

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.6468/MUM/2024
(Assessment Year: 2016-2017)**

Vinod Muthukumar

Legal heir of Late. Krishnan Shivasubramanian

1801-1901, Plot.129, Trihaatu Vihaan, Bhudaji Road,

Matunga East – Mumbai - 400019

Maharashtra.

[PAN:ABFPS0459R]

..... **Appellant**

Vs

**Assistant/Deputy Commissioner of
Income Tax, Circle 1, Kalyan**

Mohan Plaza, Wayale Nagar, Khadak Pada,

Kalyan West – 421301. Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : None

For the Respondent/Department : Shri Rajendra Chandekar

Date

Conclusion of hearing : 23.04.2025

Pronouncement of order : 30.04.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 23/10/2023, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order dated 17/12/2018, passed under Section 143(3) of the Act for the Assessment Year 2016-2017.
2. The Assessee has raised following grounds of appeal :

"1. In the facts and circumstances of the case and as per the law,

the National Faceless Appeal Centre/Commissioner of Income Tax (Appeals) ["the learned Commissioner (Appeals)] erred in passing the impugned order dated 23.10.2023 on Late. Krishnan Shivasubramanian. It is well settled principle of law that a notice/order issued in the name of a deceased person is void ab initio and non-est. Thus, the impugned order dated 23.10.2023 may be quashed.

2. *Without prejudice to the above, in the facts and circumstances of the case and as per the law, the National Faceless Appeal Centre/Commissioner of Income Tax (Appeals) ["the learned Commissioner (Appeals)] erred in denying the benefit of Section 54F of the Act to Late. Krishnan Shivasubramanian and adding the long-term capital gains of Rs. 22,37,25,004/- to the returned income. Thus, the exemption/deduction of Rs. 22,37,25,004/- as claimed by Late. Krishnan Shivasubramanian under Section 54F of the Act, may be granted and the addition of Rs.22,37,25,004/- maybe deleted."*
3. When the appeal was taken up for hearing none was present on behalf of the Assessee. However, on perusal of the appeal memo, we proceeded to adjudicated the appeal on merits after hearing the Learned Departmental Representative.
4. The relevant facts in brief are that vide order dated 17/12/2018 assessment was framed on the Assessee (i.e.Late Shri Krishnan Shivasubramanian) under Section 143(3) of the Act. The Assessing Officer denied deduction claimed by the Assessee under Section 54F of the Act and brought to tax Long Term Capital Gains income of INR.22,37,25,004/- in the hands of the Assessee.
5. Being aggrieved, the Assessee preferred appeal before the CIT(A) against the Assessment Order on 07/01/2019. The aforesaid appeal was dismissed by the CIT(A) vide order dated 23/12/2023.
6. Now the present appeal has been preferred challenging the order passed by the CIT(A) on the grounds reproduced in paragraph 2 above.

7. On perusal of the grounds raised in the appeal we find that the order passed by the CIT(A) has been challenged as being void-ab-initio since the same has been passed in the name of deceased Assessee.
8. On perusal of paragraph 6.2 of the order impugned, we find that the CIT(A) has recorded that vide written submission dated 18/10/2022, the fact of demised of the Assessee was brought to the notice of the CIT(A). It was also stated that his wife has also passed away on 24/07/2022. On perusal of paragraph 6.3 of the order impugned we find that copy of death certificates were also placed before the CIT(A). However, despite having knowledge the CIT(A) proceeded to pass the order in the name of the deceased Assessee. The Learned Departmental Representative supported the order passed by the CIT(A) by submitting that since the details of legal heirs was not available, the CIT(A) had no option but to pass order in the name of the deceased Assessee.
9. We have considered the submission advanced by the Learned Departmental Representative and have perused the material on record. We note that the Assessment Order was passed on 17/12/2018 prior to the death of the Assessee. The appeal against the Assessment Order was instituted by the Assessee on 07/01/2019. During the pendency of appeal before the CIT(A), the Assessee expired on 23/01/2022, thereafter, the impugned order was passed on 23/10/2023.
10. In our view, the order dated, 23/10/2023, passed by the Learned CIT(A) cannot be sustained since it has been passed in the name of the deceased person and is, therefore, set aside with the directions to the CIT(A) to decide the grounds raised in appeal before the CIT(A) afresh after bringing on record the legal heirs of the deceased. It is clarified that we have not expressed any opinion on

merits of the. In view of the matter the learned CIT(A) would be at liberty to adjudicated the issues raised in merits as per law.

11. In terms of the aforesaid, Ground No.1 raised in the present appeal is allowed, while Ground No.2 deal with the merits with the addition is dismissed having been rendered infructuous at this stage.
12. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 30.04.2025.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated :30.04.2025
Milan,LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai