

**IN THE INCOME TAX APPELLATE TRIBUNAL SURAT BENCH, SURAT
(HYBRID HEARING)**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. No. 31/SRT/2025
(Assessment Year: 2012-13)

Keval Kanubhai Korat (L/h. of Kanubhai Bhikhabhai Korat), 39, Purvi Society 2, Hirabag Varachha Road, Choryasi, Surat-395006	Vs.	Income Tax Officer, Ward-3(3)(3), Surat
[PAN No.AASPK6339J]		
(Appellant)	..	(Respondent)

Appellant by :	Shri P M Jagasheth, CA
Respondent by:	Shri Ajay Uke, Sr. DR

Date of Hearing	10.07.2025
Date of Pronouncement	18.07.2025

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 14.10.2024 passed for A.Y. 2012-13.

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

“1. On the facts and in the circumstances of the case as well as the law on the subject, the learned Assessing Officer of the Income Tax (Appeals) has erred in confirming the action of the re-opening the assessment u/s. 147 of the act and issuing notice u/s. 148 of the Income Tax Act, 1961

2. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in making addition of Rs.65,02,000/- on account of Long term capital gain on Sale of immovable property.

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3. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer has erred in initiating Penalty proceedings u/s.271(1)(c) of the Income Tax Act.*

4. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in levies interest u/s 234A/234B/234C/234D of the Income Tax Act, 1961.*

5. *It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.*

6. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”*

3. The brief facts of the case are that during the course of assessment proceedings, the Assessing Officer received information from sub-Registrar, Udhna (under section 133(6) of the Act), which showed that the assessee, along with four other co-owners had sold an immovable property for a total consideration of Rs. 3,25,10,000/-. The assessee's share in the said transaction amounted to Rs. 65,02,000/-. Upon further verification, the Assessing Officer noted that the sale deed was executed on 08.02.2012 whereas the assessee, Shri Knaubhai Bhikhabhai Korat had expired earlier on 10.11.2011. Therefore, the Assessing Officer noted that despite the claimed date of death of 10.11.2011, the sale deed dated 08.02.2012 bore the signature of the assessee, which raised doubt regarding the timing and authenticity of the transaction. In light of these facts the Assessing Officer held that even if the assessee had expired before the execution of sale deed the legal heir must have received the sale consideration. However, the legal heir failed to disclose this transaction or file the return of income for the Assessment Year (AY) 2012-13. Consequently, the capital gains arising from this transaction remained undisclosed. In the absence of any return or explanation, the

Assessing Officer treated the entire amount of Rs. 65,02,000/- as long-term capital gain. A final show-cause notice was issued on 23.10.2019, giving the assessee an opportunity to explain why the said amount should not be added to the total income. However, no details or explanations were submitted. Due to the non-cooperative conduct of the legal heir and failure to disclose the capital gain, the assessing officer held that the cost of acquisition could not be verified and hence, the full value of consideration was treated as taxable long-term capital gain. As a result, an addition of Rs. 65,02,000/- was made to the total income of the assessee for AY 2012-13, and penalty proceedings under Section 271(1)(c) were initiated for concealment of income.

4. In appeal, Ld. CIT(A) dismissed the appeal of the assessee on account of non-appearance before him.

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A). Before us, the Counsel for the assessee submitted the death certificate of the assessee showing the date of death of the assessee on 10.11.2011, issued by Ahmedabad Municipal Corporation. The Counsel for the assessee placed reliance on several judicial precedents in support of the contention that no assessment order can be framed in the name of a deceased assessee without bringing the legal heir of the assessee on record.

6. In response, Ld. DR placed reliance on the observations made by the Assessing Officer and Ld. CIT(A) in their respective orders.

7. We have heard the rival contentions and perused the material on record.

8. On going through the facts of the assessee's case, from the certificate placed on record, it is seen that the assessee had expired on 10.11.2011. The Counsel for the assessee submitted that the sale deed was signed by the assessee two months prior to its registration and accordingly, there was a mismatch between the date of registration of sale deed and the date of which the assessee has deceased. However, it is an undisputed fact that the assessee has expired on 10.11.2011. Further, we note that during the course of assessment proceedings, the legal heir of the assessee had produced necessary certificate to show that the assessee had expired. We note that though the assessee had expired on 10.11.2011, the assessment order was passed by the Assessing Officer on 30.10.2019, almost after a gap of eight years from the date when the assessee had deceased. The fact that the assessee had expired was also placed on record during the course of assessment proceedings and this fact is also coming out clearly from the contents of the assessment order itself. However, despite this, the Assessing Officer continued the assessment proceedings in the name of the deceased assessee and no effort was made to bring the legal heir of the assessee on record. Further, even the assessment order was framed by the Assessing Officer in the name of the deceased assessee on 30.10.2019, almost eight years from the date when the assessee had expired. It is a well settled law that no assessment can be validly framed in the name of the deceased assessee especially when the fact of the death of the assessee has been brought to the knowledge of the Assessing Officer, during the course of assessment proceedings itself.

9. It would be useful to place reliance on some of the judicial precedents including the decision of Hon'ble Gujarat High Court which have dealt with a similar issue.

10. In the case of **Pravinchandra A Shah vs. Union of India [2023] 154 taxmann.com 616 (Gujarat)/[2024] 461 ITR 307 (Gujarat)[10-07-2023]**, the Gujarat High Court held that reopening notice under Section 148 issued upon deceased assessee was a nullity, therefore, consequential proceedings and orders passed thereon were to be quashed and set aside.

11. In the case of **Sitaram Raikwar vs. National Faceless Appeal Center [2024] 167 taxmann.com 325 (Madhya Pradesh) / [2024] 301 Taxman 528 (Madhya Pradesh) [09-09-2024]**, the High Court held that where an assessment order was passed against deceased assessee even when petitioner-legal heir of assessee had filed death certificate of deceased assessee and no notices were tried to be served on legal heir, impugned assessment order framed in name of deceased assessee was to be set aside.

12. In the case of **Savita Kapila vs. Assistant Commissioner of Income-tax, Circle 4(1) [2020] 118 taxmann.com 46 (Delhi)/[2020] 273 Taxman 148 (Delhi)/[2020] 426 ITR 502 (Delhi)[16-07-2020]**, the High Court held that in absence of a statutory provision, a duty cannot be cast upon legal representatives to intimate factum of death of assessee to department and, thus, where Assessing Officer issued a notice to assessee under section 148 after his death and, in such a case, it could not have been validly served upon assessee, said notice being invalid, was to be quashed.

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13. Accordingly, in light of the above discussion we are of the view that the assessment order, having been passed in the name of the deceased assessee is void-ab-initio and hence liable to be set-aside.

14. In the result, the appeal of the assessee is allowed.

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 18/07/2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 18/07/2025

TANMAY, Sr. PS

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat