

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.1191/Bang/2024
Assessment year : 2015-16

Nirmal Kumar (L/R / Representative of Late Mishrilal Sharnickraj), 39, 1 st Floor, 3 rd Cross, KPN Extension, Bangalore – 560 002. PAN : ADOPS 5835Q	Vs.	The Deputy Commissioner of Income Tax, Circle 5(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Shirish C. Shah, CA
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	17.10.2024
Date of Pronouncement	:	29.10.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 19.04.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2015-16 on the following grounds:-

“1. The original order has been passed on a deceased/ non-existent person and is therefore bad in law and is liable to be quashed. This has been referenced among the grounds at the First Appellate Authority level.

2. The impugned order is liable to be quashed in toto for being bad in law and for want of application of principles of natural justice and for want of compliance of legal requirements as stipulated in quasi-judicial proceedings.

3. The impugned order is liable to be quashed for non-compliance with stipulated procedures for service of notice in assessment proceedings as well as in appellate proceedings.

There is no confirmation of service of notice to assessee/ appellant by way of physical service of notice/ mahazar report.

4. The Assessing Officer has erred in making addition of Rs. 1,57,00,000/- to the income of the appellant. The addition to the income is bad both in law and on facts and is liable to be deleted in entirety.

5. The Assessing Officer and appellate authority have not appreciated the facts of the case. On review of the facts and law applicable, it will be clear that the addition made has no basis and is liable to be deleted in entirety.

6. The appellate authority has not given any cogent reason in rejecting the evidence submitted at the time of filing the appeal and has passed orders without giving merit or credit to the materials submitted at the time of filing the appeal before the Commissioner of Income-tax Appeal.

7. The Assessing Officer had erred in holding that the provisions of Section 68 of I.T. Act, 1961 are applicable. There being no unexplained credit and in fact the credit having been duly explained, makes the addition U/s. 68 wholly erroneous and liable to be deleted.

8. In passing the assessment order, the assessing officer has referenced to the Annual Information Report available with him/ his office. However, no such detail has been shared with the assessee appellant for his rebuttal and thus vitiating the principles of natural justice.

9. The Annual Information Report provides details of deposits only. It does not provide details of withdrawals, which

has a bearing on the cash flow/ funds available, but must be considered for determining Total Income assessable to tax and it is therefore erroneous to consider the entire amount of deposit as income of the assessee/ appellant.

10. At no point of time has the Assessing Officer, informed to the assessee of his intent to make additions on the basis of the Annual Information Report, this vitiating the principles of natural justice.

11 The appellant denies liability to pay interest. The interest has been levied erroneously and is liable to be deleted.

12 In view of the above and on other grounds that may be adduced at the time of hearing, it is requested that the impugned order be quashed/ set aside.”

2. Briefly stated the facts of the case are that the assessee had expired on 25.07.2015 and return of income was filed by L/R on 02.11.2015 declaring total income of Rs.22,20,160. The case was selected for scrutiny through CASS for the reasons of (a) Contract fees/receipt mismatch (b) Sales turnover mismatch (c) Cash deposit (d) Tax credit mismatch. Statutory notices issued on different dates. The AO noted that the contract receipt as per Form 26AS is Rs.2,41,31,247, whereas in the return the assessee has declared Rs.6,80,35,231 which is higher than Form 26AS figure. As per assessment order para 4(b), the AO (Assessing Officer) noted that turnover is NIL in tax audit report and income tax return, hence there is no mismatch in turnover. The assessee deposited cash of Rs.1,57,00,000 in his Savings Bank account with SBH (now SBI), J C Road Br., Bangalore as per AIR information. As there was no reply from the assessee, the AO sent a letter to the Bank requesting statement from 01.04.2015 to 31.03.2016, since there

was no reply from the bank, the entire cash deposit was added back to the total income of the assessee u/s. 68 and order u/s. 143(3) r.w.s. 144 dated 26.12.2017 was passed in the name of Mishrilal Sharnickraj, PAN: ADOPS 5835Q. The L/R of the assessee Shri Nirmal Kumar holding PAN ACLPD2715J filed appeal before the CIT(Appeals) on 25.01.2018.

3. The Id. CIT(Appeals) issued 14 notices, however there was no reply from the assessee's side, therefore he decided the case on the basis of material available before him and confirmed the addition of Rs.1.57 crores u/s. 68 of the Act. Aggrieved, the L/R of the assessee is in appeal before the ITAT.

4. At the outset, the Id. AR of the assessee strongly submitted that the order passed by the AO in the name of deceased assessee is not sustainable as the assessee died on 25.07.2015 and Shri Nirmal Kumar, L/R of the assessee filed the income tax return on behalf of the assessee after adding in the income tax web portal. The turnover reported in the return is approx. Rs.6.8 crores which was audited and Form 3CB and 3CD were uploaded in the income tax web portal. The AO issued notice u/s. 143(2) and passed order u/s 143(3) in the name of deceased assessee (Mishrilal Sharnickraj). Before passing the assessment order, the AO had the entire information regarding death of the assessee. The Id. AR further submitted that this issue was raised before the Id. CIT(Appeals) as per ground No.2, however, he has not adjudicated on this ground. In support of his argument, he relied on

the judgment of jurisdictional High Court dated 19.06.2024 in WP No.25728/2032 [T-IT) in the case of Smt. Sowmya S. v. ITO. The Id. He also relied on the following judgments.

- (i) Mrs. Vanitha Gopal Shetty vs ACIT- C26(1) Mumbai reported in [2021] 129 taxmann.com 163 (Karnataka)
- (ii) Meenu Gupta vs ACIT C 67(1) Delhi & Others in WP(C) 10162/2024& CM APPL.41748/2024(Stay)
- (iii) Savitha Kapila vs ACIT (43)1 DELHI in W.P.(C) 3258/2020
- (iv) Chandreshbhai Jayantibhai Patel vs ITO in C/SCA/15172/2018 (Gujrat High Court)

5. The Id. DR relied on the order of the lower authorities and submitted that before passing the order, various opportunities were given to the assessee, but assessee did not respond any of the notices. He submitted that while filing income tax return, the assessee has not shown the capacity under which return has been filed, had the same been disclosed, the situation would have been different. Therefore he strongly relied on the order of the lower authorities.

6. Considering the rival submissions, we note that the assessee passed away on 25.07.2015. The AO has passed order in the name of non-existent person and the Id. CIT(A) has passed ex parte order in the name of Nirmal Kumar as appellant/AR. Shri Nirmal Kumar, L/R of the assessee in the first appeal has raised a legal issue in ground No. 2 regarding the AO passing the order in the name of non-existent person is bad in law and is liable to be quashed which was not decided and similar issues were raised before us. Since the L/R has raised legal issue which were not decided by the first appellate authority, even the

entire supporting evidences were filed by the L/R before filing the income tax return and Id. CIT(A) could have examined the same, therefore we are deciding the legal issue first. The turnover of the assessee during the year was Rs. 6,80,35,230.62/- and books of accounts were audited by the C.A. on 30.09.2015. The return of income was filed by Nirmal Kumar on 02.11.2015, adding his name in the income tax web portal as L/R and digitally signed holding PAN: ACLPD 2715J. In the income tax web portal, under the head 'Authorised Partner', there is sub-head 'Register as Representative Assessee' and without registering as representative assessee, it is not possible to file return of income. After submitting necessary documents for getting registered as representative assessee, the assessee has uploaded the L/R certificate. Further in the web portal under the sub-head 'Deceased (Legal Heir)', firstly representative has to register after filling details like copy of PAN of deceased, copy of death certificate, copy of L/R proof as per norms, etc. These are mandatory documents before getting registered as L/R. After approval by the department, the assessee was able to file return of the deceased assessee and signed digitally. It clearly shows that the assessee's L/R had already informed to the department before filing the income tax return of the deceased assessee. As per acknowledgement of the return, the jurisdictional AO is mentioned as Ward 3(2)(4), Bangalore. However, the assessment order has been passed by Circle 5(2)(1), Bangalore. Therefore it was in the knowledge of the AO that the assessee had died and the AO wrongly passed the order in the name of

deceased/non-existent assessee. The argument of the ld. DR that while filing the return of income, the representative assessee did not disclose his capacity in the return is a minor mistake committed by Shri Nirmal Kumar, L/R of the assessee while filling the income tax return which will not affect since the income tax department had the information about the deceased assessee before issuing notice u/s 143(2) & passing the assessment order u/s 144 of the Income Tax Act. The procedure for incorporating the name of L/R of the assessee has not been followed by the AO. A similar issue has been decided by the Hon'ble Delhi High Court in the case of *Vikram Bhatnagar v. ACIT [2023] 147 taxmann.com 254 (Delhi)* in which it has been held as under:-

9. We have considered the submissions made by the learned counsel for the parties. The issue of the validity of a notice issued against a dead person and the validity of the proceedings held subsequent thereto is no longer *res integra*. This Court in *Savita Kapila (supra)* has held as under.

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 v. Asstt. CIT [2019] 414 ITR 292 (Bom); [2019] 2 TMI 1209- Bombay High Court*).

27. In *Chandreshbhai Jayantibhai Patel v. ITO [2019] 413 ITR 276 (Guj.)*, [2019] (1) TMI 353-the Gujarat High Court has also held (page 290 of 413 ITR): "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.

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.

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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 Veerapan v. ITO* [2018] 12 ITR-OL 95 (Mad); [2018] (6) TMI 760- the 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, (page 291 of 414 ITR) "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 proceedings 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.

10. The above judgment was followed by this Court in *Mrs. Sripathi Subbaraya Manohara v. Pr. CIT* [2021] 436 ITR 469.

11. In the present case as admitted by the Respondent the facts are admitted. The death of the Assessee was duly communicated by his legal heirs (the Petitioner herein). The ITR also duly disclosed that the same has been filed by the legal representative. However, in ignorance of the said facts available on the record the scrutiny proceedings have been wrongly conducted in the name of the deceased Assessee without bringing on record all his legal heirs as per the requirement of law.

12. In the present case, the jurisdictional notice under section 143(2) of the Act was issued against the dead person and the assessment order has also been passed against the dead person on his PAN without bringing on record all his legal representatives, therefore, the said assessment order and the subsequent notices are null and void and are liable to be set aside.

13. Consequently, the impugned notice dated 22nd September, 2019 issued under section 143(2) of the Act and the impugned assessment order dated 30th September, 2021 is set aside along with all consequential proceedings and notices. The petition is allowed; however, Revenue will have the liberty to take steps in the matter, albeit as per law. In case any such-steps are taken, the Petitioner will have liberty to assail the same, in accordance with law.”

7. Respectfully following the above judgment, we quash the assessment order since the AO issued notice u/s. 143(2) and passed order u/s 144 of the Income Tax Act in the name of deceased and non-existent assessee whereas the AO had information about the death of the assessee before passing order u/s 144 of the Act. Accordingly the assessment order passed in the name of deceased and non-existent assessee is not a valid order passed in the eyes of law. Accordingly we quash the assessment order.

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

Pronounced in the open court on this 29th day of October, 2024.

Sd/-

Sd/-

(SOUNДАРARAJAN K.)
JUDICIAL MEMBER

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 29th October, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.