

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.588/Del/2022
निर्धारणवर्ष/Assessment Year:2017-18**

Vasdev Gupta, 178-1, Model Town, Panipat, Haryana. PAN No.ACYPG6978R	<u>बनाम</u> Vs.	Pr. CIT, Rohtak, Haryana.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

Assessee by	Dr. Rakesh Gupta, Adv. and Shri Somil Agarwal, Adv.
Revenue by	Mr. Javed Akhtar, CIT DR

सुनवाईकीतारीख/ Date of hearing:	28.01.2025
उद्घोषणाकीतारीख/ Pronouncement on	19.02.2025

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld. Pr. Commissioner of Income Tax, Rohtak dated 04.03.2022 for the AY 2017-18 passed u/s 263 of the Act. The Assessee has raised the following grounds of appeal which read as under: -

1. *"That the order passed under section 263 is against law and facts, the order is passed on 04.03.2022 whereas the assessee had died on 07.05.2020. The order passed is*

illegal ab initio as the order against dead person is null and void.

2. *That the proceedings have been initiated on wrong assumption that the business income surrendered at the time of survey was liable to be added back under sections 68/69/69A/69B/69C of the Act whereas the assessee is not keeping regular account books and is filing income under section 44AD.*
3. *That the Pr. CIT himself was not confirmed as to which section out of 68/69/69A/69B/69C was applicable as such treating the order passed by the AO is erroneous and prejudicial to the interest of the revenue is wrong, illegal and uncalled for.*
4. *The surrendered income was business income and had rightly been assessed by the AO. Reference has been made to the following judgments:*

Lovish Singhal & Others Vs. ITO & Others (2018) 53CCH 250 Jodh Trib.

ACIT Vs. One Enclave (2019) 56CCH 326 Indore Trib.”

2. Ld. Counsel for the assessee, at the outset, submits that the Pr. CIT had passed an order dated 04.03.2022 u/s 263 of the Act on the assessee who deceased on 28.03.2020. Therefore, the Ld. Counsel submits that since the Pr. CIT had passed an order on a dead person the order is *void ab initio*. Ld. Counsel placed a copy of death certificate dated 14.05.2020 issued by Municipal Corporation, Panipat in support of his submissions. Reliance was also placed on

the following decisions for the proposition that an order passed on a deceased person is *void ab initio* and a nullity in the eye of law.

1. *Savita Kapila L/H of Late Shri Mohinder Paul Kapila vs. Asstt. CIT, W.P. (C) 3258/2020 dated 16.07.2020 (Del);*
2. *Dharamraj vs. ITO, W.P. (C) 9227/2021 dated 17.01.2022 (Del);*
3. *Mrs. Sripathi Subbaraya Manohara L/H Late Sripathi Subbaraya Gupta vs. PCIT & Anr., W.P. (C) 2678/2020 & CM 9286/2020 (Del).*

3. Heard rival contentions, perused the orders of the authorities below. Copy of death certificate dated 14.05.2020 issued by the Municipal Corporation, Panipat clearly suggest that assessee Vasdev Gupta had deceased on 28.03.2020. The Ld. Pr. CIT issued show cause notices dated 09.02.2022 u/s 263 of the Act for the AY 2017-18 on the assessee and finally passed an order u/s 263 on 04.03.2022 on the assessee who died on 28.03.2020.

4. In the cases of Savita Kapila represented by legal heir of late Shri Mohinder Paul Kapila (supra) the Hon'ble Delhi High Court quash the notice issued u/s 148 of the Act on the deceased assessee by allowing the writ petitions filed by the legal heir of the assessee. While dealing with various issues as to whether the notice is valid when the same was issued on a dead person the Hon'ble High Court took note of the decision of the Hon'ble Madras High Court in the

case of Alamelu Veerappan vs. ITO, wherein the High Court held as under: -

“31. In Alamelu Veerappan Vs. The Income Tax Officer, Non Corporate Ward 2(2), Chennai, 2018 (6) TMI 760 - 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, “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 proceeding 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.”

5. The Hon’ble Delhi High Court further held that there is no statutory requirement imposing an obligation upon legal heirs to intimate the death of the assessee.

6. Following this judgment the Hon’ble Delhi High Court in the case of Dharamraj vs. ITO (supra) notice issued u/s 148 of the Act on a dead person was held to be null and void and all consequent proceedings/orders, including the assessment order and the subsequent notices are equally tented and liable to be set aside.

7. Similar view has been taken by the Hon'ble Delhi High Court in the case of Mrs. Sripathi Subbaraya Manohara L/H Late Sripathi Subbaraya Gupta (supra), wherein the High Court quashed the assessment and penalty orders passed on the deceased person.

8. Since in the case on hand an order u/s 263 was passed on 4.3.2022 by the Pr. CIT on the assessee who deceased on 28.03.2020 such an order is *null and void* and the same is hereby quashed. Since we have quashed the order passed u/s 263 on legal ground, we are not going into all other grounds raised by the assessee as would be of academic in nature at this stage.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 19.02.2025

**Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 19.02.2025

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi