

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA No.911/Ind/2024 (AY: 2011-12)

Late Vinayak Puranik Through L/H Yash Puranik, 7/4, New Palasia, Indore (PAN: ADQPP7016E)	बनाम/ Vs.	Income Tax Officer- 3(2), Indore
(Appellant)		(Respondent)
Assessee by	Shri S.S. Deshpande, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	26.06.2025	
Date of Pronouncement	02.07.2025	

आदेश / ORDER

Per Paresh M Joshi, J.M.:

This is an appeal filed by the assessee Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the “**Act**” for sake of **brevity**) before this Tribunal. The assessee is aggrieved by the order bearing Number ITBA/NFAC/S/250/2024-25/1070658744(1) dated 26.11.2024 passed by the Ld. CIT(A) which is hereinafter referred to as the “**Impugned order**”. The

relevant Assessment Year is 2011-12 and the corresponding previous year period is from 01.04.2010 to 31.03.2011.

2. **FACTUAL MATRIX**

2.1 That as and by way of an assessment order made **u/s. 144 r.w.s. 143(3) of the Act**, the income of the assessee Vishvesh Puranik legal heir of the original assessee Shri Vinayak Puranik was computed and assessed at **Rs.1,01,20,521/- u/s 68 of the Act**. That the aforesaid assessment order is dated 24.12.2018 which is hereinafter referred to as the **“impugned assessment order”**.

2.2 That the assessee being aggrieved by the aforesaid **“impugned assessment order”** prefers first appeal **u/s 246A of the Act** before the Ld. CIT(A) who by the **“impugned order”** has partly allowed the 1st appeal on the grounds and reasons stated therein.

2.3 That the assessee Yash Puranik Legal Heir of late Vinayak Puranik being aggrieved by the **“impugned order”** has preferred the instant second appeal before this Tribunal and has raised following grounds of appeal in Form No.36 **against** the **“impugned order”** which are as under:-

"1. The Ld. CIT(A) NFAC has erred in upholding the re-opening of assessment u/s 147. The re-opening is bad in law and hence the assessment be annulled.

2. The Ld. CIT(A) NFAC has erred in upholding the addition of Rs. 16,00,000/- on account of capital gains for sale of the house. The Ld. CIT(A)(NFAC) further erred in not allowing the deduction u/s 54F and 54EC. The same may kindly be allowed and the addition of Rs. 16,00,000/- as capital gain may please be deleted.

3. The Ld. CIT(A) NFAC has erred in upholding the addition of rs. 30,25,000/- in account of fixed deposits treating the same as unexplained.

3.1 It was proved before the lower authorities that all FDs have been taken through banking channels from transfer from one account to another and encash met of earlier fixed deposits and auto sweep facilities. Thus, the sourcer of fixed deposits are totally proved. The additions of rs. 30,25,000/- upheld is bad in law and hence be deleted.

4. The Ld. CIT(A) NFAC has erred in upholding the addition of Rs. 3,19,521/- being interest earned when the same was already disclosed as income in the return. The addition is bad in law and hence be deleted.

5. The additions upheld may please be deleted" .

3. Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 26.06.2025 when the Ld. AR for and on behalf of the assessee at the outset and threshold brought to our notice that the original assessee was **one Vinayak Puranik who died on 12.06.2017** which fact is even recorded in the **"impugned assessment order"**. **Shri Vishvesh Puranik as a legal heir later came on scene and later he too expired.** The present appeal is filed by

Yash Puranik as legal heir on record. The Ld. AR has placed on record of this tribunal a paper book from pages 1 to 145. In addition a submission is also placed from page 1 to 6 on record of this Tribunal. The Ld. AR then submitted before us that reopening of assessment by the department of Income Tax is **invalid in law**. It was inter alia contended that notice dated **30.01.2018 u/s 148** of the Act was issued to the original assessee Vinayak Puranik. That as and by way of a letter dated **28.02.2018 page 12 of paper book**, copy of death certificate of late Vinayak Puranik the original assessee was placed on record of the department. Our attention was then invited to page 22 of the paper book to demonstrate that as and by way of a notice u/s 148 of the Act dated **30.03.2018 the original assessee late Vinayak Puranik** was once again called upon to file a return in terms of said notice dated **30.03.2018**. That the **"impugned assessment order"** dated 24.12.2018 however came to be passed in the name of **legal heir Vishvesh Puranik** who was L/H of Vinayak Puranik as Vishvesh Puranik had participated in the assessment proceedings before Ld. A.O. The Ld. AR invited our attention to Section 159 of the Act and contended that any

proceeding taken against the deceased **before his death shall be deemed to have been taken against the legal representative and any proceeding** which could have been taken against the deceased **if he had survived, may be taken against the legal representative.** Shri Vinayak Puranik the original assessee had died on **12.06.2017** and no notice u/s 148 of the Act was ever served on the legal heir of deceased i.e. Vinayak Puranik. Hence the **initial notice u/s 148 of the Act dated 30.01.2018 itself is bad in law as it was issued to the deceased assessee after his death.** (Original assessee had died on 12.06.2017). The Ld. AR then relied upon the decision of *M.P High Court in case of Urmila Saxena V/s CBDT reported in (2024) 159 taxmann.com 64 (MP)* wherein in para 14 it was held that reopening notice u/s 148 of the Act issued in the name of a dead assessee is null and void being without jurisdiction. The Ld. AR then relied upon the decision of *Delhi High Court in case of Lalchand Verma V/s Union of India reported in (2025) 170 taxmann.com 825 (Delhi)* wherein it was held that when factum of the death of the assessee is informed to the Income Tax Department and despite that no notice was issued to

the legal heir of the deceased u/s 159(2)(b) the impugned notice and all consequential orders and proceedings there from are required to be quashed and were quashed. In the instant case too no notice was served on Shri Vishvesh Puranik Legal Heir of original assessee Vinayak Puranik by Ld. A.O despite the fact of death of Vinayak Puranik on **12.06.2017** was informed to the department on 28.02.2018. The Ld. AR then relied upon the decision of *Gujarat High Court in case of Himadri Kandrap Mehta v/s ITO reported in (2022) 144 taxmann.com 34 (Gujarat)* wherein it was held that notice to the dead assessee and commencement of assessment or reassessment proceedings against dead person is null and void **basis** para 5.5 of the judgment. Per contra Ld. DR stated that since the legal heir of the deceased assessee has participated in the assessment proceedings plea of Ld. AR is meritless.

4. Observations, findings & conclusions.

4.1 We now have to decide the legality, validity and the propriety of the "**impugned order**" basis records of the case and rival contentions canvassed before us.

4.2 We have carefully perused the records of the case as presented to this Tribunal by both Ld. AR & Ld. DR to determine the legality, validity of the **“impugned order”** basis law and by following due process .

4.3 We are of the considered opinion that Ld. AR has taken a **legal objection** with regard to the legality, validity and propriety of the notice u/s 148 of the Act and so also the entire proceedings emanating from it which goes to the root of the matter. The Ld. AR has strongly contended that once the original assessee Vinayak Puranik was dead on **12.06.2017** the revenue ought not to have issued notice u/s 148 of the Act dated 30.01.2018 (page 21 of paper book) on the dead person as the same is nullity in the eyes of law. We concur with the view of Ld. AR on this as any notice/s 148 of the Act as far as possible should be on a person who is in the existence and is living. A person who is dead on date of the notice cannot be said to be a person in the existence, and/or living particularly so when the original assessee had died much before the notice u/s 148 of the Act. The original assessee Vinayak Puranik had died on

12.06.2017 whereas notice u/s 148 of the Act is dated 30.01.2018 which **perse** is null and void.

4.4 We also notice and observe that as and by way of a letter dated 28.02.2018 (page 12 of paper book) the factum of death of the assessee was brought to the notice of ITO, Ward 3(2), Indore, M.P and a copy of death certificate of late Vinayak Puranik was also placed on record with reference to notice dated 30.01.2018 u/s 148 of the Act. Despite this factual position, the revenue on **30.03.2018** issues yet another notice (page 22 of paper book) once again on Shri Vinayak Puranik who was already dead and fact of his death was informed to the department vide letter dated 28.02.2018 (supra). We therefore hold both notice(s) dated **30.01.2018** & **30.03.2018** as nullity in the eyes of law as notice(s) was/were on a person not in the existence/living as having died as early as on 12.06.2017.

4.5 We also hold that while it is true that legal heir Vishesh Puranik participated in the assessment proceedings before Ld. A.O as reply dated 28.02.2018 (page 12 of paper book) was under his instructions by CA nevertheless it was incumbent upon the department to have issued at least the notice u/s 148 of the Act

dated 30.03.2018 (page 22 of paper book) on Vishvesh Puranik the legal heir which fact they could have easily ascertained from CA on record which department did not do so and yet another notice dated 30.03.2018 came to be issued once again on Vinayak Puranik. The department was rather casual in reading the letter dated 28.02.2018 wherein death certificate was enclosed too and ought to have issued a fresh notice u/s 148 of the Act dated 30.03.2018 as by that time they knew for full that Vishvesh Puranik is legal heir of deceased assessee Vinayak Puranik.

4.6 We also hold that by virtue of Section 159(2)(b) of the Act it is mandated that the department **may** take proceedings against Legal Heir (Vishvesh Puranik) which they choose not to do so as no notice was served u/s 148 of the Act afresh on Vishvesh Puranik the legal heir of Vinayak Puranik. The ***jurisdictional High Court of M.P in Urmila Saxena case (supra)*** has clearly held that notice u/s 148 of the Act if issued on dead person is null and void. We gainfully refer to para 14 of the judgment (supra) wherein in para 14 it is held as under :-

" 14. In view of the above, reopening notice under section 148 of the Act, 1961 issued in the name of a dead assessee is null and void being without jurisdiction. Recently this court in the order dated

23.11.2023 passed in WP No.9697/2022 has also held that notice and all consequential proceedings arising therefrom in the name of deceased assessee are not sustainable”.

4.7 We notice that vide para 10 below issue before M.P High Court in Urmila Saxena case (supra) was identified as below:-

10. The issue which falls for consideration of this Court is as to whether the impugned notice under Section 148 of the Act of 1961 is issued in the name of dead person 1.e. Shri Kamal Kumar Saxena is enforceable in law. The fact that Shri Kamal Kumar Saxena died on 09.11.2020 is not disputed. The notice issued in the name of the dead person is unenforceable in the eyes of law”.

4.8 We also notice that the *Hon’ble M.P. High Court in the case of Meet Lalwani Legal Heir of Late Mrs. Amita Lalwani v/s I.T.O, Indore in writ petition No.9697 of 2022 on*

23.11.2023 held in para 4, 6, 11,12,13 and 15 as under:-

“4. In view of the above, reopening notice under section 148 of the Act, 1961 issued in the name of dead assessee is null and void being without jurisdiction.

6. It is also submitted that if respondents rely upon Section 159 of the Act of 1961, the same would be of no avail as the same applies only to a situation where proceedings are initiated/pending against the assessee when he/she is alive and after his/her death, proceedings are permitted to be continued as against the legal heirs. Learned counsel has placed reliance on the judgment passed by the Madras High Court in the case of Alamelu Veerappan Vs. The Income Tax Officer, Non Coporate Ward 2(2), Chennai reported in 2018 SCC Online Mad wherein it has been held as under:

18. 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.

11. The issue which falls for consideration of this Court is as to whether the impugned notice under Section 148 of the Act of 1961 is issued in the name of dead person i.e. Mrs. Amita Lalwani is enforceable in law. The fact that Mrs. Amita Lalwani died on 07.07.2021 is not disputed. The notice issued in the name of the dead person is unenforceable in the eyes of law.

12. It has been observed by the Delhi High Court in the case of Savita Kapila Vs. Asstt.CIT reported in (2020)118 taxmann.com 46/273 Taxmann 148/426 IRT 502/108 CCH 0049 Del High Court) as under:-

"In the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the income tax department."

"Consequently, the legal heirs are under no statutory obligation to intimate the death of the assessee to the revenue.

13. The Madras High Court in the case of Alamelu Verappan(supra) has observed as under:

"Nothing has been placed before this Court by the Revenue to show that there is a statutory

obligation on the part of the legal representatives of the deceased assessee to immediately intimate the death of the assessee to take steps to cancel the PAN registration."

15. In view of the above and that various High Courts have observed that the notice issued to a dead person for reopening of assessment of a dead person is null and void, this Court holds that the notice and all consequential proceedings arising therefrom in the name of the deceased assessee are not sustainable".

4.9 We also gainfully refer to Bombay High Court order dated 10.12.2024 in case of ***Gourang Anil Wakade (legal heir of late Mrs. Meera Anil Wakade) V/s Principal Chief Commissioner of Income-tax, Mumbai in writ petition No.4091 of 2024*** wherein in para 6 following is held:-

"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 (sec: UMC Technologies Private Limited vs. Food Corporation of India & Anr., Civil Appeal No. 3687 of 2020, decided on 16 November 2020). This basic jurisprudential principle becomes applicable when any action of such nature was being initiated against Mrs. Meena Wakade. Once Mrs. Meena Anil Wakade was dead person, there was no question of her 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".

5.

Order

5.1 In the premises drawn up by us we set aside the
"impugned order".

5.2 In the result appeal of the assessee is allowed.

Order pronounced in open court on 02.07.2025.

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक/ Dated : 02/07/2025

Dev/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore