Saini i.e. in the name of a dead person. The order passed in the name of a dead person is illegal and bad in law. Hence, any subsequent proceedings arising there from are non-est."*

10. Further, reliance was placed on the decision of Co-ordinate Bench of the Tribunal in the case of **Late Shri J P Aggarwal through L/H Shri Vishwanath Aggarwal vs ITO in ITA No.3133/Del/2019** vide order dated **23.06.2023**.

11. The law is well settled by various authoritative judicial pronouncements that any proceedings initiated and order passed against a dead person would be nullity. The Revenue could not controvert the fact that what is stated by the Legal Heir of the assessee, is not correct. I therefore, respectfully following the decision of the Co-ordinate Bench of the Tribunal and law laid down by Hon'ble Supreme Court in the case of **ITO vs Durlabhbai Kanubhai Rajpara [2020] 114 taxmann.com 482 (SC)** hold that the order is nonest in

the eyes of law. Hence, same is quashed being illegal. Grounds raised by the assessee are accordingly, allowed.

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

Order pronounced in the open Court on 05<sup>th</sup> September, 2024.

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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