

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिकसदस्य के समक्ष  
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 1050/JPR/2024  
निर्धारण वर्ष / Assessment Year : 2010-11

Late Shri Badri Lal Agarwal, Through Legal Heir Geeeta Devi Agarwal. G5, Purandar Ji Ka Bagh, Moti Doongri Road, Jaipur, Rajasthan.	ब्लाम Vs.	ITO, Ward-1(4), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN No.: ALGPA5193F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Sh. P.C.Parwal, <sup>FCA.</sup> Adv. ✓  
राजस्व की ओर से / Revenue by: Sh. Gautam Singh Choudhary, JCIT.

सुनवाई की तारीख / Date of Hearing : 11/11/2024  
उदघोषणा की तारीख / Date of Pronouncement: 11 /11/2024

## ORDER

Smt. Geeta Devi is widow of Shri Badri Lal Agarwal. As per assessment order dated 22.12.2017 framed by the Assessing Officer, under section 144 read with section 147 of Income Tax Act, 1961, as regards assessment year 2010-11, her husband was the assessee.

2. Aggrieved by the assessment, on 24.1.2018, the assessee himself presented appeal before Learned CIT(A). For the first time, it was submitted before Learned

CIT(A) that Shri Badri Lal Agarwal had left this world on 25.3.2021 i.e. during pendency of the appeal.

3. Learned CIT(A) then dismissed the appeal only for statistical purposes, while observing that the appeal proceedings could not continue without due registration of the name of legal representative of the assessee with the Department on e-filing portal.

4. Hence, this appeal before this Appellate Tribunal.

5. Arguments heard. File perused.

### **Contentions**

6. Learned AR for the appellant has submitted that CIT(A) has fallen in error while dismissing the appeal simply because name of legal representative of the assessee-since deceased-was not registered with the department. He has urged that in the given situation, the impugned order deserves to be set aside.

At the same time, learned AR has submitted that the assessment order was passed ex parte and as such, the matter may be remanded to the Assessing Officer for assessment proceedings afresh after providing opportunity to the appellant-legal heir of the assessee- of being heard.

7. Learned DR has submitted that CIT(A) dismissed the appeal with the liberty to the legal heir to file Form 35 afresh after due registration of name of the legal representative with the department, and as such, there is no merit in the contention that CIT(A) should not have dismissed the appeal.

### **Analysis & Discussion**

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Analysis & Discussion

8. Factum of death of Shri Badri Lal Agarwal is not being disputed before us. As submitted, he left this world on 25.3.2021. The appeal was presented by the assessee much prior thereto i.e. on 24.1.2018.

Indisputably, factum of death of the assessee was brought to the notice of CIT(A), during pendency of the appeal. In this situation, steps should have been taken before CIT(A), to bring on record of the appeal, legal representatives of the assessee.

As per ground No.1 of the ground of appeal, CIT(A) ignored that widow of the assessee had already registered herself with the Income Tax Department and on e-filing portal.

While referring to the abovesaid ground of appeal, we have specifically enquired from learned AR for the appellant as to on which date widow of the assessee got herself registered with the Department and on e-filing portal. Learned AR has not been able to give specific and straight response in this regard. Even no screen sheet from the e-filing portal or copy of any document from the department has been produced on behalf of the appellant to support said averment in ground No.1.

At the same time, it is significant to note that department has not denied the submission put forth by Learned AR for the appellant that the appellant herein- widow of the assessee has got herself registered with the Department as legal heir of the assessee.

It is significant to note that before us it has been represented by Learned AR for the appellant that the appellant is the only legal heir of the assessee.

9. In the given situation, when the appeal was disposed of only for statistical purposes, giving liberty to the appellant in the manner indicated above, the matter requires to be remitted to CIT(A), NFAC, for appropriate steps and decision of the appeal afresh on merits after providing reasonable opportunity to the appellant, who claims herself to be the only legal representative of the assessee.

10. On going through the assessment order, we find that it was passed ex parte. No doubt, Assessing Officer had provided opportunity to the assessee to appear and furnish his response, but the assessee opted not to participate in the assessment proceedings, and ultimately, the Assessing Officer had no option to proceed further and frame assessment.

But, having regard to the reasons which have led to framing of the assessment order, we deem it to be a fit case to remand the matter to the Assessing Officer, and not to the CIT(A), NFAC, so that all the facts sought to be put forth on behalf of the assessee and relevant for the purpose of framing of assessment order are duly verified, after providing reasonable opportunity to the appellant of being heard.

11. We need to emphasize here that no satisfactory explanation has been put forth before us, to explain non appearance of the assessee before the Assessing Officer despite service of notices. Had the assessee been alive, we would have imposed costs while remanding the matter. But, taking into consideration that he has already left this world, we do not deem it to be a fit case for imposition of costs for non appearance or participation of the assessee before the Assessing Officer.

## Result

12. As a result of the above discussion, this appeal is disposed of for statistical purposes, and the matter is remitted to the Assessing Officer for decision afresh after conducting assessment proceedings in accordance with law and providing reasonable opportunity to the appellant-who claims herself to be the sole legal representative of the assessee.

File be consigned to the record room after the needful is done by the office.

Order pronounced in the open court on // 11/11/2024.

-PS-  
(राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

-SD-  
(नरेन्द्रकुमार)  
(NARINDER KUMAR)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- //11/2024

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Smt. Geeta Dewvi Agarwal, representing as L.R of the assessee.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(4), Jaipur.
3. आयकरआयुक्त / The CIT, Jaipur.
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 1050/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar