



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH,
RAJKOT

BEFORE DR. ARJUN LAL SAINI, AM.&

&

DINESH MOHAN SINHA, JM

आयकरअपीलसं./ITA No.463/RJT/2024

निर्धारणवर्ष / Assessment Year: (2017-18)

(Hybrid Hearing)

AmrutlalKarsandasSamani Rest House Road, Jodhpur Gate, Jam Khambhaliya, Dist: Devbhoomi Dwarka-361305.	Vs.	Principal Commissioner of Income Tax, Jamnagar-361008
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFHPS5447P		
(Appellant)		(Respondent)

Appellant by : Shri Mahesh Paun, Ld. AR
Respondent by : Shri Sanjay Pungalia, Ld. CIT(DR)

Date of Hearing : 27 /02 /2025
Date of Pronouncement : 25 /04 /2025

आदेश / ORDER

PER DR. A. L. SAINI, AM:

By way of this appeal, the assessee has challenged the correctness of the order dated 21.02.2024 passed by the Learned Principal Commissioner of Income-tax (in short "Ld PCIT") under section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), for the assessment year 2017-18.

2. Grievances raised by the assessee, which, being interconnected, will be taken up together, are as follows:

All the below mentioned grounds of appeal are independent and without prejudicial to each other.

1.Learned PCIT Jamnagar erred in law as well on facts by holding that the assessment order, dated 31/03/2022 passed by the Assessing Officer u/s 143(3) of the Act for the AY 2017-18 is erroneous, it is prejudicial to the interest of the revenue



within the meaning of the provisions of section 263 of the Act, set aside the passed order u/s. 263 dtd. 21/02/2024 and giving direction to the assessing officer to not to revise the assessment order.

2. Learned PCIT Jamnagar erred in law as well facts by not giving effective opportunity of being heard

3. Appellant craves leave to add, amend, alter or withdraw any ground of appeals.

3. The appeal filed by the assessee, for Assessment Year 2008-09, is barred by limitation by 68 days. The assessee has moved a petition requesting the Bench to condone the delay. Learned Counsel for the assessee explained the sufficient cause for delay, stating that because of the mistake of the advocate/accountant of the assessee, the delay in filing appeal before this Tribunal has occurred for 68 days. Because of death of the assessee, there was a tension environment in the family and the legal heirs of the assessee presumed that Advocate/accountant, appointed by the deceased assessee, should be taking care of taxation matters, however, the advocate/accountant was negligent in filing the appeal. The Id. Counsel, therefore contended that in the interest of justice, the delay should be condoned.

4. On the other hand, the learned DR for the Revenue, opposed the prayer of the Id. Counsel for the assessee and stated that because of the mistake of Advocate/accountant, the delay should not be condoned, and it was the duty of the assessee to take care and to make compliance of the time limit in respect of filing the appeal, therefore, delay in filing appeal should not be condoned.

5. We have heard both the parties on this preliminary issue. We note that mistake of an advocate in filing the appeal is a sufficient cause to condone the delay. In considering the condonation petition, it is to be remembered that statutes conferring a right of appeal must be construed in furtherance of justice



and the provision limiting the time for bringing an appeal must be liberally interpreted, so that the party pursuing such remedy allowed to him by the law is not non-suited on mere technicalities. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

6. Succinctly, the factual panorama of the case is that assessee before us is an Individual. In this the assessee has filed return of income on 29/10/2017 declaring total income of Rs. 19,59,300/- (which includes the amount of Rs 10,06,000/- disclosed during the survey proceedings as unaccounted excess stock under business head). Thereafter, assessment order u/s 147 of the Income-tax Act (in short 'the Act') was passed on 24/03/2022 determining total income at Rs. 28,59,300/- whereby making addition of Rs 19,00,000/- on account of unexplained cash credit u/s 68 r.w.s 115BBE of the Act.

7. Later on, Learned Principal Commissioner of Income-tax (in short "Ld PCIT") exercised his jurisdiction under section 263 of the Income-tax Act, 1961. On verification of record for the assessment year under consideration, it was noticed by the Ld. PCIT that during the previous year, a survey u/s 133A of the Act was conducted at the business premises of the assessee. On the date of survey, difference in the valuation of stock Rs. 10,06,000/- was found in physical stock and as recorded in the books of account of the assessee. Accordingly, in the statement recorded during the survey proceedings conducted u/s 133A of the Act, the assessee has admitted the same excess stock as unaccounted income which was not recorded in his books of account and agreed to offer this income as current year's income over and above his regular business income of the current year. However, the manner of earning of the same has not been admitted /explained by the assessee at the time of survey



proceedings u/s 133A of the Act and as also during the course of assessment proceedings. As such unaccounted stock was required to be taxed as per the provisions of section 69 r.w.s. 115BBE of the Act. However, the AO has failed to do so and has taxed such additional income as regular income of the assessee. The AO failed to examine these aspects of the assessee's case while finalising the assessment order. Such failure on the part of AO rendered the assessment order passed u/s 147 of the Act on 31/03/2022 for the AY 2017-18, as erroneous in so far as it is prejudicial to the interest of the revenue within the meaning of the provisions of section 263 of the Act.

8. During the revision processing, the assessee submitted its reply stating that stock belong to the business of the assessee. However, due to different valuation technique adopted by the survey team, the difference of Rs. 10,06,000/- was worked out by the survey team. In order to buy the peace, the assessee admitted such excess stock and paid the tax on such excess stock, therefore, there is no loss to the revenue, hence, order passed by the assessing officer is neither erroneous nor prejudicial to the interest of the revenue.

9. However, learned PCIT rejected the above contention of the assessee and held that correct taxing of unaccounted excess stock found during the course of survey proceedings, was glaring and apparent from the records available with the Assessing Officer but the AO has not taken any cognizance of these facts during the course of assessment proceedings and has passed the assessment order u/s 147 of the Act, on 31/03/2022, without verifying the same. Moreover, the AO has also not ascertained the veracity of the claims by making independent inquiries. This has rendered the assessment order passed u/s 147 of the Act dated 31/03/2022 erroneous which resulted in the loss of revenue, hence prejudicial to the interest of revenue. Therefore, learned PCIT directed the assessing officer to frame the fresh assessment order.



10. Aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

11. The Id.Counsel for the assessee submitted that assessee under consideration died on 24/12/2018. The survey was conducted to examine the cash deposited in demonetization period to the tune of Rs.19 lakhs. However, later on, Id.PCIT exercised his jurisdiction u/s.263 of the Act stating that there is unaccounted stock of Rs.10,06,000/-. Therefore, Ld.PCIT revised the assessment order passed by the AO u/s.147 of the Act dated 31/03/2022, stating that the AO did not make any enquiry for excess stock/unaccounted stock worth Rs.10,06,000/-. During the course of survey proceedings, the assessee was suffering from severe illness and eventually, the assessee died. The Id. Counsel for the assessee, therefore, submitted before us that the sequence of events, about the death of the assessee and the assessment order framed by the assessing officer, which are as follows:

- (i) Survey was conducted on 20/03/2017.
- (ii) Assessee died on 24/12/2018.
- (iii) Assessment order was framed by the AO u/s.147 of the Act, dated 31/03/2022.
- (iv) Assessee wrote letter to the AO about the death of assessee, on 26/03/2022, stating that assessee had been died, therefore assessment order should not be framed on the dead person.

12.However, despite of this, the AO framed the assessment order, dated 31/03/2022, on the dead person which is not valid in the eye of law, therefore, assessment order should be quashed on this issue and the consequential order



passed by the Ld.PCIT u/s. 263 of the Act should also be quashed, as the Ld.PCIT has also framed the assessment order on the dead person, despite of information given by the legal heirs to the Department on 26/03/2022 about the death of the assessee. The Id.Counsel for the assessee submitted that revision order u/s.263 of the Act was done by the Ld.PCIT on 26/03/2024 on dead person. Therefore, the order of the Id.PCIT should also be quashed.

13.On the other hand, the Ld.DR for the revenue submitted that no doubt the assessee has informed the Income Tax Department about the death of the assessee to the assessing. However, just because the assessment order u/s.147 of the Act was framed on dead person does not mean that assessee's issue regarding excess stock found during the course of survey should not be added in the hands of the assessee, as the assessee has not explained the manner of earning the excess stock.

14.We have heard both the parties and perused the material available on record. We note that Late Shri AmrutlalKarshandas Samani(assessee) was running his business of Grain, Pulses, Jaggery, Sugar, etc, on wholesale, semi wholesale basis for more than 25 (Twenty five) years, that is, from the starting up his business until his sudden death. His unfortunate death occurred on 24/12/2018.Copy of the death certificate is enclosed on paper book page no. 31, which we have examined.Then after on the base of portal data Ld. ADIT (Inv), Jamnagar issued summons on 8-7-2019 and 23-02-2021 for the verification of cash deposited, during the demonetization period 09.11.2016 to 31.12.2016 in which SBN (old notes) cash deposit was at Rs. 19,00,000/-. In response to the summons, Legal heir of assessee filed reply and informed the income tax authorities that assessee had passed away on 24-12-2018 and requested to drop the proceedings. Thereafter, the case of the assessee was reopened u/s. 147 of the IT Act, 1961, after getting approval from the Ld. Add/Joint commissioner of



Income Tax, Range-1, Jamnagar, a notice u/s. 148 of the IT Act, 1961 was uploaded at portal on 16-04-2021. However, Ld. AO continued proceedings, issued notice u/s 143(2) of the Act. The assessee again informed to the income tax officer about death of assessee. However, assessing officer framed the assessment order on the dead person which is bad in law. The learned PCIT also framed the revision order under section 263 of the Act on the dead person. That is, revision order under section 263 of the Act was framed on, non-existent assessee, hence, revision order framed by the ld. PCIT, under section 263 of the Act, is bad in law and needs to be quashed. We note that Co-ordinate Bench of ITAT Cuttack, in the case of Janardan Gupta, (2019) 75 ITR 64 (trib), on the identical and similar facts, has quashed the revision order under section 263 of the Act, observing as follows:

“6. After hearing both the sides and perusing the entire material available on record and the impugned order passed u/s 263 of the Act, we noticed from the death certificate submitted by the assessee that late Janardan Gupta died on 15.03.2015 which has duly been recorded by the AO in his assessment order and order has been passed in the name of legal heir also. We further noticed from the order of Pr.CIT that he has passed order in the name of deceased- assessee who was not in existence on the date of passing of the revisional order u/s. 263 of the Act. We also agree with the case law relied on by the ld. AR in the case of M. Hemanathan (supra), wherein the Hon'ble Madras High Court in para 12 has held as under

“12. But unfortunately, the said contention loses sight of the settled position that any proceeding initiated against a dead person is a nullity. The contention of the learned Standing Counsel for the Department loses sight of one important distinction between a case where the proceedings are initiated against a person, who is alive, but continued after his death and a case of proceedings initiated against a dead person himself. If the proceedings had been initiated against a person, who was alive, and they were continued after his death after putting his legal heirs on notice, those proceedings, under certain circumstances, may be saved. Such a situation is also contemplated in civil proceedings and a provision is made in the Civil Procedure Code itself under Order XXII Rule 4. Therefore, the cases where the very proceedings are initiated against a dead person stand apart from those proceedings where they are initiated against a live person, but continued after his death against the legal heirs. Hence, the first contention is rejected.”

7. Respectfully following the above decision of Hon'ble Madras High Court, we are of the considered view that the Pr. CIT is not justified in setting aside the assessment order invoking powers u/s. 263 of the Act ignoring the fact that the assessee is already expired on 15.03.2015, which was already informed by legal heir Shri Jitendra Kumar Gupta, the son of



the assessee during the course of assessment proceedings. The AO has also passed order u/s.143(3) of the Act in the name of legal heir of the assessee. Therefore, fresh assessment cannot be initiated against the deceased assessee. Accordingly, we quash the order passed by the Pr. CIT u/s.263 of the Act and allow the appeal of the assessee.8. In the result, appeal of the assessee is allowed.”

15. Hon`ble High Court of Madras, in the case of M.Hemanathan, 384 ITR 177 (Mad-HC), held that where notice issued in name of deceased-assessee was served upon legal heir,who, then, participated in proceedings, such proceedings was a nullity beinginitiated against a dead person. It was also held that where notice issued in name of deceased-assessee was served upon legal heirwho, then, participated in proceedings, said legal heir could not be deprived of rightto challenge service of notice. The Co-ordinate Bench of ITAT Delhi in the case of Sheela Devi, 64 CCH 186 (Del-trib), held that if show cause notice was addressed to deceased assessee instead of legal heirs, order was *ab-initio* void. Respectfully following the above binding precedent, we quash the order passed by the Id. PCIT under section 263 of the Act, dated 21.02.2024.

16. **In the result, the appeal of the assessee is allowed.**

Order pronounced in the Open Court on 25 / 04 /2025 at Rajkot.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(DR. ARJUNLAL SAINI)
ACCOUNTANT MEMBER

RAJKOT; Dated : 25 / 04 /2025



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,राजोकट/DR,ITAT,
Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण,राजोकट / ITAT, Rajkot