



IN THE INCOMETAX APPELLATE TRIBUNAL, RAJKOT BENCH (SMC), RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.15&23/RJT/2025

निर्धारण वर्ष / Assessment Year: (2018-19 & 2019-20)

(Hybrid Hearing)

Babubhai Joitram Patel, 9 Suvas Colony St Xaviers High School Road. Gujarat-380 014	Vs.	Deputy Commissioner of Income-tax/ Assistant Commissioner of Income-tax, Central Circle –1, Rajkot, Income Tax Officer, Amruta Estate Building, M.G. Road, Rajkot-360 001
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.: ABDPP5355 K		
(Appellant)		(Respondent)

Appellant by : Shri Pramod Popat, Ld. AR
Respondent by : Shri Dheeraj Kumar Gupta, Ld. Sr. (DR)

Date of Hearing : 14/05/2025
Date of Pronouncement : 05/08/2025

आदेश / ORDER

Per, Dr. Arjunlal Saini AM

Captioned two appeals filed by the same assessee, pertaining to Assessment Years 2018-19 & 2019-20, are directed against separate orders under section 250 of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’) passed by the Learned Commissioner of Income Tax (Appeals)-12, Ahmedabad [in short, “Ld.CIT(A)”] vide order dated 18/11/2024, which in turn arose, out of separate orders passed by the Assessing Officer, both dated 01/03/2022, u/s 153C r.w.s. 144 of the Act on 01.03.2022.

2. Grounds of appeal raised by the assessee are as follows:

Ground-1 Notice Issued in the Name of a Deceased Person The Learned Assessing Officer (Ld. AO) erred in law and on facts by issuing the notice under Section 153C of the Income Tax Act, 1961, in the name of a deceased person. The issuance of such a notice is a fundamental jurisdictional defect that renders the notice and resultant assessment order void ab initio. Further, the Learned Commissioner of Income Tax (Appeals) [CIT(A)] failed to adjudicate this legal issue despite its fundamental importance. Hence, the notice and assessment order must be quashed.



Ground-2 Ex-parte Assessment and Violation of Natural Justice The Ld. AO erred in law and on facts of the case in proceeding ex-parte and passing the assessment order based on a notice issued to a deceased person. This action violates the principles of natural justice. The CIT(A) further erred in setting aside the matter to the AO instead of annulling the assessment order, which is bad in law. The assessment proceedings, therefore, should be quashed in their entirety.

Ground-3 Addition Based on Assumptions and Hypothetical Grounds The Ld. AO erred in law and on facts of the case in making an addition on account of interest income without any corroborative evidence and in treating it as unexplained money, basing the addition solely on assumptions and hypothetical grounds. The reliance on a "dumb document" without substantive evidence renders the addition untenable. The CIT(A) erred in not adjudicating this issue on merits, and the addition must be deleted.

Ground-4 Jurisdictional and Procedural Defects The assessment order suffers from jurisdictional and procedural defects, including a failure to adhere to the statutory requirements under the Income Tax Act. Despite these glaring defects, the CIT(A) failed to annul the assessment order. The assessment proceedings, therefore, deserve to be quashed.

Ground-5 Assessment Order Bad in Law The assessment order is bad in law and on facts as it suffers from fundamental jurisdictional errors and procedural irregularities. The CIT(A) erred in failing to annul the order. Consequently, both the assessment order and the appellate order passed by the CIT(A) are unsustainable and should be quashed.

Ground-6 Erroneous Treatment of Hypothetical income the Ld AO erred in law and on facts of the case in treating hypothetical interest income as unexplained income without any legal or factual basis. The CIT(A) further erred in not deleting the addition, which was based on arbitrary and unlawful presumptions. The assessment order and appellate order must be quashed.

Ground-7 Jurisdictional Overreach The Ld. AO erred in assuming jurisdiction, issuing notices, and passing the assessment order without satisfying the mandatory jurisdictional requirements under the Act. The lack of valid jurisdiction renders the entire assessment process void.

Ground-8 Non-supply of Satisfaction The Ld. AO erred in passing the assessment order and issuing notices without supplying satisfaction as required under Section 153C of the Income Tax Act. This procedural lapse vitiates the assessment order, which deserves to be quashed.

Ground-9 Right to Amend Grounds The appellant craves leave to add, alter, or amend any of the grounds of appeal during or before the hearing of the appeal.

3. Since, these two appeals filed by the same assessee for different assessment years, and the issues are involved in both the appeals are common and identical, therefore I have clubbed these two appeals and heard together and



a consolidated order is being passed for the sake of convenience and brevity. The facts and grounds of appeal raised by the assessee in ITA No.15/Rjt/2023 have been taken into consideration for deciding these appeals *en masse*.

4. Brief facts qua the issue are that the assessee (Late Shri Babubhai Joitram Patel) is an individual who earned income from business and other sources. The return of income for the year has been filed u/s 139 of the Act, on 10.07.2018 declaring total income of Rs.88,310/-. A search and seizure action u/s 132 of the Act was carried out by Income Tax Department, in the case of Avani Group of Vadodara on 23.01.2020. The business premises of Shri Harsh Dipak Shah & Avani Petrochem Pvt. Ltd, At 5-423, Vad Falia, Ghee Kanta Raopura, Vadodara and Aakash Transport Co. 26 Vad Falia, Ghee Kanta. Raopura, Vadodara was also covered under search action. During the course of search proceedings at the said premise, certain incriminating documents were found and seized and were inventoried as A-4, A-112. A-93, A-95, A-36, A-88/AB-7, A-1, A-2. A-3, A-7/AB-6. Some of these documents contained details pertaining to/ related to the assessee. During post search proceedings, a summons dated 18.08.2020 was issued to Sh. Babubhai J. Patel with request to give details / explanation regarding his transactions with Avani group. Below given is the reply of assessee (through LH Shri Kaushal Patel), wherein he has simply denied the transactions with Avani Group, without any cogent evidences. Since, the assessee has passed away on 11.09.2019. Shri Kaushal Babubhai Patel, being legal heir of Late Shri Babubhai J Patel, filed his reply to the said summons. Thereafter, proceedings u/s. 153C was initiated on 30.06.2021. The notice 153C was therefore issued on the name / PAN of assessee. However, during the proceedings, all the notices have been issued on the name of Legal Heir, Shri Kaushal B. Patel, being legal heir, was liable to respond against the proceedings initiated u/s 153C of the Act. The section 159 of the Act binds him for the same, which reads as under:



“..... where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased

For the purpose of making an assessment (including an assessment, reassessment or re-computation under section 147 of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.....”

5. In response to the above notice, the assessee/LH has not filed return of income. Further, notices u/s 142(1) have been issued on 24.11.2021 along with a detailed questionnaire seeking details and explanations from the assessee/LH. A reminder u/s 142(1) was issued on 15.11.2021 to the assessee/LH requesting therein to file return of income u/s 153C. Thereafter a show cause notice proposing the additions was issued on 16.12.2021. In view of natural justice, copies of the seized documents containing the information related to the assessee, satisfaction note of both AO and relevant part of statements have also been provided to the assessee, whenever he/she has asked for.

6. The assessing officer noticed that in response to all the notices issued by him, the assessee has not filed return of income. Also, in response to the above all notice/questionnaire, the assessee/Legal Heir or his authorized representative has filed objections only against the proceedings, initiated u/s 153C, on official e-mail address. The same have been duly disposed of, and the assessee /LH of assessee was again requested to comply with the ongoing assessment proceedings. However, despite several notices as well as reminders, the assessee did not respond. Therefore, the sequence of events narrated clearly reveals the



fact that the assessee is non-cooperative and has scant respect for compliance with his legal obligations. Further, going through the facts of the case, during the course of search proceedings at the business premises of Shri Harsh Dipak Shah & Avani Petrochem Pvt. Ltd. and Aakash Transport Co., various incriminating documents were found and seized. While going through the seized documents inventoried as Annexure-A-2/AB-6, it came to notice that Avani Group has noted down various transactions regarding loans taken and repayment of loans and interest made to the lenders, in the said annexure. The page no. 9 of the same was reproduced by the Ld. AO in his order. According to this page, Rs.2,00,00,000/- have been borrowed from Sh. Babulal on 07.05.2015. The Assessing Officer referred various seized documents and analyzed them in the assessment order page no. 4 to 18. The Ld. AO issued several notices to legal heirs of the assessee, but no reply was given by the legal heirs. Therefore, in view of the non-cooperative attitude of the assessee and considering the limited time available for completing the assessment proceedings, the adverse inference was drawn to the effect that the assessee is not inclined to comply with the legal requirements as stipulated in the various provisions of the Income Tax Act 1961. Consequently, the assessment was being finalized as per provisions of section u/s 144 of the Act i.e. best judgment assessment based on the details available on the records and AO held that assessee has earned unexplained income of Rs. 9,00,000/- i.e. interest income @18% per annum on the above investment, the same was added to the total income of assessee for the year treating the same as income from other sources.

7. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has remitted the issue back to the file of the AO for fresh assessment, observing as follows:

“5.3 Legal Provisions:-



a. Amendment by Finance (No.2) Act of 2024

The Finance Act, 2024 has empowered the Commissioner Appeals to examine the cases where assessment order was passed as best judgment case u/s 144 of the Act and to set aside the assessment in appropriate matters and refer the case back to the Assessing Officer for making a fresh assessment. This procedural amendment is applicable to appellate orders passed by the Commissioner Appeals on or after 01/10/2024.

b. Introduction of Proviso to Sec 251(1)(a)

Proviso to Section 251(1)(a) has been introduced with effect from 01/10/2024 and it reads as follows -

"Provided that where such appeal is against an order of assessment made under section 144, he may set aside the assessment and refer the case back to the assessing officer for making a fresh assessment."

c. Amendment in Sec 153(3):

Insertion of the term "section 250" has been made with effect from 01/10/2024 in 3 places, including the proviso whereby the Assessing Officer has been specified time To complete fresh assessment pursuant to setting aside of the assessment order by the CIT Appeals as per proviso to section 251(1)(a) of the IT Act with effect from 01.10.2024.

5.4 In view of the above legal provisions and considering that the matter requires factual verification, the assessment order is set aside and the Assessing Officer is directed to make a fresh assessment after providing adequate opportunities of being heard to the appellant and following the principles of natural justice. The appellant is required to make necessary compliance to the notices issued by the AO within the time limit prescribed and to co-operate the assessment proceedings. It is pertinent to point out that the appellant is to submit necessary evidences in support of its Income tax return and the contentions made through the grounds of appeal so that the Assessing Officer can pass a fresh assessment order after considering all the facts of the case.

5.5 The assessment order u/s. 153C r.w.s.144 of the Act dated 01.03.2022 for the year under consideration is accordingly set aside in accordance with Proviso to Section 251(1)(a) with a direction to the AO to make a fresh assessment in accordance with rules and timelines prescribed u/s 153(3) of the Act."

8. At the outset, Ld. Counsel for the assessee, submitted that notice u/s 143(2) of the Act, was issued in the name of the dead person, despite informing to the department that the assessee had died. The Ld. Counsel submitted that assessing officer framed assessment order u/s. 144 of the Act, on 01.03.2022. The assessee under consideration has died on 11.07.2019 and death certificate of the assessee is reproduced below:



0811161

મરણનું પ્રમાણ પત્ર
CERTIFICATE OF DEATH
ગુજરાત સરકાર
GOVERNMENT OF GUJARAT
આરોગ્ય ખાતુ
Department of Health

ખરી નકલ Certified Copy
નમુનો ક્રમાંક-૭
Form No. 8 (See Rule 8/13)
કિંમત રૂ. ૫૦
Fee Rs. 50

(જન્મ અને મરણ નોંધણી અધિનિયમ ૧૯૬૯ ની કલમ ૧૨/૧૭ મુજબ અને ગુજરાત જન્મ અને મરણ નોંધણી નિયમો, ૨૦૦૪ના નિયમ - ૮ મુજબ)
(Issued under Section 12/17 of the Registration of Births and Deaths Act, 1969 & under section 8 of Gujarat Births & Deaths Registration Rules, 2004)

અમદાવાદ મ્યુનિસિપલ કોર્પોરેશન
Amdavad Municipal Corporation

આથી પ્રમાણપત્ર આપવામાં આવે છે કે નીચેની માહિતી મરણના મુળ રેકૉર્ડમાંથી લેવામાં આવી છે જે ગુજરાત રાજ્યના અમદાવાદ શહેરના રજીસ્ટરમાં નોંધાયેલ છે.
This is to certify that the following information has been taken from the original record of Death at Amdavad/Navrangpura of Gujarat State/ Ward નવરંગપુરા/NAVRANGPURA

માસ/ Month	સપ્ટેમ્બર/September	રોજ/ of	2019
(૧) નામ Name	:	બાબુભાઈ BABUBHAI	
(૨) જાતિ Sex	:	પુરુષ MALE	
(૩) મરણની તારીખ Date of Death	:	11/09/2019	
(૪) મરણ સ્થળ Place of Death	:	ઘર AT HOME	
(૫) પિતા / માતા / પતિનું નામ Name of Father / Mother / Husband	:	જીઈતારામ પટેલ JITARAM PATEL	
(૬) મરનારના મૃત્યુ સમયનું સરનામું Address of deceased at the time of Death	:	૯, સુવાસ કોલોની, સેન્ટ ડેવિયર્સ હાઈસ્કૂલ રોડ, નવરંગપુરા, અમદાવાદ 9, SUVAS COLONY, ST. XAVIERS HIGH SCHOOL ROAD, NAVRANGPURA, AHMEDABAD	
(૭) મરનારનું કાયમી સરનામું Permanent Address of deceased	:	૯, સુવાસ કોલોની, સેન્ટ ડેવિયર્સ હાઈસ્કૂલ રોડ, નવરંગપુરા, અમદાવાદ 9, SUVAS COLONY, ST. XAVIERS HIGH SCHOOL ROAD, NAVRANGPURA, AHMEDABAD	
(૮) નોંધણી ક્રમાંક Registration No	:	2019-DW-0010-0000868	
(૯) નોંધણી ની તારીખ Date of Registration	:	23/09/2019	
(૧૦) રીમાર્ક્સ/ Remarks	:		

MGHAMMED
નકલ બનાવનારની સહી
Prepared By

મુકાબલ કરનારની સહી
Checked By
LAW GARDEN-CCC
30/09/2019

DR DIVYANG OZA
સત્તાધિકારીની સહી
Signature of Issuing authority
આરોગ્ય ખાતુ (જન્મ પરણ વિભાગ)
Department of Health (Births & Deaths)
અમદાવાદ મ્યુનિસિપલ કોર્પોરેશન
Amdavad Municipal Corporation

C. D. C.
A.M.C.
LAW GARDEN

નોંધ : જન્મ અને મરણ નોંધણી અધિનિયમ ૧૯૬૯ ની કલમ ૧૨/૧૭ મુજબ અને ગુજરાત જન્મ અને મરણ નોંધણી નિયમો, ૨૦૦૪ના નિયમ - ૮ મુજબ
NOTE: (1) In the case of death no disclosure shall be made of particulars regarding the cause of death as entered in the register. See provision in Rule Section 17(1)(b). (2) Permanent address and present address were not applicable before 1.1.2007



9. Learned Counsel further stated that during the proceeding before the DDIT Investigation, it was informed to the revenue authorities that the assessee had died and the said information was available before the Assessing Officer, during the assessment proceedings, that the assessee has died, however, in spite of this, the assessing officer issued the notices in the name of the dead person and also framed assessment, in the name of the dead person, therefore, the assessment order passed by the assessing officer on the dead person is invalid and may be quashed.

10. On the other hand, Ld. Sr. DR for the revenue, argued that, since the assessing officer has framed the assessment order u/s. 144 of the Act, therefore, the Ld. CIT(A), remitted the issue back to the file of the assessing officer for fresh adjudication. The Ld. DR also submitted that during the assessment proceeding, the further notices were issued in the name of the legal heirs, therefore, it is sufficient compliance and assessment order should not be quashed on this issue.

11. I have heard both the parties and noted that notice u/s 153C r.w.s. 143(3) of the Act was issued in the name of deceased person and notice u/s 142(1) of the Act, was also issued in the name of the deceased person. In fact, the order was framed in the name of the deceased person. Therefore, I find that the assessee under consideration had died on 11.07.2019 and the assessing officer was aware about this fact that the assessee had died, despite of this fact, the notices were issued in the name of the deceased person and ultimately the assessing officer framed the assessment order in the name of the deceased person. Therefore, I find merit in the submission of the Ld. Counsel for the assessee, and hence assessment order needs to be quashed, and for that reliance is placed on the judgement of the Co-ordinate Bench of ITAT Rajkot in the case



of Amrutlal Karsandas Samani in ITA No.463/Rjt/2024, order dated 25.04.2025. In this order, the Tribunal has *inter alia* observed as follows:

14. We have heard both the parties and perused the material available on record. We note that Late Shri Amrutlal Karshandas Samani (assessee) was running his business of Grain, Pulses, Jaggery, Sugar, etc, on wholesale, semi wholesale basis for more than 25 (Twenty five) years, that is, from the starting up his business until his sudden death. His unfortunate death occurred on 24/12/2018. Copy of the death certificate is enclosed on paper book page no. 31, which we have examined. Then after on the base of portal data Ld. ADIT (Inv), Jamnagar issued summons on 8-7-2019 and 23-02-2021 for the verification of cash deposited, during the demonetization period 09.11.2016 to 31.12.2016 in which SBN (old notes) cash deposit was at Rs. 19,00,000/-. In response to the summons, Legal heir of assessee filed reply and informed the income tax authorities that assessee had passed away on 24-12-2018 and requested to drop the proceedings. Thereafter, the case of the assessee was reopened u/s. 147 of the IT Act, 1961, after getting approval from the Ld. Add/Joint commissioner of Income Tax, Range-1, Jamnagar, a notice u/s. 148 of the IT Act, 1961 was uploaded at portal on 16-04-2021. However, Ld. AO continued proceedings, issued notice u/s 143(2) of the Act. The assessee again informed to the income tax officer about death of assessee. However, assessing officer framed the assessment order on the dead person which is bad in law. The learned PCIT also framed the revision order under section 263 of the Act on the dead person. That is, revision order under section 263 of the Act was framed on, non-existent assessee, hence, revision order framed by the ld. PCIT, under section 263 of the Act, is bad in law and needs to be quashed. We note that Co-ordinate Bench of ITAT Cuttack, in the case of Janardan Gupta, (2019) 75 ITR 64 (trib), on the identical and similar facts, has quashed the revision order under section 263 of the Act, observing as follows:

“6. After hearing both the sides and perusing the entire material available on record and the impugned order passed u/s 263 of the Act, we noticed from the death certificate submitted by the assessee that late Janardan Gupta died on 15.03.2015 which has duly been recorded by the AO in his assessment order and order has been passed in the name of legal heir also. We further noticed from the order of Pr.CIT that he has passed order in the name of deceased-assessee who was not in existence on the date of passing of the revisional order u/s. 263 of the Act. We also agree with the case law relied on by the ld. AR in the case of M. Hemanathan (supra), wherein the Hon'ble Madras High Court in para 12 has held as under

“12. But unfortunately, the said contention loses sight of the settled position that any proceeding initiated against a dead person is a nullity. The contention of the learned Standing Counsel for the Department loses sight of one important distinction between a case where the proceedings are initiated against a person, who is alive, but continued after his death and a case of proceedings initiated against a dead person himself. If the proceedings had been initiated against a person, who was alive, and they were continued after his death after putting his legal heirs on notice, those proceedings, under certain circumstances, may be saved. Such a situation is also contemplated in civil proceedings and a provision is made in the Civil Procedure Code itself under Order XXII Rule 4. Therefore, the cases where the very proceedings are initiated against a dead person stand apart from those proceedings where



they are initiated against a live person, but continued after his death against the legal heirs. Hence, the first contention is rejected.”

7. Respectfully following the above decision of Hon'ble Madras High Court, we are of the considered view that the Pr. CIT is not justified in setting aside the assessment order invoking powers u/s.263 of the Act ignoring the fact that the assessee is already expired on 15.03.2015, which was already informed by legal heir Shri Jitendra Kumar Gupta, the son of the assessee during the course of assessment proceedings. The AO has also passed order u/s.143(3) of the Act in the name of legal heir of the assessee. Therefore, fresh assessment cannot be initiated against the deceased assessee. Accordingly, we quash the order passed by the Pr. CIT u/s.263 of the Act and allow the appeal of the assessee.8. In the result, appeal of the assessee is allowed.”

15. Hon`ble High Court of Madras, in the case of M.Hemanathan, 384 ITR 177 (Mad-HC), held that where notice issued in name of deceased-assessee was served upon legal heir, who, then, participated in proceedings, such proceedings was a nullity being initiated against a dead person. It was also held that where notice issued in name of deceased-assessee was served upon legal heir who, then, participated in proceedings, said legal heir could not be deprived of right to challenge service of notice. The Co-ordinate Bench of ITAT Delhi in the case of Sheela Devi, 64 CCH 186 (Del-trib), held that if show cause notice was addressed to deceased assessee instead of legal heirs, order was ab-initio void. Respectfully following the above binding precedent, we quash the order passed by the ld. PCIT under section 263 of the Act, dated 21.02.2024.

12. As the issue is squarely covered in favour of the assessee, by the decision of the Co-ordinate Bench, (supra) and there is no change in facts and law and the Ld. Sr-DR for the Revenue is unable to produce any material to controvert the aforesaid findings of the Co-ordinate Bench (supra). I find no reason to interfere in the said order of the Co-ordinate Bench, therefore, respectfully following the judgment of the Coordinate Bench, I allow both these appeals of the assessee.

13. In the result, both appeals filed by the assessee (**ITA No. 15 & 23/Rjt/2025 for AYs 2018-19 and 2019-20**) are allowed.

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

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Rajkot
दिनांक/ Date: 05/08/2025
Dkp Outsourcing Sr.P.S.



Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot