

IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES, SMC, JAIPUR  
VIRTUAL HEARING

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा० मीठा लाल मीना, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 1145/JP/2024  
निर्धारण वर्ष / Assessment Year : 2017-18

Late Shri Shyam Sunder Mittal Thru L/h Smt. Shashi Mittal and others M/s. Alora Service Station, Kumher Gate Bharatpur	बनाम Vs.	The ITO Ward-1 Bharatpur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABUPM 1007 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Dheeraj Board CA  
राजस्व की ओर से / Revenue by: Shri Gautam Singh Choudhary, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 03/10/2024  
उदघोषणा की तारीख / Date of Pronouncement: 29/10/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 09-07-2024, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2017-18 raising therein following grounds of appeal.

“1. That on the facts and in law impugned order u/s 250 of the I.T. Act dated 09/07/2024 passed by the Commissioner (Appeals) in the name of Shyam Sunder Mittal (who died on 02/08/2019) instead of his legal heir, namely, Smt. Shashi Mittal, wife, Shri Akash Mittal, son

and Shri. Anubhav Mittal son dismissing assessee's appeal is most arbitrary, unjust and untenable in law

2. That the Commissioner (Appeals) as well as the Assessing Officer grossly erred in passing the impugned order u/s 250 dated 09/07/2024 dismissing assessee's appeal and the relevant assessment order u/s 147 r.w.s. 144 of the LT. Act dated 30/03/2022 passed by the AO making addition of Rs. 4,45,092 u/s. 69C r.w.s. 115 BBE in the name of deceased Shyam Sunder Mittal and not in the name of his above named legal heir though he (Shyam Sunder Mittal) had died long back on 02/08/2019 respectively, which passing of impugned order u/s 250 as well as the relevant assessment order under section 147 r.w.s. 144 in the name of deceased Shyam Sunder Mittal are unjust, untenable and bad in fact and in law and liable to be cancelled.

3. That the Commissioner (Appeals) failed to appreciate that no assessment order in the name of a deceased person could be passed by the A.O. after the death of a deceased and accordingly the impugned order dated 09/07/2024 and the relevant assessment order dated 30/03/2022 are void-ab- initio and liable to be struck down.

4. That the Ld. Commissioner (Appeals) erred in dismissing the appeal and thereby sustaining additions of Rs. 4,45,092 made by the A.O. u/s 69C r.w.s. 115BBE of the LT. Act 1961 by way of treating the payment of Rs. 4,45,092 made to Hinduja healthcare limited towards treatment of assessee's cancer disease as unexplained money. which dismissal of appeal and sustaining of additions of Rs. 4,45,092 are most arbitrary, unjust and untenable in fact and in law and in the alternative highly excessive with reference to facts and circumstances of the case.

5. That on the facts and in law the impugned order u/s 250 passed Ex-parte without providing opportunity of being heard to the assessee as provided u/s 250(1) is against the provisions of LT Act as well as against natural justice and accordingly it is liable to be cancelled.

6. That the Ld. Commissioner (Appeals) failed to comply with the provisions of section 250(4) of the LT. Act which says that the Joint Commissioner (Appeals) or the Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or

may direct the assessing officer to make further inquiry and report the result of the same to the Joint Commissioner (Appeals) or the Commissioner (Appeals).”

2.1 At the very outset, I noticed that additions under section 69C of the Income Tax Act was made on account of the fact that assessee could not substantiate with evidence with regard to making of payment and therefore the same remained unexplained and were added under section 69C of the Income Tax Act

2.2 Against the order of assessment, although assessee preferred appeal yet the same was dismissed by Id. CIT(A) on the ground that assessee could not put his appearance even in spite of the fact that three notices were served upon the assessee

2.3 Now the assessee has preferred appeal before this Bench against the order of the Id. CIT(A).

2.4 We have heard the Counsel of both the parties and perused the materials placed on record and the documents filed by the assessee and the orders passed by the revenue. From the records, we noticed that there was total non-compliance of notices served by the commissioner office. Therefore, Id. CIT(A) dismissed the appeal of the assessee in limine but in our view, Id. CIT(A) was not expected to adopt a shortcut method and dismissed the appeal of the assessee as the assessee had not put his appearance. Hence, in that eventuality Id. CIT(A) was expected to

deal with the grounds raised by the assessee on merits. Be that as it may, although it was the bounded duty of the assessee to appear on each and every date of hearing before the revenue authorities as and when called for but as per the facts of the present case, the assessee had not appeared before the appellate authority, and in our view Assessee cannot be allowed to take advantage of his own wrongs. At the same time, we are also of the view that the lis between the parties is to be decided on merits. Therefore, we feel that one more chance may be given to the assessee to contest his case on merits before the revenue authority's and therefore, keeping in view the principles of natural justice, we restore this matter to the file of the AO for afresh adjudication and assessee is directed to submit all the necessary documents or evidences concerning the above appeal. However, for the lethargic and negligent acts on the part of assessee, a nominal cost of Rs.1000 is imposed on the assessee and the same may be deposited in the Prime Minister's Relief Fund and copy of the same shall be submitted to the AO for proof. With these directions, we restore the matter to the file of AO to decide the same afresh. Needless to mention that proper opportunity shall be granted to the assessee and at the same time assessee shall not seek any adjournment on frivolous grounds and shall remain cooperative during the course of proceedings and thus, the appeal of the assessee is allowed for statistical purposes.

2.5 Before parting, we may make it clear that our decision to restore the matter back to the file of AO shall, in no way be constitute as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the AO independently, strictly in accordance with law

3.0 In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced as on 29/10/2024, under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-  
( डा० मीठा लाल मीना )  
(Dr. Mitha Lal Meena)  
लेखा सदस्य / Accountant Member

Sd/-  
(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29 /10/2024

**\*Mishra**

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

1. The Appellant- Late Shri Shyam Sunder Mittal L/h Smt. Shashi Mittal and others
2. प्रत्यर्थी / The Respondent- The ITO, Ward-1, Bharatpur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 1145/JP/2024)

आदेशानुसार / By order,

Asstt. Registrar