



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA no.4533/Mum./2014  
(Assessment Year : 2006-07)

Asstt. Commissioner of Income Tax  
Circle-19(3), Piramal Chambers  
Lalbaug, Parel, Mumbai 400 012

..... Appellant

v/s

Late Shri R.L. Ramchandani  
(By L/h Smt. Saroj Ramchandani)  
Golden Rock, 8<sup>th</sup> Floor, Perry Cross Lane  
Bandra (West), Mumbai 400 050  
PAN - ADHPR6245A

..... Respondent

Revenue by : Ms. Sudha Ramchandran  
Assessee by : None

Date of Hearing - 25.04.2016

Date of Order - 29.04.2016

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Instant appeal of the Department is directed against order dated 7<sup>th</sup> April 2014, passed by the learned Commissioner (Appeals)-30, Mumbai, deleting penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") for the assessment year 2006-07.

2. Brief facts are, the deceased assessee was an individual. For the assessment year under consideration, the assessee filed his return of income on 25<sup>th</sup> February 2009, declaring nil income. As stated by the Assessing

Officer, a survey under section 133A of the Act was carried out in assessee's case and his associates on 12<sup>th</sup> September 2008, wherein it was found that the assessee had not filed his return of income for the impugned assessment year. It was further found that during the relevant previous year, the assessee had sold his residential house along with the garage for a consideration of ₹ 2,25,00,000, whereas he has not offered any tax on such transaction. It was further noticed, assessee was also receiving rental income from a property jointly held at Bangalore. On the basis of information gathered during the survey, the Assessing Officer being of the opinion that income chargeable to tax for the impugned assessment year, has escaped assessment initiated action under section 147 of the Act. The Assessing Officer observed that the return of income filed by the assessee on 25<sup>th</sup> February 2009, being much beyond the time limit prescribed under section 139 of the Act, has to be held as invalid return of income, however, the income declared in such return of income has to be treated as undisclosed income. Accordingly, the Assessing Officer completed the assessment by treating the income declared in the original return of income of ₹ 1,01,33,980, as undisclosed income of the assessee. While doing so, the Assessing Officer also initiated proceedings imposition of penalty under section 271(1)(c). In response to the show cause notice issued by the Assessing Officer under section 271(1)(c) r/w section 274 of the Act, it was submitted by the learned Authorised Representative that assessee was keeping poor health for the past seven years which ultimately resulted in his death in March 2011. It was submitted, the assessee had become totally

blind and had to rely on other persons for doing his day-to-day work. It was submitted, due to his ill health, there was default in filing return of income. Only when the survey action took place, it came to his notice that he had not filed his return of income for the impugned assessment year and immediately the assessee filed his return of income on 25<sup>th</sup> February 2009 and offered the income and paid the tax due. Relying upon certain judicial precedents, it was contended on behalf of the assessee that penalty proceedings should be dropped. The Assessing Officer, however, was not convinced with the explanation of the assessee. He was of the view that only because of survey action, the assessee came forward for filing of his return of income and paid the taxes. Otherwise, the income would have remained undisclosed and concealed. Accordingly, the Assessing Officer proceeded to impose penalty of ` 22,32,551 under section 271(1)(c). Being aggrieved of the penalty order, assessee preferred appeal before the learned Commissioner (Appeals).

3. Before the first appellate authority, the assessee represented through his legal heir challenged the validity of penalty order on the ground that before levying penalty under section 271(1)(c), the Assessing Officer had not issued any notice to the legal heir in spite of the fact that the Assessing Officer was made aware that the assessee had expired on 20<sup>th</sup> March 2011. It was further submitted, issue of notice to legal heir being a mandatory requirement of law having not been observed by the Assessing Officer, the penalty order is void ab initio. On the basis of the plea taken on behalf of the deceased assessee the learned Commissioner (Appeals) called for a remand

report from the Assessing Officer. After perusing the remand report of the Assessing Officer as well as submissions made on behalf of the deceased assessee, the learned Commissioner (Appeals) deleted the penalty on the reasoning that no order can be passed against a dead person. The relevant observations of the learned Commissioner (Appeals) is extracted herein below:-

*5.1 I have duly considered the report of the A.O. and the written submissions of the appellant reproduced above. It is not disputed by the A.O. that during the course of appellate proceedings, the A.R. of the appellant vide letter dtd. 16.06.2011 not only intimated the A.O. about the demise of the appellant, but also enclosed a copy of death certificate as an evidence / proof of death of the appellant, Late Shri R.I.. Ramchandani on 20.03.2011. The AO has passed the impugned penalty order on 29.06.2011, that is much after 16.06.2011. It is also seen that the above letter dtd. 16.06.2011, has been reproduced by the AO in the penalty order, including the second para, wherein the AR of the appellant has informed about the appellant's demise and a copy of death certificate enclosed by him. However, the AO has not discussed this part of the submission and proceeded to levy penalty on a dead person. Once the fact of death of the appellant had come to the notice of the AO, it was his bounden duty to issue notice to the legal heir of the appellant. The fact that penalty order has been passed in the name of the deceased appellant and not the legal heir also shows that no notice had been issued on the legal heir. In this regard various courts have very clearly laid down that on the death of a person, his legal personality ceases to exist and thereafter, no order can be passed against such dead person. It is also important to note that after the death of a person, the person authorized, who was representing till his death also, loses his authority to represent, unless authorized by the legal heir, therefore, any submission made by the AR of the appellant, post his death, has no significance, unless authorized by his legal heir. The AO has not brought on record anything to suggest that the AR who represented before him was duly authorized by the legal heir of the deceased."*

4. At the time of hearing, none appeared on behalf of the assessee. Therefore, we proceed to dispose off the appeal after hearing the learned Departmental Representative and on the basis of material on record.

5. On a perusal of the facts on record, it is evident that the assessee had filed his return of income for the impugned assessment year on 25<sup>th</sup> February 2009, declaring income from capital gain as well as house property and also paid taxes thereon. However, the Assessing Officer, while completing the assessment treated the return of income as invalid and held the income declared by the assessee as undisclosed income. As could be seen, in the course of penalty proceedings under section 271(1)(c), the Authorised Representative in his letter dated 16<sup>th</sup> June 2011, not only explained the reason for delay in filing the return of income but also brought to the notice of the Assessing Officer the fact that the assessee had expired on 20<sup>th</sup> March 2011 and also furnished a copy of his death certificate. Thus, in spite of the fact that the Assessing Officer was made aware that the assessee had expired on 20<sup>th</sup> March 2011, instead of bringing his legal heir on record, the Assessing Officer proceeded to pass the impugned penalty order in the name of deceased assessee. As rightly held by the learned Commissioner (Appeals), order passed against a dead person has no legal affect, hence, invalid in law. The aforesaid reasoning of the learned Commissioner (Appeals) being fully in conformity with the legal principle laid down in the decisions referred to by him, we see no reason to interfere with the order of the learned Commissioner (Appeals) which is accordingly upheld. The grounds raised are, therefore, dismissed.

6. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open Court on 29.04.2016

**Sd/-**  
**RAJESH KUMAR**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 29.04.2016**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai