

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. D. Manmohan, Vice President And Sh. N. K. Saini, AM

ITA No. 519/Del/2013 : Asstt. Year : 2003-04

Income Tax Officer, Ward 20(3), New Delhi	Vs	Late Sh. Som Nath Malhotra, Through Smt. Raj Rani Malhotra, 2, Gandhi Square, Malka Ganj, Delhi-110007
(APPELLANT)		(RESPONDENT)
PAN No. AAGPM2835B		

Assessee by : Sh. Piyush Kaushik, Adv.
Revenue by : Sh. J. S. Minhas, ACIT DR

Date of Hearing : 01.07.2015	Date of Pronouncement : 02.07.2015
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ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 25.10.2012 of ld. CIT(A)-XXII, New Delhi.

2. Following grounds have been raised in this appeal:

“1. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts by ignoring the provisions of section 292BB of the IT Act and holding the assessment not valid when the legal heir of the assessee had duly attended the proceedings and not objected to the same.

2. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts by deleting the addition made by the AO u/s 69 of the IT Act when the assessee had failed to prove the credit worthiness of the donor and explain the deposits in the bank account.

3. The appellant craves leave to amend or alter all or any of the aforesaid grounds of appeal and amend, alter or add any other ground of appeal.”

3. From the above grounds it is gathered that the main grievance of the department in this appeal relates to the assessment held by the ld. CIT(A) as invalid.

4. Facts of the case in brief are that the AO on the basis of information received from DIT(Investigation), New Delhi that one Sh. Deepak Changia had given an accommodation entry of Rs. 2,01,000/- to the deceased assessee, issued notice dated 31.03.2010 u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act). In response to the said notice the legal heir namely Smt. Raj Rani Malhotra wife of the deceased assessee vide letter dated 03.05.2010 informed the AO that Sh. Som Nath Malhotra, the assessee had expired on 06.12.2002. She also furnished the death certificate and copy of Income Tax Return filed. The AO however framed the assessment at an income of Rs. 22,99,976/- by making the addition of Rs. 19,94,120/-.

5. Being aggrieved the legal heir of the deceased assessee carried the matter to the Id. CIT(A) and challenged the validity of the notice u/s 148 of the Act on account of the reason that the notice had been issued in the name of dead person and even as per the record of the AO, the same has been served on the dead person. It was also submitted that the notice had been issued in the name of dead person, even though the original return was filed in the name of the legal heir since the assessee had died prior to the date of the accounting period. It was also pointed out that the AO himself had written in the assessment order that the notice was served on the assessee, therefore, the proceeding were invalid. The reliance was placed on the following case laws:

- *CIT Vs Suresh Chandra Jaiswal 325 ITR 563 (All.)*
- *CIT Vs Shital Prasad Kharag Prasad 280 ITR 541 (All.)*
- *Shaikh Abdul Kadar Vs ITO AIR 1959 MP 101*
- *Mrs. Jerbanoo N. Wadia Vs ACIT (1991) 36 ITD 185 (Mum)*

6. The Id. CIT(A) after considering the submissions of the assessee observed that the notice u/s 148 of the Act dated 31.03.2010 was issued by the ITO, Ward 20(3), New Delhi to Sh. Somnath Malhotra, 2, Gandhi Square, Malka Ganj, Delhi by Speed Post. He further observed that Smt. Raj Rani Malhotra, the legal heir and wife of Late Sh. Somnath Malhotra had filed a letter dated 03.05.2010 to the AO in which she has stated as under:

“Regarding your letter dated 31.03.2010, I want to inform you that I have been filed the Income Tax Return of Sh. Somnath Malhotra which was expired on 06.12.2002, on dated 29.08.2003 vide receipt no. 001149 for the Assessment Year 2003-04. Photocopy of Death Certificate & ITR is enclosed herewith for your ready reference.”

7. On the basis of the above facts, the Id. CIT(A) observed that the legal heir of the deceased assessee had informed to the AO at the very beginning of assessment proceedings that the assessee had expired much earlier on 06.12.2002 and had also informed that she had filed the Income Tax Return for the relevant assessment year i.e. assessment year 2003-04 on 29.08.2003, after the death of Late Sh. Somnath Malhotra. The Id. CIT(A) also pointed out that the Death Certificate dated 10.01.2005 was available on assessment record and revealed the date of death of Sh. Somnath Malhotra son of Late Sh. Sant Lal as 06.12.2002 and that the Income Tax Return for the assessment year 2003-04 available on the assessment record shows that the return was filed by Smt. Raj Rani in the name of Sh. Somnath Malhotra (deceased) through legal heir Smt. Raj Rani and the said return was received by acknowledgement no. 001149 on 29.08.2003. The Id. CIT(A) held that the AO at the beginning of the assessment proceedings was made aware that the assessee had deceased long back and the return for relevant assessment year had been filed by the legal heir. However, the AO continued with the assessment proceedings and made the additions of Rs. 19,94,120/-. The Id. CIT(A) observed that the AO recorded the

reasons in the name of deceased person, the approval for proceedings u/s 147 of the Act was taken in the name of deceased person and the initial notice u/s 148 of the Act was issued and dispatched in the name of deceased person by the AO who claimed in the first para of the assessment order that notice was served upon the assessee i.e. deceased person. The Id. CIT(A) accordingly held that the assessment and the additions made cannot be sustained.

8. Now the department is in appeal. The Id. DR although supported the order of the AO but could not controvert the findings and the observation given by the Id. CIT(A).

9. In his rival submissions the Id. Counsel for the assessee reiterated the submissions made before the authorities below and strongly supported the impugned order.

10. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the AO recorded the reasons for issuing the notice u/s 148 of the Act in the name of the deceased assessee Late Sh. Somnath Malhotra and got the approval of the Addl. CIT, Range-20, also in the same name. The AO issued notice dated 31.03.2010 u/s 148 of the Act in the name of the deceased assessee and also mentioned in the body of the assessment order dated 27.12.2010

that the notice u/s 148 of the Act was issued and served upon the assessee by Post within the statutory time period prescribed. In the present case, the assessee had already expired on 06.12.2002 and the legal heir Smt. Raj Rani Malhotra wife of the deceased assessee informed the AO on 03.05.2010 that the assessee had expired on 06.12.2002 and the return in the name of deceased assessee was filed by the legal heir on 29.08.2003. Thereafter also the AO did not issue any notice u/s 148 of the Act or 143(2) of the Act in the name of the legal heir, therefore, the assessment framed by the AO on the basis of the notice issued u/s 148 of the Act in the name of the deceased assessee was invalid. On a similar issue the Honøble Allahabad High Court in the case of CIT Vs Suresh Chand Jaiswal (supra) has held as under:

“That the notice under section 148 of the Income-tax Act, 1961, was addressed to an assessee who was already dead on the date of issue of notice. The notice was issued on March 28, 1985, while the assessee had died on March 20, 1985. The notice was not served upon the legal representatives of the assessee but on the munim. Even the name of the deceased assessee was not correctly mentioned in the notice. The notice was invalid.”

11. In the present case also the notice u/s 148 of the Act was issued on 31.03.2010 in the name of the deceased assessee and claimed to have been served upon the deceased assessee who had already expired on 06.12.2002. Therefore, the notice issued u/s 148 was invalid and the assessment framed on the basis of the said invalid notice was *void ab*

initio. In that view of the matter, we do not see any merit in this appeal of the department.

12. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 02/07/2015)

Sd/-
(D. Manmohan)
VICE PRESIDENT

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 02/07/2015

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR