

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 204/Ind/2024(AY: 2012-13)
ITA No. 203/Ind/2024(AY: 2017-18)

Virendra Singh (Through L/R - Smt. Sangeeta Thakur), 125/126 Patnipur, Indore (PAN:AGOPS3983Q)	बनाम/ Vs.	Income Tax Officer/ DCIT/ACIT-3(1) Indore
(Assessee/Appellant)		(Revenue/Respondent)

Assessee by	Shri Venus Rawka, AR
Revenue by	Shri Ram Kumar Yadav, CIT-DR
Date of Hearing	14.10.2024
Date of Pronouncement	18.10.2024

आदेश / ORDER

Per B.M. Biyani, AM:

The captioned two appeals have been filed by assessee as per following details:

- (i) ITA No. 204/Ind/2024 is directed against appeal-order dated 17.01.2024 passed by learned Commissioner of Income-Tax (Appeal)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 06.12.2019 passed by learned DCIT-3(1), Indore ["AO"] u/s



**Virendra Singh (Through L/R Smt. Sangeeta Thaur)
ITA 203 & 204/Ind/2024 - AY 2017-18 & 2012-13**

147/144 of the Income Tax Act, 1961 [“the Act”] for Assessment-Year [“AY”] 2012-13.

(ii) ITA No. 203/Ind/2024 is directed against appeal-order dated 17.01.2024 passed by same CIT(A) which in turn arises out of assessment-order dated 24.12.2019 passed by learned DCIT/ACIT-3(1), Indore [“AO”] u/s 144 of the Act for Assessment-Year [“AY”] 2017-18.

2. Heard the Ld. Representative of both sides and case-records perused.
3. Since these appeals relate to the same assessee and the issues are also identical; they were heard together at the request of parties and are being disposed of by this consolidated order for the sake of convenience and brevity.
4. The assessee has raised various grounds in respective Form No. 36 filed for both appeals. However, the Ground No. 1 identically raised in both appeals is a legal ground reading as under:

“1. That the Ld. AO erred in law and facts of the case and passed the assessment-order in the name of deceased person even when AO was very well intimated during assessment proceedings about his death and therefore order framed in the name of deceased assessee is non-est in law and liable to be quashed.”

5. Ld. AR for assessee/appellant firstly submitted that the assessee ‘Shri Virendra Singh’ expired on 29.09.2019, copy of death-certificate is filed at Page 3 of Paper-Book for AY 2012-13. Therefore, the Legal



**Virendra Singh (Through L/R Smt. Sangeeta Thaur)
ITA 203 & 204/Ind/2024 - AY 2017-18 & 2012-13**

Representative [“L/R”] ‘Smt. Sangeeta Thakur’ is representing the deceased assessee in these appeals. He submitted that the intimation about death of assessee was given to the AO vide letter dated 20.11.2019 prior to passing of assessment-order dated 06.12.2019 for AY 2012-13, copy at Page 7 of Paper-Book for AY 2012-13,. The AO has also acknowledged assessee’s letter of intimation of death in Para 6 of assessment-order for AY 2012-13. He submitted that so far as AY 2017-18 is concerned, the L/R also updated death status of assessee on income-tax portal on 21.12.2019 prior to passing of assessment-order dated 24.12.2019 for AY 2017-18, screenshots of income-tax portal are filed at Page 25-26 of Paper-Book for AY 2017-18. Thus, the assessee has given proper intimations to AO before passing both assessment-orders of respective years.

6. Then, Ld. AR drew us to both assessment-orders passed by AO for AY 2012-13 & 2017-18 to show that the AO has passed those orders in the name of “Virendra Singh” which was a deceased person. Ld. AR contended that such orders passed in the name of deceased person, despite intimation by L/R, are invalid or non-est in the eyes of law and must be quashed.

7. In support of his contention, Ld. AR relied upon certain judicial rulings, the most relevant being **ITAT, Mumbai in Late Shri Motilal Hastimalji Bothra, ITA No. 2316/Mum/2023, dated 16.10.2023**. Ld. AR submitted that in this decision, it was held that where the proceeding have been initiated against a deceased person prior to death and the L/R

did not inform AO about death of deceased during proceedings, even then the assessment-order framed in the name of deceased person is non est in law liable to be quashed. He submitted that in coming to such conclusion, the ITAT, Mumbai has also noted that there is no statutory provision obligating the L/R to intimate the AO about death of deceased. He submitted that the present cases of assessee are much better than the case of ITAT, Mumbai because there was an intimation to AO about death of assessee before passing assessment-orders. Accordingly, Ld. AR prayed to quash the assessment-orders passed by AO.

8. Per contra, Ld. DR for revenue submitted that the assessee deceased on 29.09.2019. He submitted that ITA No. 204/Ind/2024 for AY 2012-13 involves a situation of re-assessment u/s 147 wherein the notice u/s 148 was served on 26.03.2019 upon deceased person. Further, the ITA No. 203/Ind/2024 for AY 2017-18 has a situation of regular assessment u/s 143(2) wherein the notice u/s 143(2) was served on 24.08.2018 upon deceased person. Thus, the notices u/s 148 and 143(2) initiating the proceeding of re-assessment/regular assessment were served upon the deceased person prior to death. He submitted that in terms of section 159(2)(a), any proceeding taken against a deceased person before his death shall be deemed to have been taken against the L/R and may be continued against the L/R from the stage at which it stand on the date of death of the deceased and in terms of section 159(3), the L/R of the deceased shall, for the purpose of this Act, be deemed to be an assessee. Therefore, since the

AO has validly initiated proceedings of re-assessment/regular assessment against deceased person before death, those proceedings were rightly continued against the L/R. He submitted that the position would have been different had the AO issued notices u/s 148/143(2) in the name of deceased person after death which is not the present cases at all. He submitted that the assessee does not and cannot have any objection against initiation of proceeding against deceased person and thereafter continuation of same against L/R. The assessee has a limited objection that the assessment-orders were passed in the name of deceased person despite intimation to AO before passing of assessment-orders. In such a situation, according to Ld. DR, at the best it may be treated as an irregularity in the body of assessment-orders and for that reason, the assessment-orders cannot be quashed. He submitted that either the bench should uphold assessment-orders or at best it may remand to AO for passing assessment-orders afresh in the names of legal representative(s). He strongly prayed for second course of action i.e. remanding to AO.

9. We have considered rival submission of both sides and carefully examined the grievance raised by assessee in the light of judicial rulings cited before us. At first, we re-produce the relevant paras of **ITAT, Mumbai** in **Late Shri Motilal Hastimalji Bothra (supra)** relied by Ld. AR for assessee:

**6. We find that in the statement of facts filed before the learned CIT(A), the legal heir of the assessee specifically submitted that the assessee succumbed*



**Virendra Singh (Through L/R Smt. Sangeeta Thaur)
ITA 203 & 204/Ind/2024 - AY 2017-18 & 2012-13**

to cancer on 06/08/2015. We find that in this regard the Death Certificate of the assessee and the medical report were also furnished alongwith the appeal before the learned CIT(A). Thus, it is evident that the assessee expired much before the passing of the assessment order on 24/02/2016 and even all the notices except dated 24/06/2015 were issued after the death of the assessee on 06/08/2015. During the hearing, the learned DR submitted that there was no intimation to the AO by the legal heirs regarding the demise of the assessee. We find that while rejecting similar arguments, the **Hon'ble Delhi High Court in Savita Kapila v/s ACIT, [2020] 273 Taxman 148 (Del)** observed as under:-

"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."

7. Undoubtedly as per section 159 of the Act, 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. However, undisputedly in the present case, after the death of the assessee, his legal heir was not brought on the record and no notice was issued in the name of the legal heir. Therefore, the assessment order framed in the name of the deceased assessee is non-est in law and hence is quashed. Since the relief is granted on this short issue, the other grounds raised in the present appeal are rendered academic and thus are kept open.

8. In the result, the appeal by the assessee is allowed."

10. Thus, the Hon'ble ITAT, Mumbai has only taken a Para No. 32 from the order Hon'ble Delhi High Court in **Savita Kapila Vs. ACIT** that there is no statutory provision casting a duty upon legal heirs to intimate the death of deceased to AO and accordingly held that the assessment order made by AO in the name of deceased person was non-est. But if we carefully look into Para 25 & 26 of the order of **Savita Kapila**, we find that their lordship have



clearly noted that the AO issued notice u/s 148 to the deceased person after death. They further held that the notice could never be served upon a dead person, consequently the jurisdictional requirement u/s 148 was not fulfilled and also held that the *sine qua non* for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. They further observed that the requirement of issuing notice to a correct person and not to a deceased person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. Thereafter, in Para 30 of the order, their lordship have also noted that "Section 159 of the Act, 1961 applies to a situation where proceedings are initiated / pending against the assessee when he is alive and after his death the legal representative steps into the shoes of the deceased assessee. Since that is not the present factual scenario, Section 159 of the Act, 1961 does not apply to the present case." Even in Para 33, their lordship took support from **Maruti Suzuki Ltd. (Supreme Court)** which was also a case wherein the AO issued jurisdictional notice u/s 143(2) to a non-existent company. The relevant portion of order of Hon'ble Delhi High Court while highlighting these paras is re-produced below for an immediate reference:

"THE SINE QUA NON FOR ACQUIRING JURISDICTION TO REOPEN AN ASSESSMENT IS THAT NOTICE UNDER SECTION 148 SHOULD BE ISSUED TO A CORRECT PERSON AND NOT TO A DEAD PERSON. CONSEQUENTLY, THE JURISDICTIONAL REQUIREMENT UNDER SECTION 148 OF THE ACT, 1961 OF SERVICE OF NOTICE WAS NOT FULFILLED IN THE PRESENT INSTANCE.



25. In the present case the notice dated 31st March, 2019 under Section 148 of the Act, 1961 was issued to the deceased assessee after the date of his death [21st December, 2018] and thus inevitably the said notice could never have been served upon him. Consequently, the jurisdictional requirement under Section 148 of the Act, 1961 of service of notice was not fulfilled in the present instance.

26. In the opinion of this Court the issuance of a notice under Section 148 of the Act is the foundation for reopening of an assessment. Consequently, the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law. [See Sumit Balkrishna Gupta Vs. Asstt. Commissioner of Income Tax, Circle 16(2), Mumbai & Ors., (2019) 2 TMI 1209 - Bombay High Court].

27. In Chandreshbhai Jayantibhai Patel Vs. The Income Tax Officer, 2019 (1) TMI 353 - Gujarat High Court has also held, "The question that therefore arises for consideration is whether the notice under Section 148 of the Act issued against the deceased assessee can be said to be in conformity with or according to the intent and purposes of the Act. In this regard, it may be noted that a notice under Section 148 of the Act is a jurisdictional notice, and existence of a valid notice under Section 148 is a condition precedent for exercise of jurisdiction by the Assessing Officer to assess or reassess under Section 147 of the Act. The want of valid notice affects the jurisdiction of the Assessing Officer to proceed with the assessment and thus, affects the validity of the proceedings for assessment or reassessment. A notice issued under Section 148 of the Act against a dead person is invalid, unless the legal representative submits to the jurisdiction of the Assessing Officer without raising any objection." Consequently, in view of the above, a reopening notice under Section 148 of the Act, 1961 issued in the name of a deceased assessee is null and void.

ALSO, NO NOTICE UNDER SECTION 148 OF THE ACT, 1961 WAS EVER ISSUED UPON THE PETITIONER DURING THE PERIOD OF LIMITATION. CONSEQUENTLY, THE PROCEEDINGS AGAINST THE PETITIONER ARE BARRED BY LIMITATION AS PER SECTION 149(1)(b) OF THE ACT, 1961.

28. Also, no notice under Section 148 of the Act, 1961 was ever issued to the petitioner during the period of limitation and simply proceedings were transferred to the PAN of the petitioner, who happens to be one of the four legal heirs of the deceased assessee vide letter dated 27 th December, 2019. Therefore, the assumption of jurisdiction qua the Petitioner for the relevant assessment year is beyond the period prescribed and consequently, the proceedings against the petitioner are barred by limitation in accordance with Section 149(1)(b) of the Act, 1961.

**Virendra Singh (Through L/R Smt. Sangeeta Thaur)
ITA 203 & 204/Ind/2024 - AY 2017-18 & 2012-13**

29. In *Smt. Sudha Prasad (supra)* the petitioner had challenged the assessment order and demand notice only. Neither non-issuance of notice was challenged nor the issue of proceedings being barred by limitation was raised or decided. Consequently, the said judgment is inapplicable to the present case and is therefore, of no help to the revenue.

AS IN THE PRESENT CASE PROCEEDINGS WERE NOT INITIATED / PENDING AGAINST THE ASSESSEE WHEN HE WAS ALIVE AND AFTER HIS DEATH THE LEGAL REPRESENTATIVE DID NOT STEP INTO THE SHOES OF THE DECEASED ASSESSEE, SECTION 159 OF THE ACT, 1961 DOES NOT APPLY TO THE PRESENT CASE.

30. Section 159 of the Act, 1961 applies to a situation where proceedings are initiated / pending against the assessee when he is alive and after his death the legal representative steps into the shoes of the deceased assessee. Since that is not the present factual scenario, Section 159 of the Act, 1961 does not apply to the present case.

31. In *Alamelu Veerappan Vs. The Income Tax Officer, Non Corporate Ward 2(2), Chennai, 2018 (6) TMI 760 - Madras High Court*, it has been held by the Madras High Court, "In such circumstances, the question would be as to whether Section 159 of the Act would get attracted. The answer to this question would be in the negative, as the proceedings under Section 159 of the Act can be invoked only if the proceedings have already been initiated when the assessee was alive and was permitted for the proceedings to be continued as against the legal heirs. The factual position in the instant case being otherwise, the provisions of Section 159 of the Act have no application." In *Rajender Kumar Sehgal (supra)*, a Coordinate bench of this Court has held, "This court is of the opinion that the absence of any provision in the Act, to fasten revenue liability upon a deceased individual, in the absence of pending or previously instituted proceeding which is really what the present case is all about, renders fatal the effort of the revenue to impose the tax burden upon a legal representative."

THERE IS NO STATUTORY REQUIREMENT IMPOSING AN OBLIGATION UPON LEGAL HEIRS TO INTIMATE THE DEATH OF THE ASSESSEE.

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."

33. The judgment in Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited (supra) offers no assistance to the respondents. In Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited (supra) the Supreme Court was dealing with Section 170 of the Act, 1961 (succession to business otherwise than on death) wherein notice under Section 143(2) of the Act, 1961 was issued to non-existing company. In that case, Department by very nature of transaction was aware about the amalgamation. However, the said judgment nowhere states that there is an obligation upon the legal representative to inform the Income Tax Department about the death of the assessee or to surrender the PAN of the deceased assessee. The relevant portion of the said judgment is reproduced hereinbelow:-

"35. In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B.

XXXX XXXX XXXX XXXX

39. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainment on 2 November 2017. The decision in Spice Entertainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainment.

34. Consequently, the legal heirs are under no statutory obligation to intimate the death of the assessee to the revenue."

[Emphasis supplied]

11. Therefore, when the AO in present appeals before us had acquired a valid jurisdiction by serving notices u/s 148/143(2) upon the deceased


**Virendra Singh (Through L/R Smt. Sangeeta Thaur)
ITA 203 & 204/Ind/2024 - AY 2017-18 & 2012-13**


person before death, there was a valid continuity of proceedings of re-assessment/regular assessment against L/R in terms of section 159(2)(a). That being so, mere passing of order in the name of 'deceased person' is only an irregularity and not an invalidity. Being so, we are inclined to accept the request of Ld. DR for revenue to re-store these matters back to the file of AO for passing assessment-orders in the name of L/R after granting necessary hearing. We order accordingly.

12. Since we have remanded these matters to AO, other grounds are not required to be adjudicated at present. In fact, no submissions were made by learned Representatives qua other grounds during hearing.

13. Resultantly, these appeals are allowed for statistical purposes.

Order pronounced in open court on 18.10.2024


(VIJAY PAL RAO)
JUDICIAL MEMBER


(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore
दिनांक/ Dated : 18.10.2024
Dev/Sr. PS

***Virendra Singh (Through L/R Smt. Sangeeta Thaur)
ITA 203 & 204/Ind/2024 - AY 2017-18 & 2012-13***

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore