

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH: BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT

ITA No.76/Bang/2025
Assessment year: 2015-16

Sri Madaiah Manjunath by L/R Sri Sachidananda Swamy & Ors., No.666, 14 th Main, 14 th Cross, Jeevan Griha Colony, J.P. Nagar 2 nd Phase, Bengaluru – 560 078. PAN: AJXPM 3334R	Vs.	The Income Tax Officer, Ward 2(3)(5), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri K. Varaprasad, Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Revenue.

Date of hearing	:	02.06.2025
Date of Pronouncement	:	18.06.2025

ORDER

1. This appeal is filed by Sri Madaiah Manjunath through L/R (the assessee/appellant) for the assessment year 2015-16 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [Id. CIT(A)] dated 08.06.2023 wherein the appeal filed against the assessment order dated 29.12.2017 passed u/s. 143(3) of the

Income-tax Act, 1961 [the Act] by the ITO, Ward 2(3)(5), Bangalore [ld. AO] was dismissed holding that assessee does not want to prosecute the appeal and further there is no substance in the merits as opportunity given to the assessee was not responded to.

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

- “1. The Assessee died on 08-09-2018 without marriage, during pendency of the appeal and the order was passed by the CIT/NFAC on 08-06-2023, without arraying the Appellants as parties to the Appeal, and hence the order passed against a dead person is not valid in eye of law.
2. That the Legatees under the Will dated 08-09-2017 executed by the deceased Assessee, had brought to the notice of the ITO, Ward-2(3)(5) about the death of the Assessee, and they also produced the Death Certificate and the Will requesting to implead them in the assessment proceeding by giving them an opportunity, in view of the fact that they had no knowledge about pendency of the Appeal before the CIT/NFAC which had been filed by the deceased assessee. In view of the same, the ITO, Ward-2(3)(5) who was aware of the pendency of the Appeal, ought to have taken necessary steps in the matter.
3. That a dead individual is not a person in the eye of law and hence the assessment or reassessment proceedings or subsequent proceeding taken in his name is invalid. The Department must bring the legal representatives on record and continue the proceedings against them as required under and in accordance with Section 159 of the Act. In the instant case, the assessee died without marriage after executing the Will and during pendency of the Appeal. Hence, the CIT/NFAC ought to have remanded the matter with a direction to reprocess the same after bringing the Legal Representatives on record.
4. That, framing assessment or reassessment proceedings on a non-existent person is a jurisdictional defect and the same cannot be cured under Section 292B of the Act. Hence, in the absence of issuance of notice to the Legal Representatives or the Legatees of

the Will executed by the deceased assessee, the impugned order passed against a dead person is erroneous and unsustainable in law.

5. That during the Assessment Year, the Assessee has renovated the theatre fully by demolishing the whole structure, by spending an amount of Rupees Four Crores Forty Lakhs, by availing loan from the Banks. To substantiate the said contention, the Appellants have produced various Bank Transactions to show that the Assessee had availed loans in this regard. Therefore, the ITO ought to have deducted said loans in the values of Income brought to tax and already offered to tax.
6. It is submitted that during the Assessment Year, the Assessee had availed a loan of Rs.49,00,000/- on 30-09-2014 from the Corporation Bank, Jalabhavan, Bengaluru, vide A/c No.SB/01/002745. But the same is not taken into capital accretion. The ITO ought to have taken the said amount into capital accretion while bringing the value of income to tax, and ought to have added the same to the Loan accretion, and ought not to have added the same to the Capital accretion.
7. It is submitted that during the Assessment Year, the Assessee had availed a loan of Rs.35,00,000/- on 31-03-2015 from the Corporation Bank, Jalabhavan, Bengaluru, vide A/c No.CA/01/000059. But the same is not taken into capital accretion by the ITO. The ITO ought to have taken the said amount into capital accretion while bringing the value of income to tax and ought to have added the same to the Loan accretion, and ought not to have added the same to the Capital accretion.
8. It is submitted that the assessee had sold the property on 14-07-2014 for a sum of Rs.70,00,000/-, and Long Term Capital Gain was assessed at Rs.23,97,234/- which the assessee had invested for renovation of the theatre and therefore the ITO ought not to have added the same to the Capital accretion.
9. The Assessee relies on the following latest decisions rendered by the, Hon'ble Courts :

A. the Hon'ble High Court of Delhi at New Delhi, while passing order in W.P.(C) 12215/2021 had referred to its own Judgment

passed in case of Savita Kapila Vs. Assistant Commissioner of Income Tax, in W.P.(C) no.3258/2020, wherein it is held that :

"26. In the opinion of this court the issuance of a notice under section 148 of the Act is the foundation for reopening of an assessment. Consequently, the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law."

In the present case, though the notice under Sec.148(2) had been issued to the assessee and the Assessment order was passed during his lifetime, however, after filing of the Appeal before the CIT, the assessee died during its pendency. The fact about the death of the assessee was brought to the notice of the ITO, Ward-2(3)(5) since they had no knowledge about pendency of the Appeal before CIT/NFAC. Hence, the ITO, Ward-2(3)(5) who was a party to the Appeal, ought to have taken necessary steps in the matter. In the absence of ITO, Ward-2(3)(5) taking any such step, the CIT/NFAC continued to issue Hearing Notices to the dead person, and finally passed the order against a dead person, which is unsustainable in the eye of law.

10. It is submitted that on 30-12-2017 at 5-00 p.m. the Assessing Officer asked the Assessee to bring the documents within one hour otherwise he will add back this loan amount as an Income. Since the Assessee could bring the documents within the time stipulated and hence by protesting this he signed the papers. Thereafter, the Assessing Officer has passed the order without verification of documents.
11. The income under the assessment is not a professional income but it is purely business income, and therefore this case does not come under ITO, Ward-2(3)(5).
12. The learned Income Tax Officer not at all verified four books of accounts.
13. Not given sufficient time to produce the papers.

14. Within one week completed the assessment order without verifying the books of accounts.
15. Not verified the bank statements at all.
16. The Appellants may kindly be permitted to raise other grounds of appeal at the time of hearing with the previous approval of this Hon'ble Tribunal.

PRAYER

WHEREFORE, the Appellants most humbly pray that this Hon'ble Tribunal be pleased to :

- (a) SET ASIDE the Order dated 29-12-2017 passed by the Assessing Officer, Ward No.2(3)(5), Bangalore;
 - (b) SET ASIDE the Order dated 08-06-2023 passed by the National Faceless Appeal Centre (ANFAC), Delhi, in Appeal No.CIT(A), Bengaluru-2/10505/2017-18 ;
 - (c) DECLARE that the Assessee is not liable to pay the amount as mentioned in the Order dated 29-12-2017 passed by the Assessing Officer, Ward No.2(3)(5), Bangalore.”
3. The appeal is in fact delayed by 503 days. The assessee has filed an application for condonation of delay stating that delay of 503 days was due to sufficient cause.
 4. Assessee submitted that assessment order was passed on 29.12.2017 against which the appeal was filed before the Id. CIT(A) on 23.1.2018. However, during the pendency of the appeal before Id. CIT (A) , the assessee passed away on 8.9.2018. As the L/R did not have the information about filing of appeal before the Id. CIT(A), nobody attended the proceedings before the Id. CIT(A). The Id. CIT(A) issued 4 notices at the email address given in Form 35.

5. On receipt of letter by banker of assessee from Id. AO about payment of taxes, on 18.6.2019 the L/R attended and submitted before the Id. AO about the death of assessee and requested for impleading and opportunity to represent him in the assessment proceedings. However, no opportunities were given.
6. Meanwhile The Id. CIT(A) vide order dated 8.6.2023 dismissed the appeal of the assessee for non-prosecution and also confirmed the action of the AO in absence of any submission made by the assessee.
7. The order of the Id. CIT(A) was taken by the L/R in the 2nd week of July, 2023 to his CA. After understanding the issue involved in the appeal, the relevant documents were also given to the CA in Aug. 2023. Somewhere in the month of August, 2023, the present Advocate was contacted for filing of the appeal. At that time LR was informed that a certificate of L/R from the court is required to be obtained and only thereafter appeal can be filed before the Tribunal. It was intimated that the petition is already filed before the City Civil Court and Sessions Judge for succession certificate which is pending adjudication. Such succession certificate was available on 19.9.2024 and thereafter once again effort was made to file the appeal. Meanwhile the L/R fell ill and after regaining some health in the first week of January 2025, contacted the counsel, who after going through the same, preferred the appeal before the Tribunal on 15.1.2025.

8. It was therefore submitted that the delay caused in filing of appeal is due to sufficient cause. The affidavit in support of the same stating the above facts dated 13.1.2025 is also filed.
9. The ld. AR vehemently supported the Affidavit submitted by the L/R and submitted that there is sufficient cause for delay in filing the appeal, therefore delay of 503 days in filing the appeal may be condoned.
10. The ld. DR vehemently objected to the delay in filing the appeal.
11. I have carefully considered the rival contentions and find that in this case the order of the ld. CIT(A) was passed on 8.6.2023 which was also stated to be received by the assessee on 8.6.2023, but appeal was filed on 15.1.2025, thereby causing a delay of 503 days. I find that assessee is an individual, who after filing of appeal before the CIT(A) on 23.1.2018 during its pendency died on 8.9.2018. The L/R did not have any information of appeal filed by the deceased-assessee. When they came to know about the proceedings before the AO on 18.6.2019, they approached the ld. AO stating that assessee has passed away and they are L/Rs, therefore they may be impleaded in the assessment proceedings. The assessee, Sri Madaiah Manjunath passed away on 18.9.2018 and he was not married, there was no successor to him. He executed Will on 8.9.2017, the Will was executed in the name of Class II heir as successor to the estate of the deceased, one of whom is LR who is defending the case. What prompted him to go to AO on 18.6.2019 is that the bank account of the assessee with Corporation

bank had received a letter of the outstanding payment in the case of assessee. After that he approached the counsel, who after obtaining the details of the filing of appeal guided them to another lawyer, who advised them to first obtain the succession certificate and only thereafter could they file the appeal. Therefore, the succession certificate was obtained, and copy was taken in the month of Sept. 2024. Subsequently the L/R got sick for some time and immediately in the month of Jan. 2025, the appeal is filed.

12. Facts shows that LR of the assessee was constantly vigilant about the proceedings, apprised the authorities about the death of the assessee and also the willingness to implead him in the proceedings. Though he went to the ld. AO and requested so, obviously no intimation was available with the ld. CIT (A), as it was faceless. In fact, ld. AO should have intimated the death of the assessee to ld. CIT (A), as soon as he came to know about it. For filing appeal before ITAT, delay was explained as no succession certificate was available to LR till September 2024 and then there were health issues, which prevented LR from filing the appeal. Looking at the causes stated above, the assessee acted in a bonafide manner, and the delay was due to circumstances beyond the control of LR. Thus, I find that there is sufficient cause in not filing the appeal in time. Accordingly, I condone the delay and admit the appeal.
13. The brief facts of the case show that assessee was an individual, filed his return of income on 23.2.2016 at a total income of Rs.15,04,280.

The return was picked up for scrutiny. The assessment order came to be passed u/s. 143(3) of the Act whereby total income was assessed to Rs.40,02,313 and further a sum of Rs.3,77,44,633 was added u/s. 68 of the Act and taxes are levied u/s 115BBE of the Act. The assessee, aggrieved with the same, preferred appeal before the Id. CIT(A) on 23.1.2018. However, as per details produced before us, the assessee died on 8.9.2018. The Id. CIT(A) issued all the 4 notices after the death of assessee at the email address given in Form 35. The AO was informed by the L/R as per letter dated 18.6.2018. The L/R went to the AO in response to letter written by the AO to Corporation Bank on 14.2.2019 intimating the outstanding demand of Rs.33,23,996. The AO was also submitted a copy of death certificate and Will of the assessee. It appears that the AO despite these, did not inform the Id. CIT(A) also about the death of assessee. The Id. CIT(A) passed an order in the name of assessee, Sri Madaiah Manjunath on 8.6.2023, when he has already passed away on 8.9.2018. Therefore, the order of the Id. CIT(A) passed on the dead person cannot be sustained. Further the notices issued are also after the death of assessee, therefore apparently the L/R of the assessee did not get an opportunity to present his case before the Id. CIT(A).

14. Before us the assessee has submitted an application under Rule 29 for admission of additional evidences, wherein the bank statement of the assessee, copies of sale deed, copies of the Will, etc. are furnished as additional evidence. In these peculiar circumstances, we admit the additional evidence. As the Id. CIT(A) has decided the appeal holding

that assessee does not want to prosecute the appeal and on merits nothing is presented before him, we restore the appeal back to the file of Id. CIT(A) with a direction to consider the additional evidence placed before us and to decide the issue afresh after giving reasonable opportunity of hearing to the L/R of the assessee.

15. Thus the appeal of the assessee is allowed by adjudicating ground No.2 of the appeal in favour of the assessee.
16. All other grounds of appeal on the merits are not required to be adjudicated.
17. In the result, the appeal of the assessee is allowed for statistical purpose

Pronounced in the open court on this 18th day of June, 2025.

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,
Dated, the 18th June, 2025.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.