



**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH "DB", JABALPUR**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI, ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No. 176/JAB/2024
Assessment Year: 2012-13

Rajkumar Valecha L/h of Late Shri Ghanshyam Das Valecha S-736/1-4 Mahavir Complex, Russal Chowk-482001.	v.	DCIT Circle-2(1) Annexue Building Napier Town-482001.
PAN:ABJPV5609E		
(Appellant)		(Respondent)

Appellant by:	Shri G. N. Purohit, Sr. Advocate		
Respondent by:	Shri Rahul Padha, JC-2		
Date of hearing:	11	02	2026
Date of pronouncement:	27	02	2026

ORDER

PER KUL BHARAT, VICE PRESIDENT.:

This appeal, filed by the assessee, against the order dated 30.09.2024 of learned Commissioner Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred as to "Ld. CIT(A)"] pertaining to the assessment year 2012-13. The Assessee has raised the following grounds of appeals: -

"(1)The learned CIT(A) and AO have erred in law and facts of the case in farming the assessment order in the name of dead person and CIT(A) upholding the validity of such order ignoring the judgment of jurisdictional High Court in the case of CIT V/s Prabhawati Gupta and others (1998)231 ITR 188 (M.P.). The order is void ab initio should be annulled.

2. The learned CIT (A) has framed the appeal order in the name of a dead person is a nullity should be quashed.

3. The assessment order framed under section 147 read with section 144B of the Income Tax Act on 25/10/2021 is barred by limitation in view of the section 153(2) ought to have been completed before 31/03/2021. The assessment order should be quashed.

4. The learned AO as well as CIT(A) has failed to appreciate that proviso added in section 50(c) w.e.f 01/04/2017 is clarificatory in nature shall have retrospective operation. The guideline value of the financial year 2007-08 should have been adopted for application of section 50(c) as the agreement for sale is dated 22/04/2007.

5. *The legal heir was registered on the IT portal on 26/04/2019, the CIT (A) and AO cannot take shelter that death certificate was not submitted before AO. The copy of death certificate is submitted before CIT(A) which is ignored to uphold the legality of assessment is grossly unjustified. The assessment order is liable to be annulled.*

6. *The reopening of the assessment is bad in law as the capital gain on sale of land was disclosed in the return of income filed by the assessee. The reopening is illegal.*

7. *The service of notice u/s 148 on 01.04.2019 is barred by limitation for reopening of assessment. The notice u/s 148 and subsequent proceedings should be quashed in toto.*

8. *The appellant craves permission to raise any other ground or grounds that may arise before or during the course of hearing of this appeal”*

2. The facts giving rise to the present appeal are that in this case, the assessee had filed his return of income on 30.09.2012 for A.Y. 2012-13. The original return was duly processed u/s 143(1) of the Income Tax Act, 1961 (“Act”, for short). Thereafter, the case was re-opened by the Assessing Officer (“AO”, for short) for framing assessment u/s 147 of the Act on the basis that certain income escaped assessment *qua* sale of immovable property. Accordingly, a notice u/s 148 read with section 147 of the Act was issued on 29.03.2019 by the legal heir of the assessee. Pertinently, the return of income was filed by the legal heir of the assessee in response to the notice issued u/s 148 of the Act. The Assessing Officer, after considering the material available on record, proceeded to make an addition of Rs. 22,23,445/- and thereby assessed the total income at Rs. 70,16,450/- as against the returned income of Rs. 47,93,000/-. The assessment was framed in the name of the deceased assessee. Aggrieved by this, the assessee preferred appeal before the Ld. CIT(A), who also dismissed the appeal of the assessee. Now the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal, the Ld. Counsel for the assessee contended that the assessment has been framed in the name of the dead person. It is stated that in response to the notice u/s 148 of the Act returned was filed by the legal heir of

the assessee. However, it is pointed out that while framing the assessment the assessment has been framed against the dead person despite the Assessing Officer having noted in his order regarding the returned filed by the legal heir of the assessee. It is also submitted that the assessee Shri Ghanshyam Das Valecha expired on 06.02.2019. A death certificate issued by Registrar (Birth & Death) Municipal Corporation, Jabalpur is placed on record. Thus, he prayed that the impugned order is bad in law and ex-facie non-est as the same has been passed in the name of a deceased person, and is therefore liable to be quashed as void ab initio.

4. On the other hand, the Ld. Departmental Representative (DR) opposed the submission and supported the orders of the lower authorities.

5. We have heard rival contention and perused the materials available on records. Undisputedly, the impugned order has been passed against dead person. It is well settled law that any order that is passed against a dead person such order is *non-est* in the eyes of law. The Revenue has not brought any material to rebut the contention of the assessee. Even if, the provision of Section 159 of the Act is taken into account then also the impugned order cannot be sustained. Undisputedly, even after taking note of the death of the assessee, the Assessing Officer failed to frame the assessment in the name of the legal representative. The assessment order has been passed in the name of Shri Ghanshyam Das Valecha, who had admittedly expired on 06.02.2019 prior to passing of assessment order. In para 2 of the assessment order itself, it is recorded that the legal heir, Shri Rajkumar Valecha, filed a fresh return of income on 27.11.2019, declaring total income of Rs.47,93,000/-. The Ld. CIT(A) has grossly erred in deciding the issue of notice issued against a dead

person by presuming that the proceedings continued against the legal representative in terms of section 159 of the Act. However, as transpired from the record, the Ld. CIT(A) has not made any observation or recorded any finding regarding the legality of passing the assessment order in the name of a dead person. Even the appellate order has been addressed to Shri Ghanshyam Das Valecha, which clearly demonstrates that the orders have been passed mechanically, without proper application of mind to this fundamental legal infirmity. Under these facts and circumstances, both the assessment order as well as the impugned appellate order passed by the Ld. CIT(A) are bad in law and illegal. In this regard, reliance is respectfully placed on the judgment of the Hon'ble Jurisdictional High Court in the case of CIT vs. Prabhawati Gupta and Others (1998) 231 ITR 188 (MP), wherein it has been held as under: -

"We have heard learned counsel for the parties and perused the records. It is an admitted fact that the assessee died before the proceedings for assessment were completed. Since the proceedings had not been completed and it was yet to be completed, therefore, it was incumbent under section 159(2) of the Act on the Income-tax Officer to have brought the legal representative of the deceased on record and proceeded from the stage where it was left at the time of death of the deceased. According to the findings of the Tribunal, the proceedings had not been completed before the death of the assessee; therefore, the Tribunal has rightly held that the assessment should be completed under section 159(2) of the Act. In this view of the matter, we are of the opinion that the view taken by the Tribunal is correct and both the questions are answered against the and perused the Revenue and in favour of the assessee.

Learned counsel for the Revenue has submitted that no order has been passed by the Tribunal for assessing the liability of the legal representative of the deceased assessee though the Tribunal in para 4 of the order has very clearly observed:

"In such circumstances, natural justice demands that the assessment should go back to the Income-tax Officer to give sufficient opportunity to the legal representatives of the deceased for stating their case."

Therefore, the Tribunal was mindful of the fact that in such a situation, the case has to be remanded; though the Tribunal has not very specifically mentioned this part presumably the Tribunal may have credited this much to the Income-tax Officer that he will initiate the action under section 159(2) of the Act. Be that as it may, if it is now possible under the law, then it is open for the Income-tax Officer to proceed According to law under section

159(2) of the Act. This reference is answered against the Revenue and in favour of the assessee.”

6. Therefore, respectfully following the judgment of the Hon'ble Jurisdictional High Court in the case of CIT vs. Prabhawati Gupta and Others (supra), the impugned assessment order is quashed. However, it is made clear that the Assessing Officer shall be at liberty to proceed against the legal representative of the deceased assessee in accordance with law. Grounds of appeal of the assessee are partly allowed for statistical purposes.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 27/02/2026.

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-
[KUL BHARAT]
VICE PRESIDENT

DATED: 27/02/2026

Vijay Pal Singh, (Sr. PS)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

By order

// True Copy//

Assistant Registrar
ITAT, Jabalpur