

**THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI KHETTRA MOHAN ROY, ACCOUNTANT MEMBER**

**ITA Nos.1167 & 1168/Del/2024
(Assessment Year: 2010-11)**

Late Sh. Raja Ram through legal heir Virendra Yadav, C/o B.K. Kapur & Co. Chartered Accountants 17 Navyug Market, Ghaziabad, Uttar Pradesh- 201001	Vs.	ITO, Ward 2(2)(1) CGO Complex-II Kamla Nehru Nagar, Hapur Road, Ghaziabad
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: ARIPV1844Q		
Appellant	..	Respondent

Appellant by :	Sh. Madhav Kapoor, Adv
Respondent by :	Ms. Harpreet Kaur Hansra, SR. DR

Date of Hearing	04.06.2025
Date of Pronouncement	16.07.2025

O R D E R

PER MADHUMITA ROY, JM:

Both the appeals filed by the assessee are directed against the orders passed by the National Faceless Appeal Centre (NFAC), Delhi both dated 14.12.2023 passed under Section 147 r.w.s 144 of the Act and 271(1)(c) of the Act, respectively for Assessment Year 2010-11.

2. The quantum appeal is barred by limitation for about 30 days in support of which an application for condonation of delay has been filed by the assessee. The previous counsel engaged in the matter received the communication of the order passed by the First Appellate Authority but further communication of the same to the assessee was not made. The order passed by the First Appellate Authority was gathered late by the assessee and affidavit explaining such fact is also forthcoming along with the application for condonation of delay; such affidavit has been affirmed by the legal heir of the assessee the said explanation rendered by the assessee seems to be genuine which was also not objected by the Ld. DR with all her fairness. Thus, having regard to this particular facts and circumstances of the matter the delay is condoned.

2. The brief facts leading to the case are that the assessee died on 27.09.2016 the death certificate whereof is annexed at page 1 of the paper book filed before us. The assessee sold an immovable property at Rs.129,34,741/- during the year under consideration. Subsequently, upon recording reasons and obtaining prior approval from the PCIT, Ghaziabad, notice under Section 148 dated 29.03.2017 was issued and served upon the assessee but no compliance was made. Further notice under Section 142(1) dated 18.05.2017 along with questionnaire was issued followed by show cause notice issued under Section 144/147 of the Act issued to the assessee on 10.10.2017 fixing the date of hearing on 25.10.2017 but no compliance was made. The assessment was finalized upon making addition of Rs. 129,34,741/- which was in turn confirmed by the First Appellate Authority. Hence, the quantum appeal before us.

Proceeding under Section 271(1)(c) of the Act was initiated and finalized upon imposing penalty which was also confirmed by the First Appellate Authority and thus, challenged before us.

3. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that admittedly the impugned notice under Section 148 was issued in the name of the deceased assessee, died long back and therefore, the assessment proceeding itself is vitiated and thus, liable to be quashed. On 09.04.2025 when the matter was taken up by the bench a direction was given upon the Ld. DR to obtain a report from the Ld. AO on the issue raised by the assessee on the validity of the assessment framed under Section 147 of the Act, the jurisdictional notice under Section 148 of the Act having been issued on a dead person. However, when the matter was subsequently taken up on 04.06.2025 no report has been furnished by the department. In support of the case made out by the assessee the Ld. AR relied upon the following judgments:

- i. **Savita Kapila Vs. ACIT, 426 ITR 502 (Del) (2020)**
- ii. **Krishnaawtar Kabra Vs. ITO, 140 taxmann.com 423 (Guj) (2022)**
- iii. **Late Smt. Usha Choudhary through legal heir Mr. Ilya Rana Vs. ITO, ITA No. 3439 of 2023**

4. Having heard the Ld. Counsels appearing for the parties and having regard to the facts and circumstances of the matter, as no notice is found to have been served upon the assessee during his life time or even on the legal heir of the assessee as “deemed assessee” within the prescribed time the entire proceeding is found to have been vitiated as

the same is breach of principle of natural justice and the mandatory provisions contains in Section 148 of the Act as well. The judgment relied upon by the Ld. AR passed by the Hon'ble jurisdictional High Court in the case of Savita Kapila (supra) has duly been considered by us. We find that the court has been pleased to observe categorically that the sine qua non for acquiring jurisdiction to reopen the assessment is that such notice should be issued in the name of the correct person. The requirement of issuing of 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. The judgment passed by the Hon'ble Bombay High Court in the case of Sumit Balkrishna Gupta Vs. ACIT, Circle 16(2) Mumbai & Ors., reported in (2019) 2 TMI 1209 was also considered by the Hon'ble jurisdictional High Court in the above matter. We note, that in the case of Alamelu Veerappan Vs. ITO, reported in (2018) (6) TMI 760 wherein it has been held that in the absence of statutory mandate no responsibility could be cast upon the survivor of the assessee to intimate the fact of his/her demise to the tax department. It was held that there is no statutory requirement imposing an obligation to legal heir to intimate the death of the assessee. In order to undertake the proceeding in respect of a deceased person the legal heir needs to be identified and notices are required to be served upon such legal heirs being deemed assessee, in their names and in the capacity as legal heirs of the deceased and that particular notices are required to be served within the statutory time limit prescribed, in the absence of which the proceeding particularly when the notices for assumption of jurisdiction issued under Section 148 of the Act admittedly being issued in the name of the deceased person the entire proceeding is vitiated and thus, liable to be quashed. The requirement of issuance of notice to correct person

and not to a dead person is not merely a procedural requirement but a condition precedent to the impugned notice being valid in law.

5. Thus, having regard to the entire aspect of the matter, under the present facts and circumstances of the matter the notice under Section 148 of the Act having been issued admittedly in the name of the dead person, the entire proceeding is void-ab-initio and therefore, quashed. Consequently, the penalty proceeding initiated under Section 271(1)(c) also fails.

6. Both the appeals of the assessee are allowed.

Order pronounced in the open court on 16.07.2025

Sd/-
(Khettra Mohan Roy)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 16.07.2025

Rohit, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI