

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'B', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 148/CHD/2023

निर्धारण वर्ष / Assessment Year : 2009-10

Virbhadra Singh, Through Legal Heir Smt. Pratibha Singh of Late Shri Virbhadra Singh, Holly Lodge, Jakhoo, Shimla-171001	Vs. बनाम	The DCIT, Circle Shimla
स्थायी लेखा सं./PAN No: ALRPS 6513N		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

(PHYSICAL HEARING)

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Dr. Ranjit Kaur, Addl. CIT, Sr.DR

सुनवाई की तारीख/Date of Hearing : 24.09.2024

उद्घोषणा की तारीख/Date of Pronouncement : 25.09.2024

आदेश/Order

Per Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Assessee against the order dated 30.01.2023 of the Commissioner of Income Tax, National Faceless Appeal Centre, Delhi (NFAC).

2. Grounds of appeal are as under: -

1. *That the Ld. CIT (A), NFAC, Delhi has erred in confirming the action of the Assessing Officer in reopening the case u/s 148 as there was no reason to believe with the Assessing Officer to have resorted to reopening of the case u/s 148.*
2. *That the reopening of the case is otherwise bad in law since there was a mechanical approval accorded by the Ld. PCIT, Shimla u/s 151(1) of the Act and, thus, since there was no application of mind by the Ld. PCIT and, thus, the assessment as framed by the Assessing Officer deserves to be quashed.*
3. *Notwithstanding the above said ground of appeal, the ld. CIT(A) has erred in confirming the addition of Rs. 75 lacs on account of contribution towards the LIC policies, for which, the requisite sources had been explained.*
4. *That the Ld. CIT(A) has erred in sustaining the addition of Rs. 1,01,999/- as interest from Saving / FDR and also in sustaining the addition of Rs. 13,67, 489/- on account of deposits in different bank account.*
5. *That the addition has been confirmed against the facts and circumstances of the case.*
6. *That the assessee craves leave to add, amend, alter any ground or grounds of appeal before the appeal is finally heard or disposed-off.*

3. During the proceedings before us, the ld. Counsel of the Assessee filed an Additional Ground of appeal, which is as under: -

1. *"That the Ld. CIT(A), NFAC having passed the order in the name of deceased person namely Late Sh. Virbhadra Singh is bad in law and void ab initio since, it was already, in the knowledge of the department that Sh. Virbhadra Singh had died on 08.07.2021*

2. *The order as passed in the name of dead person is Void ab-initio in view of following case laws :-*
 - i) *Shaikh Abdul Kadar Vs ITO (1958) 34 ITR 451 (MP High Court)*

 - ii) *CIT Vs Kumari Prabhawati Gupta, 231 ITR 188 (All. High Court)*

 - iii) *CIT Vs Suresh Chandra Jaiswal 325 ITR 563 (All.)"*

4. At the very outset, the ld. Counsel for the Assessee submitted that the order passed by the ld. CIT(A), NFAC was in the name of deceased / dead person, therefore, it is bad in law and void ab initio. He has also submitted that it was known to the Department that Shri Virbhadra Singh had died on 8.7.2021, still then the order was passed by the CIT(A) on 30.01.2023 in the name of Shri Virbhadra Singh through his legal heir Smt. Pratibha Singh. The ld. Counsel also submitted that Smt. Pratibha Singh was not declared a legal heir by that time and, therefore, the order issued in the name of a dead person Shri Virbhadra Singh was void ab initio. He has also brought on record an order passed by the Hon'ble Gujarat High Court in the

case of ‘Durlabhai Kanubhai Rajpara vs. ITO’ [2020] 114 taxmann.com 481 (Guj.). In this case an SLP was filed in the Hon’ble Supreme Court and the SLP was dismissed by the Hon’ble Supreme Court in ‘Income Tax Officer, Surat v. Durlabhbhai Kanubhai Rajpara’ [2020] 114 taxmann.com 482 (SC).

5. The ld. DR relied on the order of the CIT(A).

6. We have considered the submissions made by the ld. Counsel and the case laws relied on by him and we find that no notice / order can be issued in the name of a dead person. Accordingly, the order issued in this case in the name of Late Shri Virbhadra Singh is an invalid order and, therefore, it is quashed. Accordingly, the Assessee’s appeal on this issue is allowed.

7. Since the order has been quashed on the basis of the additional ground, therefore, we are inclined to pass any order on other grounds of appeal.

8. In the result, the appeal is allowed.

Order pronounced on 25 .09.2024.

Sd/-
(A. D. JAIN)
Vice President

Sd/-
(KRINWANT SAHAY)
Accountant Member

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar