

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM
आयकर अपील सं./ITA No.199/CTK/2018

(निर्धारण वर्ष / Assessment Year :2013-2014)

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| Janardan Gupta(Deceased) Through Legal Heir Jitendra Gupta, M/s Gupta Automobiles, Panchamahala, Angul | Vs. | Principal Bhubaneswar CIT-2, |
| स्थायी लेखा सं./PANNo. : ACPPGS 5186 I | | |

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| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
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| निर्धारिती की ओर से /Assessee by | : | Shri P.R.Mohanty, AR |
| राजस्व की ओर से /Revenue by | : | Shri Subhendu Dutta,DR |

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| सुनवाई की तारीख / Date of Hearing | : | 15/10/2019 |
| घोषणा की तारीख/Date of Pronouncement | : | 15/10/2019 |

आदेश / ORDER

Per L.P.Sahu, AM:

This is an appeal filed by the assessee against the order passed by the Pr. CIT-2, Bhubaneswar u/s.263 of the Act, on the following grounds of appeal :-

1. *That on the facts and in the circumstances of the case, the Ld. Pr.CIT-2, Bhubaneswar has erred in law by invoking section 263 basing upon the presumption & Surmises and set-aside the completed assessment made U/s 143(3) of the Act, in spite of the fact that the assessee is already expired on 15' March 2015, and fresh assessment can't be initiated against deceased assessee.*
2. *That on the facts and in the circumstances of the case, the Ld.Pr.CIT-2,Bhubaneswar erred by giving the instruction of indicative disallowance U/s 37(1) in the hands of the assessee which represented disallowance of bank interest amounting to Rs 12,66,651/-, i.e., 12.7% of the borrowed fund to the extend not utilized for the purpose of business.*

3. *That the order of the Ld. Pr. CIT-2, Bhubaneswar being not based on the fact of the case of the appellant and being contrary to law, should hence be quashed and appellant be given such relief or reliefs as prayed for.*
4. *For that, the appellant craves leave to add/alter/amend further grounds, if any, at the time of hearing of appeal.*

2. Brief facts of the case are that the return of income of assessee Late Janardan Gupta was filed for the financial year 2012-2013 on 31.03.2015 and the case was selected for scrutiny. During the course of assessment proceedings, on 08.10.2015, son of late Shri Jitendra Gupta informed that he has expired on 15.03.2015 and all such correspondences regarding Late Janardan Gupta shall be addressed to his legal heir Jitendra Gupta. The assessment was completed on 31.03.2016 in the name of Late Janardan Gupta legal heir –Jitendra Kumar Gupta by making certain additions. Later on the Id.CIT passed u/s.263 of the Act by exercising his revisionary power in the name of late Shri Janardan Gupta vide order dated 27.03.2018 setting aside the order to the file of AO for re-do the assessment.

3. Feeling aggrieved from the above order of Pr. CIT, the assessee is in appeal before the Income Tax Appellate Tribunal.

4. Ld. AR submitted that the order passed in the name of deceased person which is not sustainable in the eyes of law. Therefore, entire proceeding initiated by the Pr. CIT u/s.263 of the Act is erroneous. In support of this contention, Id. AR relied on the decision of Hon'ble

Madras High Court in the case of CIT Vs. M. Hemanathan, (2016) 384 ITR 0177(Mad).

5. On the other hand, ld. DR relied on the order of Pr. CIT.
6. After hearing both the sides and perusing the entire material available on record and the impugned order passed u/s.263 of the Act, we noticed from the death certificate submitted by the assessee that late Janardan Gupta died on 15.03.2015 which has duly been recorded by the AO in his assessment order and order has been passed in the name of legal heir also. We further noticed from the order of Pr.CIT that he has passed order in the name of deceased-assessee who was not in existence on the date of passing of the revisional order u/s.263 of the Act. We also agree with the case law relied on by the ld. AR in the case of M. Hemanathan (supra), wherein the Hon'ble Madras High Court in para 12 has held as under :-

“12. But unfortunately, the said contention loses sight of the settled position that any proceeding initiated against a dead person is a nullity. The contention of the learned Standing Counsel for the Department loses sight of one important distinction between a case where the proceedings are initiated against a person, who is alive, but continued after his death and a case of proceedings initiated against a dead person himself. If the proceedings had been initiated against a person, who was alive, and they were continued after his death after putting his legal heirs on notice, those proceedings, under certain circumstances, may be saved. Such a situation is also contemplated in civil proceedings and a provision is made in the Civil Procedure Code itself under Order XXII Rule 4. Therefore, the cases where the very proceedings are initiated against a dead person stand apart from those proceedings where they are initiated against a live person, but continued after his death against the legal heirs. Hence, the first contention is rejected.”

7. Respectfully following the above decision of Hon'ble Madras High Court, we are of the considered view that the Pr. CIT is not justified in setting aside the assessment order invoking powers u/s.263 of the Act ignoring the fact that the assessee is already expired on 15.03.2015, which was already informed by legal heir Shri Jitendra Kumar Gupta, the son of the assessee during the course of assessment proceedings. The AO has also passed order u/s.143(3) of the Act in the name of legal heir of the assessee. Therefore, fresh assessment cannot be initiated against the deceased assessee. Accordingly, we quash the order passed by the Pr. CIT u/s.263 of the Act and allow the appeal of the assessee.

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

Order pronounced in the open court on 15/10/2019.

**Sd/-
(C.M.GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(L.P.SAHU)**

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 15/10/2019

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Janardan Gupta(Deceased)
Through Legal Heir Jitendra Gupta,
M/s Gupta Automobiles,Panchamahala, Angul
2. प्रत्यर्थी / The Respondent-
Principal CIT-2, Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

**आदेशानुसार/
BY ORDER,**

सत्यापित प्रति //True Copy//

(Senior Private Secretary)

**आयकर अपीलीय अधिकरण, कटक /
ITAT, Cuttack**