

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.1525/दिल्ली/2024 (नि.व. 2011-12)

ITA No.1525/DEL/2024 (A.Y.2011-12)

Ramchand Through Legal Heir,
Sh. Chander Mohan,
733, Ward-3, Near Gol Kothi, Rampura Mohalla,
Hansi, Haryana 125033

PAN: AVDPR-8470-R

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Ward-3,
Aayakar Bhawan, Sector-14, Hisar,
Haryana 125001

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by

: Shri Kuldip Khera, Chartered Accountant

प्रतिवादीद्वारा/ Respondent by

: Shri Sanjay Kumar, Sr. DR

सुनवाई की तिथि/ Date of hearing

: 03.02.2025

घोषणा की तिथि/ Date of pronouncement:

: 03.02.2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 24.08.2023, for assessment year 2011-12.

2. The appeal is time barred by 164 days. The assessee has filed an application for condonation of delay in filing of appeal. After perusal of the same, I am satisfied that delay in filing of appeal was not intentional or for non action of the assessee/appellant, but was for the reasons stated in the application which appears to be bonafide. Thus, delay in filing of appeal is condoned and appeal is admitted for hearing on merits.

3. Shri Kuldip Khera, appearing on behalf of the assessee submits that the original assessee Shri Ramchand died on 31.01.2018, his death certificate is at page 51 of the paper book. Om Prakash son of Ramchand vide letter dated 26.02.2018 informed the Assessing Officer (AO) regarding death of Shri Ramchand and had also enclosed copy of death certificate along with said communication. The letter was delivered in the office of AO on 05.03.2018 as is evident from the acknowledgment at page 46 of the paper book. Despite, the fact that AO was informed about death of Shri Ramchand, the AO issued notice u/s. 148 of the Income Tax Act, 1961(hereinafter referred to as 'the Act') in the name of Ramchand on 29.03.2018. In reply to the notice u/s. 148 of the Act, Om Prakash son of the assessee vide communication dated 25.04.2018 again informed the AO regarding death of Ramchand and once again enclosed copy of his death certificate. The said letter was delivered in the office of AO against acknowledgment dated 26.04.2018. The AO without taking cognizance of letters sent by the Legal Heirs of assessee intimating about the death of Ramchand issued notice u/s. 142(1) of the Act on 23.05.2018 in the name of Ramchand. Thereafter, the AO vide assessment order dated 28.11.2018 passed assessment order in the name of Ramchand through legal heir Smt. Bhagwanti Devi making addition of Rs.20,50,000/- on account of unexplained deposits in the bank account of Ram Chand. The LR of the assessee carried the issue in appeal before the CIT(A) *inter alia* assailing validity of assessment order as the same was passed in the name of a dead person.

3.1. The CIT(A) in ex-parte proceeding dismissed appeal of the assessee without adjudicating the legal issue of validity of notice u/s. 148 of the Act issued in the name of a dead person. The Id. AR submits that assessment is liable to be quashed

only on the ground that the notice u/s. 148 of the Act and subsequent proceedings including assessment order is in the name of a dead person.

4. Per contra, Shri Sanjay Kumar representing the department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id. DR submits that a perusal of assessment order would show that the assessment is made in the name of legal heir of Shri Ramchand. Hence, it cannot be said that the assessment is framed in the name of a dead person.

5. Both sides heard, orders of the authorities below examined. The primary contention of the assessee is that notice u/s. 148 of the Act and subsequent notice u/s. 142(1) of the Act have been issued in the name of deceased, hence, proceeding arises there from are vitiated. Shri Ramchand died on 31.01.2018 as is evident from his death certificate placed on record at page 51 of the paper book. The LR's of deceased Ramchand vide letter dated 26.02.2018 (delivered in the office of AO on 05.03.2018) informed the AO regarding death of Ramchand and also enclosed his death certificate. The said letter is at page 46 of the paper book. Despite the fact that AO was informed about the death of Ramchand, still he issued notice u/s. 148 of the Act on 29.03.2018 in the name of Ramchand. It is not a case where the AO was oblivious of the fact of death of Ramchand. The AO in assessment order has categorically mentioned that notice u/s. 148 of the Act was issued and served upon the assessee through its legal heirs. It is no *more res integra* that Income Tax proceedings cannot be initiated in the name of a dead person. In the instant case, the Assessing Officer was time and again informed about the death of Ramchand. Despite that the AO not only issued notices u/s. 148 and 142(1) of the Act in the name of a dead person but has also passed assessment order in the name of deceased mentioning his name as, Late Shri Ramchand through L/H Smt. Bhagwati

Devi. Thus, in effect the assessment order was passed in the name of a dead person. The Supreme Court of India in the case of PCIT vs. Maruti Suzuki India Limited 265 Taxman 515 has categorically held that where assessment order is passed in the name of a non existing entity, the same is without jurisdiction and has to be set aside.

6. In present case, I find that the AO in first instance has erred in issuing notice u/s. 148 of the Act in the name of a dead person and thereafter, has erred in framing assessment in the name of deceased without substituting the name of legal representatives of deceased. Thus, I hold assessment proceedings and assessment order in the name of dead person without jurisdiction and quash the same.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on Monday the 03rd day of February, 2025.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 03.02.2025

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI