

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.4725/DEL/2017
Assessment Year 2007-08

Neelam Dhingra, (through husband and legal heir- Vinod Dhingra) P-36, Tara Apartment, Alaknanda, Kalkaji, New Delhi.		DCIT, Circle-1(1)(1), International Taxation, New Delhi.
TAN/PAN: AAEPD0040R		
(Appellant)		(Respondent)

Appellant by:	Shri R.S. Ahuja, CA		
Respondent by:	Shri Bhopal Singh, Sr.D.R.		
Date of hearing:	16	03	2022
Date of pronouncement:		06	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-XLII, New Delhi ('CIT(A)' in short) dated 25.05.2017 arising from the assessment order dated 17.03.2015 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 147 of the Income Tax Act, 1961 (the Act) concerning AY 2006-07.

2. The grounds of appeal raised by the assessee reads as under:

"(A) That on the facts & circumstances of the case the learned DCIT U/s. 147/143(3) and Learned CIT(A)- 42 U/s 250 erred in:

i) Reopening the case U/s 148 of the Income Tax Act, 1961.

ii) *Reopening the case U/s 148 on the basis of alleged document seized from the J premises of a person (Sh. Naresh Gupta) referred to in Sec. 153A.*

iii) *Understanding the nature of the document (Undated, Unsigned and incomplete draft deed) on the basis of which the case was reopened U/s 148.*

iv) *Reopening the case on the same matter of Capital Gains which has been considered in the Assessee's own case U/s 143(3) assessment by order dated 24.12.2009 and by \ the CIT (A)-XXIX, New Delhi in appeal order no. 62/09-10 dated 31.05.2011.*

v) *Making an addition of Rs. 14500000/- in the Capital Gains on account of Extra money received on sale of property, which is contrary to the facts and prevailing law.*

vi) *Not agreeing with the Assessee that the document found in the computer of Sh. Naresh Gupta is a 'Dumb Document' which is the result of a cut and paste job in his computer and no cognizance should be taken thereof.*

vii) *Making the addition knowing that on the day when the assessee was to have received cash, she was not in India and making an addition without any other corroborative evidence such as acceptance by the buyer i.e. I.G Builders and Promoters (P) Ltd. of cash amounts paid or acceptance of genuineness of documents by Mr. Naresh Gupta.*

(B) That the principles of Natural Justice have been violated as neither any opportunity to cross examine Mr. Naresh Gupta has been given to us nor his statement been provided to us.

(C) That no cognizance has been taken by the Ld. DCIT and Ld. CIT (A) of the reply given by M/s. IG Builders and Promoters (P) Ltd. and the fact that Naresh Gupta has himself stated in writing

to the Ld. DCIT that Sometimes cut paste of various documents in the computer shows discrepancy and not shows true character of the documents.

(D) The Assessment as framed by the AO is illegal as no notice has been served by him on the legal heirs of the assessee who is deceased and information thereof was given to AO of the facts along with death certificate.”

3. When the matter was called for hearing, the ld. counsel for the assessee *inter alia* pointed out that the assessee herein was a non resident. She died on 01.10.2010. The information of her death along with death certificate was submitted to the Assessing Officer vide letter dated 26.12.2014 as well as 23.02.2015. The Assessing Officer also acknowledges the receipt of letter dated 26.12.2014 in letter F.No. DCIT/Intl. Tax/circle-1(1)(1)/2014-15 dated 30.01.2015. However, despite such fact brought to the notice of the Assessing Officer, no notice was issued on the legal heir. All that he has done is that he has framed the impugned assessment dated 17.03.2015 in the name of legal heirs, Shri Vinod Dhingra. This apart, the notice under Section 143(2) dated 20.02.2015 was issued in the name of the deceased, i.e., Ms. Neelam Dhingra. A notice under Section 142(1) was similarly issued in the name of the deceased after her death. On these facts, it was contended that notice for reopening of assessment and continuation of reassessment proceedings thereafter was carried out in the name of the deceased person in direct contradiction to the judgments rendered in *Rupa Shyam Sunder Dhumatkar vs. ACIT (2020) 420 ITR 256 (Bom)*, *Alamelu Veerappan vs. ITO (2018) 257 taxmann.com 72 (Mad)*, *Sumit Balkrishna Gupta vs. ACIT (2019) 414 ITR 292 (Bom)*, *Savita Kapila vs. ACIT (2020)*

426 ITR 502/273 Taxman 148 (Del), ITO vs. Late Shri Ram Kumar (ITA 6495/Del/2016 Bench F) dated 27.12.2017. It was thus urged that the re-assessment order passed in the name of death person cannot be protected under any circumstances and thus requires to be quashed.

4. Ld. DR for the Revenue relied upon the order of the authorities below and could not controvert the factual position pointed out on behalf of the assessee.

5. We have carefully considered the rival submissions. In the light of several judicial precedents pointed out on behalf of the assessee as noted in paragraph no.3 hereinabove, it is trite that notice for reopening of assessment under Section 148 dated 25.03.2014 against dead person is invalid. The Assessing Officer has further accentuated the legal fallacy by continuing to proceed against the dead person by issuing notice under Section 143(2) and Section 142(1) of the Act. The re-assessment order passed pursuant to such invalid notices for the purposes of reopening the assessment and for assumption of jurisdiction for carrying out the assessment is thus apparently bad in law and has no legal sanctity. The re-assessment order is required to be quashed at the threshold. Hence, we do not consider it necessary to go into any other grievance raised on behalf of the assessee.

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

Order pronounced in the open Court on 10/06/2022.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

DATED: /06/2022

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER