

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH", KOLKATA

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 395/KOL/2025
(Assessment Year 2011-12)**

Sumitra Devi Agarwal

(Legal heir of Late Gokul Chand Agarwal),

49A, T.C. Road, New Alipore,

Kolkata - 700053

[PAN: ADGPA7148E]

..... **Appellant**

vs.

ITO, Ward 28(4), Kolkata,

Aayakar Bhawan, Dakshin 2,

Gariahat Road, Kolkata - 700031

..... **Respondent**

Appearances by:

Assessee represented by : Miraj D Shah, AR

Department represented by : Soumitra Ghosh, Sr. DR

Date of concluding the hearing : 01.07.2025

Date of pronouncing the order : 03.07.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. This appeal arises from the order u/s 250 of the Income Tax Act, 1961 (hereafter "the Act"), passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi vide order dated 24.12.2024.

1.1 In this case, the Ld. AO passed an order dated 21.12.2018 through which an addition of Rs. 51,57,050/- was made u/s 68 of the Act.

1.2 The assessee carried this matter in first appeal, where he could not succeed and the Ld. AO's actions were confirmed.

1.3 Aggrieved with this action, the assessee has filed the grounds that challenge the assumption of jurisdiction by the Ld. AO, the denial of opportunity to the assessee and misapplication of section 68 of the Act on what are actually legitimate transactions in shares.

1.4 Before us, the Ld. AR filed a letter by one Sumitra Devi Agarwal, wife of Late Gokul Chand Agarwal as under:

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Dated:-

From:-
 Sumitra Devi Agarwal
 For Gokul Chand Agarwal
 49A, Tollygunge Circular Road,
 New Alipore
 Kolkata-700053

To,
 The Income Tax Officer-ITO 28(4)/Kolkata,
 Office of the Income tax Officer ITO Ward -28(4)/Kolkata
 Aayakar Bhawan Dakshin, 3rd Floor
 2, Gariahat Road, Kolkata-31,

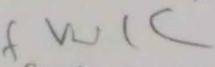
Respected Sir,

Sub: Notice under Section 142(1) of the Income Tax Act, 1961 for the A. Year - 2011-12
Ref:-ITBA/AST/F/2(1)/2018-19/1013557201(1) dated 10th November, 2018
Ref:In the matter of Late Gokul Chand Agarwal (PAN-ADGPA7148E)

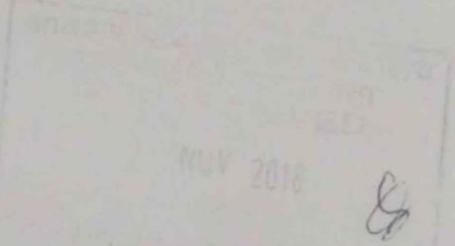
Kindly refer to above.

This is with reference to your above mentioned notice ,at the out set I wish to inform your honour that Late Gokul Chand Agarwal has demised on 14-06-2018 .He has left with his heirs wife ,son and daughter.In such scenario please guide us our course of action in this regard so that there shall not be non compliance of the notices issued under the I T Act,1961 issued to him. My client is in search of the details related with him so that the notices can be complied in due time. Moreover we request you to please arrange to provide the reason for the reopening so that we can arrange for the related documents as these pertains to long back.We are also enclosing the copy of challan of Rs. 100/- in this relation.

We hope you will arrange for the reason of reopening so that we can serve your requirement in time.

Thanking You,
 Yours Faithfully,

 Sumitra Devi Agarwal
 Wife of Late Gokul Chand Agarwal

Encl:-Copy o challan of Rs. 100/-



1.3 The Ld. AR stated that the Ld. AO was duly informed about the demise of the assessee well before passing of the order dated 21.12.2018. He pointed out that the receipt stamp on the said intimation is 20.11.2018 and in light of this, the Ld. AO should have brought the legal heirs on record

and thereafter proceeded ahead with the assessment. The Ld. AR pointed out that the Ld. AO has proceeded ahead with the assessment inspite of this intimation. The Ld. AR relied on the case of Shilpa Agarwal Vs. Assessment Unit, Income Tax Department & Ors., WPA 9183 of 2024 dated 10.04.2024 [Calcutta] to canvass the point that there can be no valid assessment on a deceased person.

1.4 The Ld. DR was also asked to address this issue. The Ld. DR relied on the orders of authorities below.

2. We have carefully considered the averments of Ld. AR/DR and we have also gone through the facts of the case. It is clear that the Ld. AO was duly informed about the passing away of the assessee through letter received in his office on 20.11.2018 (supra). We have also perused the case of Shilpa Agarwal (supra) which is squarely on the facts of this case. The text of this judgment deserves to be extracted:

“Heard learned advocates appearing for the parties. By this writ petition, petitioner has challenged the impugned assessment order dated 26th February, 2024, under Section 147 read with Section 144/B of the Income Tax Act, 1961, relating to the assessment year 2016-17, on the ground that the impugned assessment order has been passed against one Satish Agarwal, who died on 3rd November, 2014 and whose death was officially intimated to the department by letter dated 8th June, 2018 by annexing the death certificate as appears at page 31 and 32 of the writ petition. Learned advocate representing the respondent is not in a position to defend the impugned assessment order which has been passed against a dead person in view the facts which appears from record itself.

Considering the facts and circumstances of the case and submission of the parties, the impugned assessment order dated 26th February, 2024, is quashed. However, dismissal of this writ petition will not be a bar on the part of the respondent Assessing Officer to initiate any fresh assessment proceeding in future in accordance with law. Accordingly, this writ petition being WPA 9183 of 2024 is disposed of.”

Considering that an assessment cannot be passed on a deceased person, especially when the fact of passing away of the assessee was duly brought to the notice of the Ld. AO, the assessment order itself would become void and hence it deserves to be quashed.

4. In the result, appeal filed by the assessee is allowed.

Order pronounced on 03.07.2025

Sd/-
(George Mathan)
Judicial Member

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 03.07.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Sumitra Devi Agarwal (Legal heir of Late Gokul Chand Agarwal)
2. ITO, Ward 28(4), Kolkata
3. CIT(A)
4. CIT
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches