

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH 'SMC-I, NEW DELHI

Before Sh. N.K. Saini, AM

ITA No. 1062/Del/2016

Asstt. Year 2007-08

Bimla Devi Through L/h. Sh. Chet Ram 5174, Topchiwara Rewari	Vs.	ITO Ward-1 Rewari
(Appellant)		(Respondent)
PAN No. AWCPD8207E		

Appellant by : Sh. Navin Gupta, Adv.

Respondent by : Sh. V.R. Sonbhadra, Sr. DR

Date of hearing : 25.05.2016	Date of Pronouncement : 27 .5.2016
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ORDER

PER N.K.SAINI, AM :

This is an appeal by the legal heir of the deceased assessee against the order dated 14.12.2015 of the Id. CIT(A)-2 , Gurgaon.

Following grounds have been raised in this appeal :-

1. *That the order of Ld. CIT(Appeals) is against law and facts.*
2. *That the Ld. CIT(Appeals) erred in not accepting the plea of the appellant that the notice issued u/s 148 in the name of deceased Smt. Bimla Devi is non-est, as she expired much before the issue of notice u/s 148.*
3. *That the Ld. CIT (Appeals) erred in not accepting the plea of the appellant that the Ld. AO erred in assuming jurisdiction over the case without proper service of notice u/s 148 of the Act.*
4. *That the Ld. CIT(Appeals) erred in not quashing the assessment order although the notice issued by the Ld. AO u/s 143(2) of the Act was in the name of deceased Smt. Bimla Devi and any notice issued in the name of dead person is not a valid notice.*
5. *That the Ld. CIT(Appeals) erred in not quashing the assessment order although the assessment was completed u/s 144 of the Act by the Ld. AO without proper service of notice u/s 142(1) of the Act on all the L/Hs of Smt. Bimla Devi.*
6. *That the Ld. CIT(Appeals) erred in confirming the addition of Rs. 10,01,500/- made by the Ld. AO u/s 68 on account of cash deposit in the Bank Account.*
7. *That the appellant craves leave to add or alter any of the Grounds of Appeal.”*

2. From the above grounds it is gathered that the assessee has challenged the validity of the initiation of the assessment proceedings by issuing the notice u/s 148/142(1) & 143(2) of the Income Tax Act, 1961 (hereinafter referred as the “Act”) on the deceased person.

3. Facts of the case in brief are that the AO on the basis of AIR information issued notice u/s 148 of the Act, dated 16.3.2012 to the assessee. In response to the said notice, no return of income was filed. The AO mentioned in the assessment order dated 21.03.2013 that another notice u/s 142(1) dated 23.7.2012 was issued to the assessee and a return of income declaring an income of Rs. 29,990/- was filed on 6.11.2012 by Shri Chet Ram, Legal heir of the assessee. The AO framed the assessment u/s 144 read with section 148 of the Act, at an income of Rs. 10,01,500/- . The legal heir of the assessee carried the matter to the Id. CIT(A) and challenged the validity of the assessment, however, the Id. CIT(A) did not find merit in the submissions of the legal heir of the assessee and confirmed the action of the AO. Now the legal heir of the assessee has filed the appeal.

4. The Id. Counsel for the deceased-assessee submitted that the AO although was knowing that the assessee has expired when the return of income was filed by the legal heir of the deceased-assessee on 6.11.2012, even then the notice u/s 143(2) was issued on 6.11.2012 and again on 05.02.2013 in the name the deceased-assessee i.e. the dead person. It was further submitted that the another notices u/s 142(1) of the Act were issued on 05.02.2013 and 15.03.2013 in the name of the dead person. Therefore, the

assessment framed u/s 144 on the dead person was void ab initio and deserves to be set aside.

5. In his rival submissions, the Id. DR supported the orders of the authorities below and further submitted that the return of income was filed by the legal heir of the deceased assessee and the assessment has been framed in the name of the assessee through legal heir, therefore, the assessment framed by the AO was valid.

6. I have considered the submissions of both the parties and carefully gone through the material available on the record. On perusing the assessment order dated 21.3.2013 in the name of Smt. Bimla Devi, deceased through legal heir Shri Chet Ram, it would be clear that the return of income was filed by Shri Chet Ram legal heir of the deceased assessee on 6.11.2012, therefore, the AO was having the knowledge that the assessee had already expired when the return of income was filed on 6.11.2012. However, the notice u/s 143(2) and u/s 142(1) dated 05.02.2013 (copy of which is placed at page no. 7 and 8 of the assessee's paper book) were issued in the name of Smt. Bimla Devi the deceased assessee which had already expired. It is well settled that the issuance of notice u/s 143(2) is the pre-requisite condition for framing the assessment u/s 143(3) of the Act. However, in the present case, it is noticed that the AO issued the notices dated 05.02.2013 u/s 143(2) & 142(1) of the Act in the

name of dead person i.e. Smt Bimla Devi. Therefore the assessment framed on the basis of said notice was void- ab initio.

7. In view of the aforesaid discussion, the assessment framed by the AO vide assessment order dated 21.03.2013, on the basis of the notices issued u/s 143(2) dated 6.11.2012 and u/s 142(1) & 143(2) dated 05.02.2013, is quashed.

8. In the result, Appeal of the legal heir of the deceased assessee is allowed.

(Order pronounced in the Open Court on 27 /05/2016)

Sd/-

(N.K.Saini)

ACCOUNTANT MEMBER

Dated : 27/05/2016

B.Rukhaiyar

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Draft dictated on	25.05.2016		
2.	Draft placed before author	25.05.2016		
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			