

**आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ, कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH KOLKATA**

**श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER**

**आयकर अपील सं/ITA No.475/KOL/2025**

**(निर्धारण वर्ष / Assessment Year. :2013-2014)**

Gita Rani Sikder, Legal Heir of Umesh Chandra Sikder Haripur, Gawala Patty, South Colony PO: Sahudangi Hat, Dist : Jalpaiguri West Bengal-735135	Vs	ITO Ward-1(1), Siliguri
PAN No. : <b>AMIPS 2542 K</b>		
<b>(अपीलार्थी /Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>निर्धारिती की ओर से /Assessee by</b>	:	Shri Sujit Basu & Rajib Mukherjee, ARs
<b>राजस्व की ओर से /Revenue by</b>	:	Shri Mrinmoy Basak, Sr. DR
<b>सुनवाई की तारीख / Date of Hearing</b>	:	05/08/2025
<b>घोषणा की तारीख/Date of Pronouncement</b>	:	05/08/2025

**आदेश / O R D E R**

This is an appeal filed by the assessee against the order dated 19.02.2025 passed by the Id.CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2013-2014

2. Shri Sujit Basu & Shri Rajib Mukherjee, Id. ARs appeared on behalf of the assessee. Shri Mrinmoy Basak, Id.Sr. DR appeared on behalf of the revenue.

3. It was submitted by the Id. AR that the assessee Late Umesh Chandra Sikder had filed his return of income on 24.12.2020. He had expired on 29.12.2020. A notice u/s.148 of the Act came to be issued on 23.03.2020 and the return has been filed in response to the notice issued u/s.148 of the Act. It was the submission that notice u/s.143(2) of the Act came to be issued in the name of Umesh Chandra Sikder on 01.03.2021. Smt. Gitarani Sikder vide a letter dated 19.08.2021 had intimated the

Assessing Officer that Shri Umesh Chandra Sikder had expired and also provided a death certificate. It was the submission that after this the Assessing Officer had completed the assessment in the name of dead person and on the Pan of the dead person. It was the submission that as the assessment has been done in the name of dead person, the assessment is liable to be quashed.

4. Ld.AR placed reliance on the decision of the Hon'ble Delhi in the case of Savita Kapila, Legal Heir of Late Shri Mohinder Paul Kapila, passed in W.P(C) 3258/2020, dated 16.07.2020, wherein in para 32 the Hon'ble Delhi High Court has held as follows :-

*THERE IS NO STATUTORY REQUIREMENT IMPOSING AN OBLIGATION UPON LEGAL HEIRS TO INTIMATE THE DEATH OF THE ASSESSEE.*

*32. This Court is of the view that 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. After all, there may be cases where the legal representatives are estranged from the deceased assessee or the deceased assessee may have bequeathed his entire wealth to a charity. Consequently, whether PAN record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In Alamelu Veerappan (supra) it has been held "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 or take steps to cancel the PAN registration."*

5. Ld.AR also placed reliance on the decision of Hon'ble Rajasthan High Court in the case of Sharda Devi Chhajer, passed in D.B.Civil Writ Petition No.11787/2024, dated 19.03.2025, wherein the Hon'ble Rajasthan High Court in para 7 to 7.2 has held as follows :-

7. [Article 265](#) of the Constitution of India, prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because State cannot at its whims and fancies burden the citizens without authority of law, as has been held in *Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar and Company & Ors.*, 2018 (361) E.L.T. 577 (SC).

7.1. In a taxing statute, one has to look at the text as it is. There is no equity in taxation law. There is no intendment and presumption as to tax. Nothing is to be read in and nothing is to be implied.

7.2. The basic principle of charge under Tax Statutes is, "No tax can be imposed on the subject without words in the Act clearly showing an intention to lay a burden upon him."

6. It was the submission that as the assessment has been done on a dead person, the same is liable to be quashed.

7. Ld.AR also placed reliance on the Circular issued by the CBDT in F.No.225/97/2021/ITA-II, dated 6<sup>th</sup> September, 2021, wherein it has been held that personal hearings has to be conducted in a designated area in Income Tax Offices. Ld.AR also placed reliance on the order u/s.119 of the Act issued by the CBDT in F No.187/3/2020-ITA-I, dated 6<sup>th</sup> September, 2021, wherein it has categorically been held that where the PAN is not available the NFAC is not to pass the assessment order. It was the submission that the assessment order is liable to be quashed.

8. In reply, Id.Sr. DR supported the order of the Id. CIT(A).

9. I have considered the rival submissions. A perusal of the order of the Id. CIT(A) shows that the Id. CIT(A) has set aside the assessment to the Assessing Officer for readjudication in accordance with law. The assessee admittedly has filed the appeal against the set aside order of the Id. CIT(A). A perusal of the assessment order shows that in page 4, the Assessing Officer recognized that Smt. Gita Rani Sikder, who is the wife of deceased-

assessee, has furnished a response that the assessee had expired on 29.12.2020 and has provided the death certificate itself. This clearly shows that Smt. Gita Rani Sikder was well aware of the proceeding that was in the case of the assessee. An email had been addressed to Smt. Gita Rani Sikder requested her to bring the legal heirs on record. This is also mentioned in the first paragraph at page 4 of the assessment order. The said Gita Rani Sikder has not responded to the email. Another letter seems to have been on 14.09.2021 to Smt. Gita Rani Sikder to which also there has been no compliance. Left with no other alternative the Assessing Officer has completed the assessment on 29.09.2021. Now, Smt. Gita Rani Sikder has assumed the status of legal heir but for the purpose of the assessment she conveniently decided to be non-cooperative. This is nothing but contumacious conduct on the part of the assessee. Insofar as due taxes will not be paid but the department is expected to do justice. The Id.CIT(A) admittedly has given another opportunity by setting aside the issues to the file of the Id. Assessing Officer but the legal heir is still not satisfied. As notices have already been given to the legal heir and as the PAN of the said legal heir Smt. Gita Rani Sikder is available and as recorded by the Id.AO in page 5 of his assessment order, I am of the view that the assessee is entitled to any further relief. However, as the Id.CIT(A) has restored the issues to the file of Id. Assessing Officer for readjudication and as the revenue has not challenged the said relief granted to the assessee, it is not possible for the Tribunal to deny the relief to the assessee beyond what has been denied by the first appellate authority.

This being so, I am of the view that the order of the Id. CIT(A) would have to be upheld and consequently the findings of Id. CIT(A) restoring the issues to the file of the Id.AO stands upheld.

10. Coming to the decision of the Hon'ble Delhi High Court quoted by the Id. AR in the case of Savita Kapila, referred to supra, the same does not apply to the facts of the assessee's case, insofar as that was a case where the assessment has been done on the deceased assessee without any notice or request to the legal heir to provide the details for bringing them on record. Here in assessee's case there has been repeated requests from the revenue to legal heir to provide details for being brought on record. The reliance placed by the Id. AR on the decision of the Hon'ble Rajasthan High Court in the case of Sharda Devi Chhajer, referred to supra, actually goes against the assessee as in the said decision the Hon'ble High Court has held that, "*No tax can be imposed on the subject without words in the Act clearly showing an intention to lay a burden upon him.*" In the present case though the assessee's claim is that there is no provision for bringing legal heir record, the same does not stand to a reason, insofar as the provision of Section 159 of the Act are available in the statute.

11. Coming to the circular quoted by the Id. AR, it is in regard to the procedure for handling of assessment by jurisdictional assessing officers. Here notices have been issued by the ITO being the jurisdictional Assessing Officer but also by the faceless Assessing Officer and the legal heir has conveniently not cooperated in the proceedings nor responded to the letters issued other than intimating the letter of the death of the

assessee. This being so, the said circulars and orders do not have any benefit to the assessee. In these circumstances, the appeal of the assessee stands dismissed and the order of the Id.CIT(A) stands upheld.

12. In the result, appeal of the assessee is dismissed.

Order dictated and pronounced in the open court on 05/08/2025.

Sd/-

(जार्ज माथन)

**(GEORGE MATHAN)**

**न्यायिक सदस्य / JUDICIAL MEMBER**

**कोलकाता** Kolkata; दिनांक Dated 05/08/2025

*Prakash Kumar Mishra, Sr.P.S.*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

**Income Tax Appellate Tribunal, Kolkata**