

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Rajesh Kumar, Accountant Member**

**I.T.A No.373/Kol/2024  
Assessment Year: 2012-13**

**Estate of Arjun Das Agarwal.....Appellant  
Flat No.3B, 19-B, Richie Road,  
Ballygunge, Kolkata – 700019.  
[PAN: AABAE1990M]**

**vs.**

**ITO, Ward-40(3), Kolkata.....Respondent**

**Appearances by:**

Shri Ravi Tulsian, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 12, 2024

Date of pronouncing the order : September 10, 2024

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by Estate of Arjun Das Agarwal through Sri Vivek Agarwal in a representative capacity, against the order dated 31.01.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The brief facts of the case are that return of income for assessment year 2012-13 was filed by Sri Arjun Dass Agarwal during his life time on 31.03.2014 declaring total income of Rs.2,43,159/- and the same was processed u/s 143(1) of the Act on 26.07.2014. Shri Arjun Dass Agarwal died on 11.12.2015. Thereafter, the Assessing Officer received some information regarding transaction of immovable property done by Sri

Arjun Dass Agarwal during his lifetime. The Assessing Officer, thereafter, issued notice dated 31.03.2017 in the name of Sri Arjun Dass Agarwal. The notice was received by Sri Vivek Agarwal, grandson of the deceased Sri Arjun Dass Agarwal, as he was residing at the address mentioned by the Assessing Officer in the said notice. Sri Vivek Agarwal vide his letters dated 05.08.2017 and 21.11.2017 intimated the Assessing Officer about the death of Sri Arjun Dass Agarwal, his grandfather, on 11.12.2015 and a copy of death certificate was also provided. In the said letter, he also objected to the issuance of notice on a dead person and also explained that as he was not the legal heir of Late Shri Arjun Dass Agarwal by any document or by any court's order and, therefore, he was not liable/responsible/entitled to reply to such invalid notices issued to the deceased assessee and received by him. However, despite the aforesaid information provided by Sri Vivek Agarwal, grandson of the deceased Sri Arjun Dass Agarwal, the Assessing Officer continued the proceedings and further issued notice u/s 142(1) of the Act, however, the said notice was addressed to "legal heir (late Arjun Dass Agarwal)" which was sent on the email of Sri Vivek Agarwal, calling upon certain details relating to the business of the deceased Sri Arjun Dass Agarwal. In reply, Sri Vivek Agarwal again submitted that he was not the legal heir of his grandfather and the service of notice on his email-id was illegal. However, just to put facts on record, he replied to the letter of the Assessing Officer without owning/admitting any liability on himself as legal heir of late Arjun Dass Agarwal. He also attached copy of the death certificate of the late Arjun Dass Agarwal with the said reply. He further submitted that the notice, in question, was served upon him on 03:00 PM on 16.11.2017 and it was not possible for him to collect the requisite details and therefore, the details relating to the business and other transactions carried on by

deceased Sri Arjun Dass Agarwal were not readily available with him and further it was reiterated that he was not legal heir designated by any court of law of Sri Arjun Dass Agarwal. However, the Assessing Officer again issued a letter to Sri Vivek Agarwal, though addressed as “legal heir of Sri Arjun Dass Agarwal”, to make necessary compliances to which Sri Vivek Agarwal replied that he was not legal heir of Sri Arjun Dass Agarwal and that he was replying to the various letters issued by the Assessing Officer as a matter of cooperation and bringing true facts on record. The Assessing Officer thereafter proceeded to finalise the assessment and made the additions on the entire sale price of the land. The Assessing Officer passed the impugned assessment order only in the name of ‘The Legal Heir Late Arjun Dass Agarwal’.

3. Thereafter, appeal against the said order was e-filed before the CIT(A) by one Sri Sanjay Kumar Bajoria, being the sole executor/settlor of the will executed by the testator Sri Arjun Dass Agarwal during his life time. The validity of the notice u/s 148 of the Act against a deceased person was duly contested in the said appeal before the CIT(A). The Id. CIT(A) called a remand report from the Assessing Officer in this respect, wherein, though, the Assessing Officer admitted that no notice was issued u/s 148 of the Act in the name of any legal heir of the deceased person, he, however, mentioned that the legal heirs of the assessee were required to file income tax return of late Arjun Dass Agarwal and further they did not surrender the PAN allotted to Sri Arjun Dass Agarwal and even they did not intimate the Assessing Officer about the death of Sri Arjun Dass Agarwal, therefore, the mistake, if any, in issuing the notice in the name of dead person and not issuing notice on legal heir of the assessee was on account of aforesaid facts. Though the objections against the said remand report along with exhausted written

submissions were filed on behalf of the appellant before the Id. CIT(A), however, the Id. CIT(A) dismissed the appeal observing that it was submitted in the said appeal by the appellant that Sri Arjun Dass Agarwal during his lifetime made his will and testament and appointed his relative Shri Sanjay Kumar Bajoria to be the sole executor and settlor of the will, however, the said 'will' was being contested in the court of law and that the said case/suit was still remained undisposed by the said court. He, therefore, held that as on the date, there was no legal heir determined of late Arjun Dass Agarwal. He accordingly held that the appellant was not the legal representative of Sri Arjun Dass Agarwal and dismissed the appeal as not maintainable.

4. Appeal against the said order has been filed before us, by Estate of Arjun Das Agarwal through Sri Vivek Agarwal (grandson of late Shri Arjun Dass Agarwal) pleading therein that the claim of Shri Sanjay Kumar Bajoria being the sole executor and settlor was challenged by Smt. Bimala Devi Agarwal, widow of late Sri Arjun Dass Agarwal and after her death, Sri Vivek Agarwal had been impleaded as her legal heir and successor in a suit contested for removal of the executor. Thereafter, the court of Id. 8<sup>th</sup> Additional District Judge ('ADJ'), Alipore vide order dated 15.01.2024 removed Sri Sanjay Kumar Bajoria as executor of deceased Sri Arjun Dass Agarwal and appointed Sri Vivek Agarwal as administrator of the Estate of Sri Arjun Dass Agarwal. Pursuant to the order of the ADJ, Alipore dated 15.01.2024, Sri Vivek Agarwal has been appointed as the administrator of the deceased late Arjun Dass Agarwal and he has filed the present appeal, accordingly, against the order of the Id. CIT(A).

5. The ld. counsel for the assessee has made two-fold submissions. Firstly, that the assessment order passed was bad in law as the notice u/s 148 of the Act, which was a sine qua non to assume jurisdiction to reopen and carry on assessment proceedings u/s 147 of the Act, was issued in the name of dead person, therefore, the assessment order in question was bad in law. Secondly, that the rejection of the appeal by the ld. CIT(A) was wrong and illegal as on the date of filing of the appeal before the ld. CIT(A), Sri Sanjay Kumar Bajoria was executor/administrator of the Estate of late Arjun Dass Agarwal.

6. The ld. DR, however, has relied on the findings of the lower authorities.

7. We have considered the rival submissions and gone through the record. In this case, though Sri Vivek Agarwal, the grandson of late Arjun Dass Agarwal, from the very stage of beginning of the assessment proceedings, had timely and duly intimated the Assessing Officer that Sri Arjun Dass Agarwal was no more in this world and further that as on the said date, he was not legal heir of Sri Arjun Dass Agarwal. However, the Assessing Officer did not bother to enquire as to who was the legal heir of the deceased Sri Arjun Dass Agarwal and continued the assessment proceedings. He even did not implead by name any person being the legal heir of the deceased Sri Arjun Dass Agarwal. He just added “legal heir” before the name of the deceased Sri Arjun Dass Agarwal and finalised the assessment. At this stage, it will be relevant to reproduce the relevant provisions of section 159 of the Act:

**“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),-*

*(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.*

*(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.”*

7.1 A perusal of the aforesaid provisions of section 159 of the Act would reveal that as per the provisions of section 159(2)(b) of the Act, any proceeding which could have been taken against the deceased, if he had survived, may be taken against the legal representative and further that as per sub section 159(3) of the Act, the legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee. As per the aforesaid provisions, the Assessing Officer having come to know that the assessee Sri Arjun Dass Agarwal has died, was supposed to substitute the name of the legal heir who would have been liable in his own name as an assessee for tax liability of Sri Arjun Dass Agarwal, however, to be recovered only out of estate left by the deceased assessee. No such exercise has been done by the Assessing Officer in this case. The assessment order framed by the Assessing Officer is bad in law on two counts. Firstly, the notice u/s 148 of the Act has been issued in the name of dead person and further the legal heir of the deceased assessee has not been impleaded and no notice u/s 148 of the Act has been issued in the name of any legal heir of the deceased assessee. Even the assessment has not been framed in the name of any

specific person, rather, simply 'legal heir of late Arjun Dass Agarwal' has been mentioned, without pointing out as to against whom the same is specifically enforceable. In view of this, the impugned assessment order passed by the Assessing Officer is void and the same is accordingly quashed.

8. In the result, the appeal of the assessee stands allowed.

***Kolkata, the 10<sup>th</sup> September, 2024.***

Sd/-  
**[Rajesh Kumar]**  
लेखा सदस्य / **Accountant Member**

Sd/-  
**[Sanjay Garg]**  
न्यायिक सदस्य / **Judicial Member**

Dated:10.09.2024.

RS

*Copy of the order forwarded to:*

1. Estate of Arjun Das Agarwal
2. ITO, Ward-40(3), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches