

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

ITA No.6953/Mum/2025
(Assessment Year: 2017-18)

Suguna Radhakrishna Adappa, (Legal Heir of Late Radhakrishna Monappa Adappa) Santosh Lunch Home, Shop No.1, Vihar Darshan, 7 th Road, Rajawadi, Vidyavihar (East), Mumbai 400070	Vs.	Income Tax Officer, Ward 27(3)(1), Kalyan
(Appellant)	:	(Respondent)
PAN NO. AABPA 6632K		

Appellant by	:	Shri Devendra Jain
Respondent by	:	Shri Swapnil Choudhary, Sr. DR
(Appellant)		(Respondent)

Date of Hearing	:	14.01.2026
Date of Pronouncement	:	22.01.2026

ORDER

Per Saktijit Dey, Vice President:

This is an appeal by the assessee against an order dated 12.09.2025 passed by National Faceless Appeal Centre (NFAC), Delhi confirming the penalty imposed of Rs.1,04,171/- under section (u/s.) 271AAC(1) of the Income Tax Act, 1961 (in short the ‘Act’) for the Assessment Year (AY) 2017-18.

2. Briefly the facts are, the assessee (since deceased) was a resident individual. For the assessment year under dispute, the assessee had filed his original return of

income on 18.03.2018, declaring income of Rs.7,43,680/-. The return of income so filed was processed u/s. 143(1) of the Act. Subsequently, the Assessing Officer received information that in the year under consideration the assessee had deposited cash aggregating to Rs.13,48,500/- in two bank accounts. Alleging that income to the extent of cash deposited in the bank account has escaped assessment, Assessing Officer initiated proceedings u/s. 147 of the Act. Ultimately, he completed the assessment vide order dated 29.03.2022 adding back the amount of Rs.13,48,500/- u/s. 69A of the Act. The assessee contested the addition by filing an appeal before the learned First Appellate Authority.

3. Learned counsel appearing for the assessee made a statement at the bar that the appeal is still pending. Be that as it may, based on the addition made, the AO initiated proceeding for imposition of penalty u/s. 271AAC of the Act and ultimately passed an order imposing penalty of Rs.1,04,171/-. Though, the assessee challenged the imposition of penalty by filing an appeal before the First Appellate Authority, however, it was confirmed.

4. Before us, learned counsel appearing for the assessee raised a preliminary issue questioning the validity of the order passed imposing penalty. He submitted, by the time the order imposing penalty was passed on 15.09.2022 the assessee had died. Hence, no order imposing penalty could have been passed against him. To demonstrate the death of the assessee, learned counsel furnished copy of the death certificate issued by Municipal Corporation of Greater Mumbai. Further, he strongly

relied upon the decision of the Hon'ble Bombay High Court in the case of '*Geeta vs. Principal Commissioner of Income-tax*' [2024] 166 taxmann.com 369 (Bombay).

5. The learned Departmental Representative (DR) submitted, since the AO had no intimation regarding the death of the assessee, he rightly passed the order of penalty in assessee's name.

6. We have considered rival submissions and perused the materials on record. As per the copy of the death certificate furnished by the assessee, it appears that the assessee had died on 03.06.2021. Whereas, the show cause notice u/s. 274 r.w.s. 271AAC(1) of the Act was issued to the assessee on 29.03.2022 much after the assessee had died. Thereafter, the penalty order was passed on 18.09.2022. In case of '*Geeta vs. Principal Commissioner of Income-tax*' (supra) the Hon'ble jurisdictional High Court, while dealing with more or less identical issue, has held as under:

"8. It cannot be debated upon that it is the duty of the Department to ensure that its notice is issued and executed on a person to whom it is intended to be served. If the Department gets knowledge after issuance of such a notice that the concerned assessee has passed away, there must be a mechanism to recall such a notice since, it would be a wasteful exercise to spend time for attempting to serve such a notice on a dead person, in as much as, it would not advance the case of either of the parties since a dead person would not be answerable to or respond to the notice and the legal heirs, unless served with a notice, would have no authority to reply to the said notice.

9. *Since we are informed that the CBDT has the scope of issuing instructions under Section 119 of the Income Tax Act for ensuring effective and proper administration, we would advise the CBDT, if there is no other legal impediment, to issue appropriate instructions to the*

concerned Departments to recall or withdraw such a notice, once it is brought to the knowledge of the Authority that the addressee has passed away. There must be a provision to withdraw such notice, lest every legal representative will be compelled to file a Petition in this Court and pray for an order for quashing the said notice. We trust that the CBDT would consider this observation for issuing an instruction under Section 119 for the purpose of recalling a notice which is issued to a dead person.

10. In view of the above, this Writ Petition is allowed in terms of prayer clause-C. The impugned notice dated 16.03.2024, stands quashed and set aside for having been issued to a dead person. Needless to state, the Department is at liberty to issue an appropriate notice in place of the earlier notice, to the appropriate legal representative and proceed with the matter. In the peculiar facts of this case, since a fresh notice would actually be a replacement of the earlier notice, which was inadvertently issued to a dead person, as the Department did not have any knowledge and the widow did not intimate the Department of the said event, contentions of the parties with regard to such notice are kept open.

11. Since we have requested the CBDT to issue instructions as observed above, we request Respondent No.1 to place this order before the CBDT for compliance.”

7. As could be seen from the observations of the Hon'ble Jurisdictional High Court, as aforesaid, it is the duty of the Department to ensure that penalty notice is issued and executed on a person who is capable of answering /responding to the notice. In the facts of the present case, undoubtedly, the penalty notice was issued to a dead person and not to the legal heirs. It may be a fact that the death of the assessee was not within the knowledge of the AO. However, that cannot validate the proceeding against a dead person, unless it is initiated through legal heirs.

8. In view of aforesaid, we are inclined to set aside the order passed imposing penalty u/s. 271AAC(1) of the Act and that of learned First Appellate Authority as

well. It is open to the AO to initiate penalty proceedings against the legal heirs subject to other statutory conditions and limitation.

9. In the result, appeal is allowed as indicated above.

Order pronounced in the open court on 22/01/2026.

Sd/-
(Jagadish)
Accountant Member

Sd/-
(Saktijit Dey)
Vice President

Mumbai; Dated : 22/01/2026

Aks/-

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai