

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "J(SMC)", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
MISS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.80/Mum/2025  
(Assessment year: 2012-13)**

<b>Abbas Khan</b> , (through legal heir Mr. Iqbal Khan) Flat No.7, Haroon Building, 1 <sup>st</sup> Floor, A H Wadia Marg, Opp Habib Hospital, Old Agra Road, Kurla (W), Mumbai-400 070 <b>PAN: AAHPK3046K</b>	<b>vs</b>	<b>National Faceless Appeal Centre/ Income-tax Officer 41(1)(1), Mumbai</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Vimal Punmiya, CA  
Respondent by : Shri Mukesh Thakwani (SR DR)

Date of hearing : 08/05/2025  
Date of pronouncement : 21/05/2025

**ORDER**

**Per Anikesh Banerjee (JM):**

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre (NFAC), Delhi [in short, 'Ld.CIT(A)] passed under section 250 of the Income Tax Act, 1961 (in short, 'the Act') date of order 12/11/2024 for A.Y. 2012-13. The impugned order was originated from the order of the Learned

Income-tax Officer, Ward 26(1)(1), Mumbai (for brevity the "Ld. AO") passed under section 144 read with section 147 date of order 30/11/2019.

2. The assessee has taken the following grounds of appeal:-

*"Ground 1-*

*The Ld CIT(A) erred in confirming the addition of a sum of Rs.42,22,616/- under section 68 of the Income Tax Act, 1961 treating the same escaped income and added the same to the income of the assessee.*

*Ground 2-*

*The Ld CIT(A) erred in charging interest 234A,234B and 234C of the act*

*Ground 3-*

*The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing."*

***Additional Ground***

*"On the facts of the assessee's case and under the law, the learned Assessing Officer (AO) and the Commissioner of Income Tax (Appeals) [CIT(A)] erred in passing the impugned order in the name of the deceased assessee and further the impugned order is bad in law."*

3. We have heard the rival submissions and perused the material available on record. The Ld. AR primarily advanced arguments on the additional ground raised, contending that the assessee had passed away on 09.12.2017, whereas the notice under Section 148 of the Act was issued on 28.03.2019. It was thus argued that the entire assessment proceedings initiated and concluded by the Ld. AO were conducted in the name of a deceased person, rendering the notice issued under Section 148 invalid and liable to be quashed ab initio.

To substantiate the factual matrix, the Ld. AR submitted that the assessee was an individual engaged in the business of trading in iron scrap. For the relevant assessment year, the assessee had filed his return of income on 06.02.2014 declaring a total income of Rs.2,32,120/-. The case was reopened under Section 147 of the Act on account of a reported mismatch in TDS amounting to Rs.39,571/- under Section 194C (TDS on contractual receipts) for the AY 2012–13. Subsequently, a notice under Section 148 of the Act dated 28.03.2019 was issued in the name of the deceased assessee. Pursuant thereto, notices under Section 142(1) dated 22.07.2019 and 07.11.2019 were issued, followed by final show cause notices dated 12.11.2019 and 22.11.2019, requiring an explanation as to why a sum of Rs.42,22,616/- should not be added to the income of the assessee. However, since the assessee had passed away on 09.12.2017, and his legal heir was unaware of the said proceedings, no response was filed on the assessee's income tax portal. Without conducting a proper enquiry, and solely relying on the information available, the Ld. AO treated the amount of Rs.42,22,616/- as unexplained income under Section 69A of the Act and added it to the total income of the assessee.

Being aggrieved, the legal heir of the deceased assessee preferred an appeal before the Ld. CIT(A), challenging the assessment order dated 30.11.2019 passed under Section 144 read with Section 147 of the Act. However, owing to the legal heir's unfamiliarity with the process of filing submissions on the portal of his deceased father, no effective submission could be made. Consequently, the Ld. CIT(A) dismissed the appeal ex parte by order dated 12.11.2024.

Aggrieved by the said order of the Ld. CIT(A), the legal heir has now preferred the present appeal before us.

4. The Ld. AR submitted that the Ld. CIT(A) erred in confirming the addition of Rs.42,22,616/-, wrongly treating it as income that had escaped assessment. It was argued that the said addition was made without any cogent basis, and merely due to the alleged failure of the deceased assessee to furnish supporting documentary evidence relating to sales, purchases, and other business transactions during the relevant period. The Ld. AR reiterated that the assessee had expired on 09.12.2017 and is now represented by his legal heir, Mr. Iqbal Khan. During the year under consideration, the assessee had undertaken purchases amounting to Rs.21,71,518/- and effected sales of Rs.24,83,023/-. It was further submitted that the major scrap purchases during the relevant year were from the following entities: —

<b>Sr.No.</b>	<b>Name of Seller</b>	<b>Amount (Rs.)</b>
1.	Central Government Controller of Stores Office	19,15,750/-
2.	SR Asset Financial Advisor Workshop and Stores	1,48,755/-
3.	Nuclear power Corporation of India	46,803/-
	<b>Total</b>	<b>21,11,308/-</b>

Further, the Ld.AR mentioned that the above purchases can be clearly verified from the Form 26AS (page 6 of paperbook) the said amount is shown in Part B i.e. TCS; the above 3 parties and purchases made from them can be clearly observed and the same is shown in the profit and loss account too. The Ld. AO without any information and material evidence on record has made addition amounting to Rs.42,22,616/-u/s 69A of the Act to the income of the assessee.

5. In argument on legal grounds, the Ld.AR stated that during the appeal proceedings, the AR of the assessee mentioned that the assessee is dead person, but it was not considered during the assessment proceedings. The copy of the

death certificate has duly been annexed in the APB page 13. The Ld.AR fully argued that the entire assessment including issuance of the notice under section 148 is liable to be quashed as the issuance of notice and the assessment was made on the dead person. The Ld.AR relied on the order of the Hon'ble Supreme Court in the case of **Ghanshyam A Dhanani vs ITO (2021) 169 taxmann.com 327 (SC)**, the relevant paragraph 9 of which is extracted below:-

*“9. In response to this submission, learned counsel for the appellant submitted that no doubt the appellant would appear before the Assessing Officer on the basis of the judgment of this Court in Rajeev Bansal (supra) but the main impediment in the case of the appellant herein is that the High Court has curtailed their right to take a contention that the impugned Notices were initially issued in the name of a dead person; that solely because the appellant as a legal representative subsequently responded to the notices would not imply that the proceeding initiated was valid. It was sought to be contented that the proceedings in fact are vitiated on account of the initial Notices being issued in the name of a dead person and the subsequent participation of the legal representatives in the proceedings before the Assessing Office would not have cured the initial defect. He therefore, submitted that the liberty may be reserved to the appellant herein to raise the said contention also before the Assessing Officer.”*

Further, the Ld.AR also relied on the order of the Hon'ble High Court of Bombay in the case of **Gene Gracious vs ITO (2025) 170 taxmann.com 82 (Bombay)**. The relevant paragraphs 6 – 10 are reproduced as below:-

*“6. We find ourselves in agreement with the submissions as made on behalf of the petitioner. We may at the outset observe that the Supreme Court has held it to be the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself (see: UMC Technologies (P) Ltd. v. Food Corporation of India [Civil Appeal No. 3687 of 2020,*

*dated 16-11-20201). This basic jurisprudential principle becomes applicable when any action of such nature were being initiated against Mr. Gene Gracious. Once Mr. Gene Gracious is a dead person there was no question of his defending such action or being heard so as to accord any sanctity to such order, and the consequential notice under Section 148 of the IT Act. The entire action under clause (b) and clause (d) of Section 148A of the IT Act were of no consequence being non-est. In this situation even the legal heirs cannot be bound by such order which is non-est, void ab initio.*

*7. Also the provisions of Section 148A read with Section 148 as applicable in the facts of the present case (AY 2015-16) rests on a foundation that no notice under Section 148 could have been issued without a prior show cause notice being issued to an assessee and hearing being granted to the assessee on such show cause notice and an order passed thereon, as clearly seen from the legislative scheme under section 148A of the IT Act. All this is certainly not possible to be undertaken against a dead person and/or even against a non existing entity [refer Maruti Suzuki India Ltd. (supra)].*

*8. Once such mandatory legal compliance itself could not be achieved, on such sole ground, the notice issued under Section 148 preceded by earlier actions is required to be held to be non-est and void ab initio. We are in complete agreement with the view taken by the Courts in the decisions which are referred by Ms. Malde, learned counsel for the petitioner, which echo such principles that the department cannot maintain issuance of the notice as impugned to a dead person.*

*9. In the present case, admittedly, the concerned assessee Mr. Gene Gracious expired on 09 November 2016, the show cause notice under Section 148A(b) of the IT Act was issued on 26 May 2022 and an order thereon was passed on 29 July 2022 under Section 148A(d), as also the impugned notice under Section 148 was also issued on 29 July 2022. All this has happened after the said assessee-Mr. Gene Gracious had expired.*

*10. In this view of the matter, the petition deserves to be allowed. It is accordingly allowed in terms of prayer clause (d). However, it is made clear that this order will not preclude the Revenue from issuing a fresh notice for reassessment against the legal heirs in accordance with law if requirements under Section 147/148 of the IT Act are satisfied including the limitation period as prescribed.”*

6. The Ld. DR supported and relied upon the orders passed by the revenue authorities. However, the Ld. DR was unable to place on record any contrary judicial precedent to rebut the submissions advanced by the Ld. AR.

7. In our considered opinion, the adjudication of the additional ground concerning the validity of the notice issued under Section 148 of the Act, reveals that the said notice was issued in the name of a deceased person and is therefore null and void in law, and liable to be quashed. In this regard, we respectfully rely on the decision of **Gene Gracious** (supra). We find that, in light of the binding precedents of the Hon'ble Supreme Court in **Ghanshyam A Dhanani**(supra) and the jurisdictional High Court, there is no option but to quash the assessment order passed by the Ld. AO, which has been rendered without legal authority. Consequently, the addition of Rs.42,22,616/- made in the assessment is also liable to be deleted.

Since the legal issue has been decided in favour of the assessee, the remaining grounds raised in the appeal are rendered academic in nature and require no adjudication.

8. In the result, the appeal of the assessee bearing **ITA No.80/Mum/2025** is allowed.

Order pronounced in the open court on 21<sup>st</sup> day of May, 2025.

Sd/-

sd/-

(MS. PADMAVATHY S)  
ACCOUNTANT MEMBER

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 21/05/2025

Pavanan

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai