

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
माननीय श्री जगदीश, लेखा सदस्य के समक्ष।
**BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER
AND HON'BLE SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.1419/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-2018)

Punamchand Parek
Legal heir Santhilabarek Lathabai
G. Vijaychand Jhabakh,
No.157, P.M. Swamy Colony,
5th Street, Coimbatore 641 002.

Vs. The Deputy Commissioner of
Income Tax,
Central Circle 2,
Coimbatore

[PAN: AJDPL 1383R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri G.V. Jhabak, FCA
: Shri N.S. Phanidharan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 01.10.2024

घोषणा की तारीख /Date of Pronouncement

: 09.10.2024

आदेश / ORDER

MANU KUMAR GIRI (Judicial Member)

The appeal filed by the legal representative of deceased assessee is directed against the order of the Ld. Commissioner of Income Tax(Appeal) Chennai-20 [CIT(A)] dated 30.04.2024 for Assessment Years 2017-18.

2. The assessee has assailed the impugned order on 1-9 grounds. However, we find that the solitary issue raised by the assessee is that whether notice dated

18.02.2020 issued u/s 148 on the deceased person is nullity and all consequential proceedings pursuant thereto is liable to be set aside.

3. Brief facts of the case are as under:

The assessee is an individual, is deceased and was having a proprietorship in the name of M/s New Jewel Palace, was engaged in the business of trading of silver item, hosiery / garments. No Return of Income was originally filed by the appellant for the AY 2017-18. Consequent to the survey u/s 133A of the Act conducted on 17.11.2016 in the case of M/s New Jewel Palace, her son, Shri Sanjay Parek @ Shri Shanthilal Suresh who was looking after the entire business activity of M/s New Jewel Palace, after demise of the appellant on 27.07.2016, has admitted the unaccounted stock to the tune of Rs.46,31,251/- found during the survey as income for the year under consideration. However, in response to notice u/s 148 issued for the year, no return of income was filed. The assessment order u/s 147 r.w.s. 144 was passed computing the assessed income at Rs.46,31,251/- being the unexplained investment u/s 69 of the Act. Aggrieved with order u/s 147 r.w.s 144 dated 29.09.2021, the appeal was filed in the name of deceased person. The CIT(A) vide order dated 01.08.2023 has dismissed the appeal as it is not maintainable. The appellant has filed appeal before Income Tax Appellate Tribunal. The ITAT vide order in ITA No.939/Chny/2023 dated 28.11.2023 has set aside the order of CIT(A) and directed the appellant to file Form 35 removing the defect and also directed CIT(A) to adjudicate the appeal afresh. The appellant has filed Form 35 on 07.12.2023 and hence, the appeal is taken for disposal. On appeal to CIT(A), the

Id.CIT(A) dismissed the only ground raised by the appellant whether AO erred in issuing notice u/s 148 on the dead person. Now assessee is in further appeal before us.

4. We find from the record that Smt. Santhilabarek Lathabai who was sole proprietor of M/s New Jewel Palace expired on 27.07.2016. The factum of demise of assessee was already conveyed to the income tax department/revenue when survey u/s 133 was conducted on 17.11.2016 in the case of M/s New Jewel Palace. We also find that digital notice dated 18.02.2020 u/s 148 of the Act was issued on a dead assessee despite knowledge of fact to the revenue regarding death of assessee. We also note that the revenue did not take any step u/s 159 of the Act to bring on record the legal representatives of the deceased assessee.

5. The Hon'ble High Court judgment in the case of *Smt. MadhubenKantilal Patel Vs UOI 452 ITR 17 (Guj)* held that where the legal heirs of the assessee deceased had supplied information of death to the revenue and despite reopening notice issued subsequently u/s 148 in the name of deceased was illegal and thus liable to be set aside. Similarly, Hon'ble Delhi High Court in the case of *Savita Kapila Vs ACIT (2020) 426 ITR 502:273 Taxman148: 118 Taxmann.com 46 (Del)* has quashed the notice u/s 148 of the Act on a dead person.

6. We, respectfully following the judgment of the Hon'ble High Courts referred supra, set aside the notice dated 18.02.2020 issued under section 148 of the Act on

deceased assessee and declare the same as nullity. Hence all consequential order and proceedings are also set aside.

7. In the result, the appeal filed by legal representative of the assessee is allowed.

Order pronounced in the open court on 9th day of October, 2024.

Sd/-
(जगदीश)
(JAGADISH)

Sd/-
(मनु कुमार गिरि)
(MANU KUMAR GIRI)

लेखा सदस्य / ACCOUNTANT MEMBER न्यायिक सदस्य / **JUDICIAL MEMBER**

चेन्नई Chennai:

दिनांक Dated :09-10-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF