

**INCOME TAX APPELLATE TRIBUNAL  
AGRA BENCH "SMC": AGRA  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
(Through virtual hearing)**

**ITA No. 51/AGR/2025  
(Assessment Year: 2009-10)**

Sarvesh Devi (legal heir of Late Madan Lal Tomar, 51, Keshav Kunj, Pratap Nagar, Agra, 282 001, UP (Appellant) <b>PAN: AAXPT3982D</b>	Vs.	ITO, Ward-2(1)(1), Agra (Respondent)
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Assessee by :	Shri Rajesh Malhotra, CA
Revenue by:	Shri Anil Kumar, Sr. DR
Date of Hearing	20/08/2025
Date of pronouncement	13/11/2025

**ORDER**

1. The appeal in ITA No. 51/AGR/2025 for AY 2009-10, arises out of the order of the Id National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. NFAC', in short] dated 09.12.2024 against the order of assessment passed u/s 147 r.w.s. 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 25.07.2019 by the ITO, Ward-4(2), Agra (hereinafter referred to as 'Id. AO').
2. Though the assessee has raised several grounds of appeal, I find that the preliminary issue raised by the assessee is challenging the validity of framing of assessment on a dead person. Since, it goes to the root of the matter, I deem it fit to address the same first.
3. I have heard the rival contentions and perused the material available on record. The return of income for AY 2009-10 was filed on 10.03.2010 declaring total income of Rs. 1,48,990/-. The case was selected for scrutiny vide issuance of notice u/s 143(2) of the Act on 23.08.2010. Madan Lal Tomar expired on

21.09.2010. The assessee is represented by legal heir Smt Sarvesh Tomar, among other legal heirs. The fact of death of the assessee Madan Lal Tomar was duly intimated to the Id AO during the course of assessment proceedings which fact is also acknowledged in page 2 of the assessment order. The details of legal heirs together with the legal heir certificate issued by Office of District Magistrate, Agra were also filed before the Id AO which is also taken note by the Id AO in page 2 of the assessment order. Despite this, the assessment stood framed u/s 144 of the Act on 17.11.2011 by the AO in the name of Late Madan Lal Tomar (deceased assessee) determining the total income of Rs. 38,94,600/-.

4. The Id AR before us challenged the validity of framing of assessment in the name of deceased by placing reliance on the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Maruti Suzuki India Ltd reported in 416 ITR 613 wherein it was observed as under:-

27. The submission however which has been urged on behalf of the Revenue is that a contrary position emerges from the decision of the Delhi High Court in ***Skylight Hospitality LLP*** (*supra*) which was affirmed on 6 April 2018 by a two judge Bench of this Court consisting of Hon'ble Mr Justice A K Sikri and Hon'ble Mr Justice Ashok Bhushan <sup>33</sup> *Sky Light Hospitality LLP* (*supra*). In assessing the merits of the above submission, it is necessary to extract the order dated 6 April 2018 of this Court:

"In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292B of the Income Tax Act.

The special leave petition is dismissed.

Pending applications stand disposed of."

Now, it is evident from the above extract that it was in the **peculiar facts** of the case that this Court indicated its agreement that the wrong name given in the notice was merely a clerical error, capable of being corrected under Section 292B. The "peculiar facts" of Skylight Hospitality emerge from the decision of the Delhi High Court<sup>34</sup> *Sky Light Hospitality LLP* (*supra*). *Skylight Hospitality, an LLP*, (*supra*) had taken over on 13 May 2016 and acquired the rights and liabilities of Skylight Hospitality Pvt. Ltd upon conversion under the Limited Liability Partnership Act 2008<sup>35</sup>. It instituted writ proceedings for challenging a notice under Sections 147/148 of the Act 1961 dated 30

March 2017 for AY 2010-2011. The "reasons to believe" made a reference to a tax evasion report received from the investigation unit of the income tax department. The facts were ascertained by the investigation unit. The reasons to believe referred to the assessment order for AY 2013-2014 and the findings recorded in it. Though the notice under Sections 147/148 was issued in the name of Skylight Hospitality Pvt. Ltd. (which had ceased to exist upon conversion into an LLP), there was, as the Delhi High Court held "substantial and affirmative material and evidence on record" to show that the issuance of the notice in the name of the dissolved company was a mistake. The tax evasion report adverted to the conversion of the private limited company into an LLP. Moreover, the reasons to believe recorded by the assessing officer adverted to the approval of the Principal Commissioner. The PAN number of the LLP was also mentioned in some of the documents. The notice under Sections 147/148 was not in conformity with the reasons to believe and the approval of the Principal Commissioner. It was in this background that the Delhi High Court held that the case fell within the purview of Section 292B for the following reasons:

"18...There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated 11.04.2017. They had objected to the notice being issued in the name of the Company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s. Skylight Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused."

**28.** The decision in *Spice Entertainment (supra)* was distinguished with the following observations:

"19. Petitioner relies on *Spice Infotainment Ltd. v. Commissioner of Service Tax*, [2012] 247 CTR 500. Spice Corp. Ltd., the company that had filed the return, had amalgamated with another company. After notice under Section 147/148 of the Act was issued and received in the name of Spice Corp. Ltd., the Assessing Officer was informed about amalgamation but the Assessment Order was passed in the name of the amalgamated company and not in the name of amalgamating company. In the said situation, the amalgamating company had filed an appeal and issue of validity of Assessment Order was raised and examined. It was held that the assessment order was invalid. This was not a case wherein notice under Section 147/148 of the Act was declared to be void and invalid but a case in which assessment order was passed in the name of and against a juristic person which had ceased to exist and stood dissolved as

per provisions of the Companies Act. Order was in the name of non-existing person and hence void and illegal."

**29.** From a reading of the order of this Court dated 6 April 2018 in the Special Leave Petition filed by ***Skylight Hospitality LLP*** (*supra*) against the judgment of the Delhi High Court rejecting its challenge, it is evident that the peculiar facts of the case weighed with this Court in coming to this conclusion that there was only a clerical mistake within the meaning of Section 292B. The decision in ***Skylight Hospitality LLP*** (*supra*) has been distinguished by the Delhi, Gujarat and Madras High Courts in:

- (i) ***Rajender Kumar Sehgal*** (*supra*);
- (ii) ***Chandreshbhai Jayantibhai Patel*** ; and (*supra*)
- (iii) ***Alamelu Veerappan*** (*supra*).

**30.** There is no conflict between the decisions of this Court in ***Spice Entertainment*** (*supra*) and in ***Skylight Hospitality LLP*** (*supra*) .

**31.** Mr Zoheb Hossain, learned Counsel appearing on behalf of the Revenue urged during the course of his submissions that the notice that was in issue in Skylight Hospitality Pvt. Ltd. was under Sections 147 and 148. Hence, he urged that despite the fact that the notice is of a jurisdictional nature for reopening an assessment, this Court did not find any infirmity in the decision of the Delhi High Court holding that the issuance of a notice to an erstwhile private limited company which had since been dissolved was only a mistake curable under Section 292B. A close reading of the order of this Court dated 6 April 2018, however indicates that what weighed in the dismissal of the Special Leave Petition were the peculiar facts of the case. Those facts have been noted above. What had weighed with the Delhi High Court was that though the notice to reopen had been issued in the name of the erstwhile entity, all the material on record including the tax evasion report suggested that there was no manner of doubt that the notice was always intended to be issued to the successor entity. Hence, while dismissing the Special Leave Petition this Court observed that it was the peculiar facts of the case which led the court to accept the finding that the wrong name given in the notice was merely a technical error which could be corrected under Section 292B. Thus, there is no conflict between the decisions in ***Spice Entertainment*** (*supra*) on the one hand and ***Skylight Hospitality LLP*** (*supra*) on the other hand.

It is of relevance to refer to Section 292B of the Income Tax Act which reads as follows:

"292B. No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B.

In this context, it is necessary to advert to the provisions of Section 170 which deal with succession to business otherwise than on death. Section 170 provides as follows:

"170. (1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,—

(a) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;

(b) the successor shall be assessed in respect of the income of the previous year after the date of succession.

(2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall, so far as may be, apply accordingly.

(3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assessed on the predecessor, cannot be recovered from him, the [Assessing] Officer shall record a finding to that effect and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in section 171, but without prejudice to the provisions of this section. Explanation.—For the purposes of this section, "income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession"

Now, in the present case, learned Counsel appearing on behalf of the respondent submitted that SPIL ceased to be an eligible assessee in terms of the provisions of Section 144C read with clause (b) of sub section 15. Moreover, it has been urged that in consequence, the final assessment order dated 31 October 2016 was beyond limitation in terms of Section 153(1) read with Section 153 (4). For the purposes of the present proceeding, we do not consider it necessary to delve into that aspect of the matter having regard to the reasons which have weighed us in the earlier part of this judgment.

**32.** On behalf of the Revenue, reliance has been placed on the decision of this Court in *CIT v. Jai Prakash Singh* [1996] 85 Taxman 407/219 ITR 737. That was a case where the assessee did not file a return for three assessment years and died in the meantime. His son who was one of the legal representatives filed returns upon which the assessing officer issued notices under Section 142 (1) and Section 143 (2). These were complied with and no objections were raised to the assessment proceedings. The assessment order mentioned the names of all the legal representatives and the assessment was made in the status of an individual. In appeal, it was contended that the assessment proceedings were *void* as all the legal representatives were not given notice. In this backdrop, a two judge Bench of this Court held that the assessment proceedings were not null and *void*, and at the worst, that they were defective. In this context, reliance was placed on the decision of the Federal Court in *Chatturam v. CIT* [1947] 15 ITR 302 (FC) holding that the jurisdiction to assess and the liability to pay tax are not conditional on the validity of the notice : the liability to pay tax is founded in the charging sections and not in the machinery provisions to determine the amount of tax. Reliance was also placed on the decision in *Maharaja of Patiala v. CIT* [1943] 11 ITR 202 (Bom.) ("**Maharaja of Patiala**"). That was a case where two notices were issued after the death of the assessee in his name, requiring him to make a return of income. The notices were served upon the successor Maharaja and the assessment order was passed describing the assessee as "His Highness...late Maharaja of Patiala". The successor appealed against the assessment contending that since the notices were sent in the name of the Maharaja of Patiala and not to him as the legal

representative of the Maharaja of Patiala, the assessments were illegal. The Bombay High Court held that the successor Maharaja was a legal representative of the deceased and while it would have been better to so describe him in the notice, the notice was not bad merely because it omitted to state that it was served in that capacity. Following these two decisions, this Court in **Jai Prakash Singh** (*supra*) held that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where the liability is created by a distinct substantive provision. The omission or defect may render the order irregular but not *void* or illegal. **Jai Prakash Singh** (*supra*) and the two decisions that it placed reliance upon were evidently based upon the specific facts. **Jai Prakash Singh** (*supra*) involved a situation where the return of income had been filed by one of the legal representatives to whom notices were issued under Section 142(1) and 143(2). No objection was raised by the legal representative who had filed the return that a notice should also to be served to other legal representatives of the deceased assessee. No objection was raised before the assessing officer. Similarly, the decision in **Maharaja of Patiala** (*supra*) was a case where the notice had been served on the legal representative, the successor Maharaja and the Bombay High Court held that it was not *void* merely because it omitted to state that it was served in that capacity.

**33.** In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in **Spice Entertainement** (*supra*) on 2 November 2017. The decision in **Spice Entertainement** has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in **Spice Entertainement** (*supra*).

**34.** We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are

made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.

**35.** For the above reasons, we find no merit in the appeal. The appeal is accordingly dismissed. There shall be no order as to costs.

5. Respectfully following the same, I have no hesitation to quash the assessment framed in the name of deceased person as illegal and void ab initio.

6. Since, the entire assessment is quashed, the adjudication of other grounds become academic in nature and no opinion is given thereon and they are left open.

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

Order pronounced in the open court on 13/11/2025.

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 13/11/2025  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi