

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.39/Mum/2023
(निर्धारण वर्ष / Assessment Year: 2009-10)

Late Keshav L. Jumani (Through Legal Heir Smt. Pushpa K. Jumani) Flat No. 7, 2 nd Floor, Madhu Kunj, Opp. Madhu Park, 1 st Road, Khar (W), Mumbai- 400052.	बनाम/ Vs.	ITO-16(2)(5) Room No. 569, Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPJ4491P		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Yogesh Thar/Chaitanya Joshi/Karan Jain	
Revenue by:	Shri Anil Gupta	

सुनवाई की तारीख / Date of Hearing: 01/03/2023
घोषणा की तारीख /Date of Pronouncement: 31/03/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the late assessee through legal heir Smt. Pushpa K. Jumani against the order of the Ld. CIT(A)/NFAC, Delhi dated 09.11.2022 for AY. 2009-10.

2. The main grievance raised in the appeal is that even though the assessee (Dr. Keshav Lachmandas Jumani) had passed away (expired) on 03.03.2015 and the fact was brought to the notice of the AO, still he went ahead and framed assessment in the name of the deceased/late assessee i.e. Dr. Keshav L. Jumani which action of the AO to have framed the assessment order on 17.11.2016 u/s 143(3)/147 of the Income Tax Act, 1961 (hereinafter "the Act") according to Appellant was bad in law being null in the eyes of law.



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3. Brief facts, the assessee (Dr. Keshav L. Jumani) had filed his return of income declaring total income of Rs.1,15,580/- on 08.06.2009 for AY. 2009-10. Later, the assessment of the assessee was re-opened and notice u/s 148 of the Act was issued on 03.12.2015. Pursuant thereto, the assessee's wife brought to the notice of the AO that the assessee (Dr. Keshav Lachmandas Jumani) had expired on 03.03.2015 and enclosed a copy of the death certificate evidencing this fact, which has been acknowledged by the AO at para no. 4 of the assessment order by noting as under: -

“4. In response to the same, Smt. Pushpa Keshav Jumani Legal Heir of Late Dr. Keshav Lachmandas Jumani, filed a letter dated 06.03.2016 stating that the assessee expired on 03.03.2015, the photocopy of Death Certificate is filed on record assessee expired on 03.03.2015, the photocopy of Death Certificate is filed on record and further stated that the return of income filed on 08.06.2009 shall be treated as return of income having been filed on response to your notice u/s 148 of the I. T. Act, 1961.”

4. Though the fact of death of Dr. Keshav was acknowledged by AO, still he framed the assessment in his name on 17.11.2016 by making certain additions which resulted in computation of gross total income at Rs.18,87,560/-. Aggrieved, the assessee's wife preferred an appeal before the Ld. CIT(A) who was pleased to dismiss the appeal of the assessee ex-parte, on the ground that the non responded to his notices when the appeal was listed. Aggrieved, the assessee is before this Tribunal.



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5. I have heard both the parties and perused the records. The assessment of AY 2009-10 was re-opened by issue of notice u/s 148 of the Act by the AO on 03.12.2015. Pursuant thereto, the assessee's wife brought to AO's notice vide letter dated 06.03.2016 that the assessee had expired on 03.03.2015 and filed copy of death certificate, which fact has been acknowledged by the AO at para no. 4 of the assessment order (supra). Even after knowing that the assessee had expired, still he has framed the assessment on 17.11.2016 in the name of the deceased Dr. Keshav L. Jumani which is *per-se* bad in law. It is noted that in similar facts of the case i.e. the AO's action of framing the assessment in the deceased assessee's name was challenging before the Hon'ble Bombay High Court in the case of Rupa Shyamsundar Dhumatkar Vs. ACIT reported in 2020 (120 taxmann.com 323) (Bom) wherein the Hon'ble Bombay High Court held as under: -

"1. Heard learned Counsel for the parties for final disposal of the Petition. This Petition is filed by the widow of Late Shri Shyamsundar Pundalik Dhumatkar. Late Shri Shyamsundar Dhumatkar was engaged in his individual business. He filed return of his income till the year 2007-2008. According to Petitioner, however, since thereafter he had no taxable income, he had stopped filing returns of income. The Assessing Officer issued a notice dated 27/03/2018 in the name of Late Shri Nesarikar 2/3 08-WP-404-19.odt Shyamsundar Dhumatkar under section 148 of the Income Tax Act, 1961 (for short 'the Act') reopening the assessment for the assessment year 2011-2012. Shri Shyamsundar Pundalik Dhumatkar expired on 14/10/2016. Thus, the notice dated 27/03/2018 was issued on a



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dead person. The Petitioner as a widow and legal heir of the deceased Shri Shyamsundar Dhumatkar brought these facts to the notice of the income tax department. Despite this, the Assessing Officer issued a notice under section 142(1) of the Act on 29/08/2018 and therefore the Petitioner has filed this Petition challenging the said notice dated 27/03/2018.

2. The facts are not seriously in dispute. The Petitioner had produced the death certificate of Shri Shyamsundar Dhumatkar before the Income Tax authorities, indicating that he died on 14/10/2016. Thus, the impugned notice of reopening of assessment was issued on a dead person. There are several judgments of different High Courts holding that the notice or reopening of assessment is invalid in law. A reference in this 3/3 08-WP-404-19.odt respect can be made to a decision of Gujarat High Court in the case of Chandreshbhai Jayantibhai Patel Vs The Income Tax Officer (Special Civil Application No.15172 of 2018, decided on 10/12/2018). As also the decision of Madras High Court in the case of Alamelu Veerappan Vs. Income Tax Officer, Non- corporate Ward-2(2), Chennai, reported in (2018) 257 Taxman 72 (Madras). It is not necessary to refer to all the judgments on the point. Suffice it to say, as per the settled law, notice for reopening of assessment against a dead person is invalid.

3. In the result, the impugned notice is set aside. Petition is disposed of accordingly. Consequentially, the order of assessment dated 31/12/2018 also stands annulled.”



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6. Respectfully following the ratio laid by the Hon'ble Jurisdictional High Court wherein similar legal issue was adjudicated and the impugned action of AO to have framed the assessment in the name of deceased person was annulled. In the present case, the AO even after knowing about the death of assessee, has framed the assessment in the name of Dr. Keshav L. Jumani which is bad in law and so the assessment framed on 17.11.2016 is annulled.

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

Order pronounced in the open court on this 31/03/2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/03/2023.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai