

IN THE INCOME-TAX APPELLATE TRIBUNAL "D" BENCH,  
MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No. 1742/MUM/2025  
(A.Y. 2018-19)

Assistant Commissioner of Income Tax, Central Circle – 7(3), Room No. 655, Floor 6 <sup>th</sup> , Aayakar Bhavan, M.K. Road, Mumbai – 400 020, Maharashtra	v/s. बनाम	<b>Raniben Khimji Patel, Legal Heir of Shri Karamshi Patel, 602, 6<sup>th</sup> Floor Petit Tower, August Kranti Marg, Kempes Corner, Mumbai 400 036, Maharashtra</b>
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADPP8816G</b>		
<b>Appellant/अपीलार्थी</b>	<b>..</b>	<b>Respondent/प्रतिवादी</b>

For Assessee	:	Ms. Komal Dedhia, AR
For Revenue	:	Shri Annavaram Kosuri, (Sr. AR)

Date of Hearing	11.08.2025
Date of Pronouncement	09.09.2025

**आदेश / ORDER**

**PER PRABHASH SHANKAR [A.M.] :-**

The present appeal arising from the appellate order is filed by the Revenue against the order passed by the Learned Commissioner of Income-tax, Appeal, CIT(A) 49, Mumbai [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 26.07.2021 for the Assessment Year [A.Y.] 2018-19.



2. The grounds of appeal are as under:

1. *“On facts and circumstances of the case and in law, the Learned CIT(A) erred in invalidating the assessment order passed by the Assessing Officer (AO) without considering the provisions of Section 292B of the Income Tax Act, 1961, which clearly stipulates that no proceeding under the Act shall be invalid merely due to any mistake, defect, or omission in the name, designation, or description of the assessee, or any procedural defect, provided that the substance of the order is valid and no prejudice has been caused to the taxpayer.”*
2. *“On facts and circumstances of the case and in law, the Learned CIT(A) failed to consider that under Section 159 of the Income Tax Act, 1961, the liability to pay tax passes to the legal heir upon the death of the assessee.”*
3. *“On facts and circumstances of the case and in law, the Learned CIT(A) failed to consider the decision of High Court in the case of Sardar Harvinder Singh Sehgal and Ors. vs Assistant Commissioner Of Income-Tax, which emphasized that the intention behind the Income Tax Act is to ensure that taxes are assessed correctly, and minor defects or errors in the notice (like incorrect or missing details) would not invalidate the process, provided the substance is intact.”*

3. Brief facts of the case are that the assessee had filed return of income declaring total income of Rs. 21,67,880/-. The case was selected for scrutiny under CASS. Subsequently, statutory notices u/s 143(2) and u/s.142(1) along-with the questionnaires were issued and served to the assessee. During the assessment proceedings, the explanation for interest expense on unsecured loans was not fully accepted by the AO and disallowance of interest expense of Rs. 52,32,511/- u/s. 69C of the Act and addition of interest capitalized to WIP of Rs. 33,80,174/- to the



business income on account of its impact on net profit for the year under consideration were made to the income of the assessee.

4. In the subsequent appeal before the Id.CIT(A), the assessee inter alia claimed that the assessment order passed u/s. 143(3) of the Act was without jurisdiction, invalid, bad in law and in violation of the principals of natural justice and **order passed in the name of the deceased assessee is void ab initio and lacks jurisdiction despite specifically intimation in the course of assessment proceedings. It was submitted that it is not in dispute that the legal heir of late Shri Khimji Karamshi Patel had not participated in the proceedings. All that the legal heir of late Shri Khimji Karamshi Patel did was to inform the Assessing Officer about the death of her husband in April 2021. Even after coming to know about the demise of late Shri Khimji Karamshi Patel, the department could have issued a valid notice to the legal heir as the period of limitation of 21 months had not expired. We fail to understand what prevented the department from issuing a valid notice to the legal heir within the time period.**

4.1 The Id.CIT(A) after examining the issue observed that the legal heir of the assessee namely Mrs. Raniben Khimji Patel had duly



intimated to the Assessing Officer about demise of Shri Khimji Karamshi Patel on 15.04.2021. Hence, on facts, it is a case where the Assessing Officer was fully aware about the legal heir of the deceased assessee before passing the assessment order on 26.07.2021. Before him, the assessee relied upon number of case laws wherein it is held that the proceedings get vitiated even when the notice is issued in the name of the deceased. In the assessment order, the address of the assessee was mentioned as Legal Heir of Shri Khimji Karamshi Patel Ground Floor, 53 Sheth Motisha Lane, Malgaon Mumbai, Mumbai 400010, Maharashtra, India'. **However, the name of the assessee is mentioned as 'Khimji Karamshi Patel'. Thus, the assessment order was passed in the name of the deceased assessee and not his legal heir.** There is no discussion regarding the demise of the assessee in the body of the assessment order. He further stated the appellant has relied upon the decision of **Hon'ble ITAT, Jaipur in the case of Late Sh. Birdi Chand vs. ITO, ITA No. 502/JPR/2023, where the facts of the case are identical.** Respectfully, following the cited case laws and the fact that even after intimating about the demise of the deceased assessee and his legal heir prior to issue of assessment order, the AO ought to have issued the impugned order on 26.07.2021 in the name of legal heir of the deceased



assessee which was not the case here, the impugned order passed u/s 143(3) was held to be invalid.

5. Before us, the ld.DR has vehemently contested the appellate order claiming that such a mistake was rectifiable in the light of provisions of section 292B of the Act. Therefore, the appellate authority wrongly invalidated and quashed the assessment order. However, he did not controvert the material facts of the case as discussed in the appellate order. On the other hand, the ld.AR has duly supported the facts on record and detailed findings of the ld.CIT(A).

6. We have carefully considered the rival submissions, contents of the appellate order and findings therein. Section 159 of the Act provides that: (i) Legal representatives ( LR) would be liable for the tax dues of the deceased, (ii) for making assessment or reassessment (in respect of income of the deceased) or for levying any tax (on the income of the deceased), LR would be deemed assessee, (iii) proceedings may be continued against LR from the stage at which it stood on the date of the death of the deceased, (iv) all the provisions of the Act will be applicable against the LR., (v) Liability of LR will be limited to the extent of estate of the deceased. Thus, LR would be a deemed assessee on behalf of the deceased. Therefore, where an individual dies, during assessment



proceedings, then the LR have to inform to the Assessing Officer, along with the death certificate and names and addresses of all the legal heirs. Then AO should bring all the legal heirs on the record. Where he did not take any such steps to bring all LR's of deceased on record and/or passed assessment order on deceased assessee treating assessee as alive, assessment so made would be invalid. The AO has to issue fresh notices to all the legal heirs for continuing the proceedings from the stage at which they were on the date when the assessee had expired.

6.1 Whereas in this case, admittedly the LR did not participate in the proceedings but had informed the AO about the death of the assessee. The AO went on to complete the assessment in the name of the deceased assessee and did not comply with the provisions of section 159 of the Act, thus making the whole proceeding null and void which could not be cured by the provisions of section 292B of the Act. Reliance of the Revenue on the case of *Sardar Harvinder Singh Sehgal and Others v. ACIT and Others* (Guwahati HC) is not applicable to the facts of the case are factually distinguishable.

7. To conclude we are of the considered opinion that in effect the assessment order passed in the name of a dead person was invalid. The hon'ble Supreme Court of India in the case of **PCIT vs. Maruti Suzuki**



**India Limited 265 Taxman 515** has categorically held that where assessment order is passed in the name of a non-existing entity, the same is without jurisdiction and has to be set aside. The hon'ble Court had held that the notice issued in the name of an old entity and the order passed in the name of the old entity is bad in law, inspite of the fact that the factum of merger was known to the Officer. Further, such error of the Assessing Officer was held by the Court to be not curable under section 292B of the Act as the same constitutes substantive illegality and not mere procedural violation. Accordingly, we hold that the assessment order in the name of dead person in the instant case was without jurisdiction and the Id.CIT(A) has rightly quashed the same.

8. In the result, the appeal of the Revenue stands **dismissed.**

Order pronounced in the open court on 09.09.2025.

Sd/-

**SANDEEP GOSAIN**

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

**PRABHASH SHANKAR**

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई / Mumbai

दिनांक / Date 09.09.2025

Lubhna Shaikh / Steno



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.

