



**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH "SMC", JABALPUR**

BEFORE SHRI KUL BHARAT, VICE PRESIDENT

ITA No. 141/JAB/2023
Assessment Year: 2012-13

Vijay Rathi L/H Manisha Rathi C/o Rathi Dal Mill, Surajganj, Main Road, Itarsi-461111.	v.	DCIT, Circle 109, Aaykar Bhawan, Hoshangabad Road, Bhopal-462011.
PAN:AGMPR6103K		
(Appellant)		(Respondent)

Appellant by:	Shri Sapan Usrethe, Adv.		
Respondent by:	Shri Bharat Sheogankar, Sr. CIT(DR)		
Date of hearing:	08	01	2025
Date of pronouncement:	09	01	2025

ORDER

PER KUL BHARAT, VICE PRESIDENT.:

This appeal, by the assessee, is directed against the order of the Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC) dated 22.09.2023 pertaining to the assessment year 2012-13. The assessee has raised the following grounds of appeal: -

"1. The learned Commissioner of Income tax (Appeal) NFAC was not justified in passing exparte order without appreciating that appellant was prevented with reasonable cause in not filing the response as he was not aware of fixation of case.

2. The learned Commissioner of Income tax (Appeal) NFAC was not justified in passing exparte order without appreciating that the appellant before the Commissioner of Income tax (Appeal) NFAC was expired on 12.01.2017 and therefore no compliance was made as no notice was received.

3. The learned Commissioner of Income tax (Appeal) NFAC was not justified in confirming the action of AO with regard to the addition of Rs.33,16,301 without appreciating that appellant is maintaining regular books of accounts and accounts are being audited and appellant has filed all the details related to the grain business which is also evident from order itself.

4. *The learned Commissioner of Income tax (Appeal) NFAC was not justified in confirming the action of AO in rejecting the books of account and application of section 145(3) by the AO without any basis and merely on presumption books of accounts cannot be rejected and when the other party has already confirm the transaction in their books of accounts.*

5. *The learned Commissioner of Income tax (Appeal) NFAC was not justified in confirming the action of AO with regard to the addition made on account of business loss without appreciating that it was the first year of business and she was not aware of the market trend therefore purchase and sales were made as per guidance received from other persons and merely loss is occurred cannot be the ground for rejection of books of account and invocation of section 145 of income tax Act.*

6. *The learned Commissioner of Income tax (Appeal) NFAC was not justified in confirming the action of AO with regard to the addition made on account of business loss by treating it as loss from speculative business without any basis and therefore order of lower authorities deserves to be quashed.*

7. *The appellant craves for leave to amend, add to or omit any ground up to the time of hearing of the appeal.”*

2. The facts giving rise to the present appeal are that the assessee is the husband and legal heir of Smt. Manisha Rathi (now deceased assessee). In this case, the return of income for the year under consideration was filed on 31.03.2013, declaring total income at Rs.10,09,740/-. Thereafter, the case was taken up for scrutiny u/s 143(2) of the Income Tax Act, 1961 (hereinafter referred as to “the Act”). The Assessing Officer on the basis of material available on record made disallowance of Rs.33,16,301/- and assessed total income at Rs.43,26,041/-. Aggrieved by this, the assessee preferred appeal before the Ld. CIT(A) who also sustained the addition and dismissed the appeal by passing the impugned order dated 22.09.2023. Aggrieved against this, the assessee has filed the present appeal.

3. At the outset, the Ld. Counsel for the assessee submitted that the impugned order is bad in law and ex-facie non-est as the same has been passed in the name of the dead person. It is also submitted that the assessee Smt. Manisha Rathi expired on 12.01.2017. A death certificate issued by Registrar (Birth & Death) Municipal Corporation, Sagar is placed on record.

4. On the other hand, the Ld. Departmental Representative (DR) opposed the submission and supported the orders of the lower authorities.

5. I have heard the rival submissions and perused the material available on record. Undisputedly, the impugned order has been passed against dead person. It is well settled law that any order that is passed against a dead person such order is non-est in the eyes of law. The Revenue has not brought any material to rebut the contention of the assessee. Even if, the provision of Section 159 of the Act is taken into account then also the impugned order cannot be sustained. I, therefore, hereby set aside the impugned order. It is noticed that the appeal before Ld. CIT(A) was filed on 15.04.2015 and the assessee had expired on 12.01.2017, much prior to the passing of impugned order. No action was taken to bring legal heir on record. Even, the legal heirs had also not taken steps for prosecution of the appeal before Ld. CIT(A). The legal heir has now challenged the impugned order before this Tribunal. Looking to the totality of facts, liberty is given to the legal heir to approach the Ld. CIT(A) against the impugned assessment who would decide the grounds in accordance with law.

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

Order pronounced in the open Court on 09/01/2025.

Sd/-
[KUL BHARAT]
VICE PRESIDENT

DATED: 09/01/2025

Vijay Pal Singh, (Sr. PS)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

By order

// True Copy//

Assistant Registrar
ITAT, Jabalpur