

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री वी. दुर्गा राव,न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER&
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.339/Viz/2019
(निर्धारण वर्ष/Assessment Year:2008-09)**

Late Deverasetty Venkata Subba Rao	Vs	Income Tax Officer
LR D.Ravikumar		Ward 1(3)
18-1-41, Sattenapalli		Guntur
Guntur		

[PAN : ASBPD9432C]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से / Respondent by	:	Smt.Suman Malik, DR

सुनवाई की तारीख / Date of Hearing	:	11.03.2020
घोषणा की तारीख/Date of Pronouncement	:	12.03.2020

आदेश /O R D E R

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1,Guntur in Appeal No.123/2016-17 dated 26.12.2016 for the Assessment Year (A.Y.)2008-09.

2. In this case, Ground No.1 is related to the issue of notice u/s 143(2) r.w.s. 263,(wrongly typed as (143(3) in grounds)on a dead person for taking up the assessment . The assessee challenged the notice issued on a dead person and invalid as not curable mistake u/s 292B or section 292BB of the Income Tax Act, 1961 (in short 'Act').

3. Brief facts of the case are that the in this case, the assessee filed the return of income for the A.Y.2008-09 on 09.11.2009 and the assessment was completed u/s 143(3) r.w.s. 147 of the Act on 31.03.2011. Subsequently, the assessment was completed u/s 143(3) r.w.s. 263 of the Act by an order dated 16.09.2014. Subsequent to passing the order u/s 143(3), r.w.s. 263 dated 16.09.2014, the Ld.Pr.CIT has taken up the case for revision u/s 263 again and passed the order setting aside the assessment made on 16.09.2014 with a direction to redo the assessment in accordance with the procedure and law after affording the assessee, reasonable opportunity by an order dated 20.10.2016. For giving effect to the order of the Ld.Pr.CIT, the AO had issued notice u/s 143(2) on Devarasetty Venkata Subba Rao who was expired by the time of issue of notice and the notice was served on the legal heir, Mr.Ravi Kumar. In response to the notice the Ld.AR of the assessee appeared and filed written submissions and the AO

completed the assessment u/s 143(3) r.w.s. 263 in the name of Sri D.Ravi Kumar, legal heir of Late Devarasetty Venkata Subba Rao by an order u/s 143(3) r.w.s. 263 on 26.12.2016 and assessed the total income at Rs.12,48,690/-.

4. Against which the assessee went on appeal before the CIT(A) and argued that the notice u/s 143(2) was issued on a dead person and the same is invalid, which cannot be cured either u/s 292B or 292BB of the Act and thus argued that the assessment made u/s 143(3) r.w.s. 263 dated 26.12.2016 required to be quashed. Not being convinced with the argument of the assessee, the Ld.CIT(A) upheld the validity of issue of notice and the assessment made u/s 143(3) and dismissed the appeal of the assessee on this ground.

5. Against which the assessee filed appeal before this Tribunal, challenging the order of the Ld.CIT(A). During the appeal hearing, the Ld.AR submitted that Sri Devarasetty Venkata Subba Rao was expired, hence, the AO has passed assessment order u/s 143(3) on 16.09.2014 in the name of the legal heir. Subsequently, the Ld.Pr.CIT has taken up the case for revision u/s 263 and passed order u/s 263 in the name of dead person. Hence, the order passed u/s 263 is invalid. Knowing fully well that

the assessee had expired, the AO issued notice u/s 143(2) on a dead person and framed the assessment in the name of legal heirs. Since the notice u/s 143(2), is a primary requirement for initiating the proceedings u/s 143(3) r.w.s. 263 which was issued on a dead person is invalid, hence, argued that consequent assessment framed u/s 143(3) r.w.s. 263 cannot stand on its legs, hence requested to quash the assessments made u/s 143(3) r.w.s. 263 order dated 26.12.2016. The Ld.AR relied on the decision of this Tribunal in the case of Sri Aemala Venkateswara Rao Vs. ITO,Guntur in I.T.A. No.227/Viz/2017 dated 03.03.2019 and Late Tanguturi Venkata Subbayya Vs. ITO, Palakol in I.T.A No.226/Viz/2018 dated 28.06.2019, wherein the Tribunal held that the notice issued on a dead person u/s 148 was invalid and accordingly quashed the notices u/s 148. Since the facts are identical, the Ld.AR requested to quash the notice u/s 143(2) and consequent assessments.

6. On the other hand, the Ld.DR supported the orders of the lower authorities and argued that issue of notice on a dead person cannot make the assessment invalid, since, the legal representative has responded to the notice and participated in the assessment proceedings. The facts of this case are distinguishable with that of the case laws relied upon by the

assessee. In this case, the assessment was framed u/s 143(3) r.w.s. 263 which is a consequential order, giving effect to the order of the Ld.Pr.CIT, whereas in the case laws relied upon by the assessee, the notice was issued u/s 148 for reopening the assessment. Therefore, argued that the case laws relied upon by the Ld.AR cannot come to the help of the assessee, hence, requested to uphold the order of the AO and dismiss the appeal of the assessee.

7. We have heard both the parties and perused the material placed on record. In the instant case, the assessee had expired before passing the order u/s 263 dated 20.10.2016. This fact is evident from the order passed u/s 143(3)) on 16.09.2014 which was passed in the name of Sri Deverasetty Ravikumar, Legal Representative of Late Sri D.V.Subba Rao. The Ld.Pr.CIT passed order u/s 263 on a dead person, which is also invalid. In the order u/s 263, the Ld.CIT has set aside the assessment order passed u/s 143(3) r.w.s 263, with a direction to redo the assessment after giving opportunity to the assessee. Thereby, the order u/s 143(3) dated 16.09.2014 was set aside by order of 263. For initiation of reassessment proceedings, the AO required to issue notice u/s 143(2) which the AO has issued in the name of dead person. Initiation of proceedings u/s 143(2) on

a dead person is bad in law and makes the assessment also invalid. This view is supported by the decision of this Tribunal relied upon by the Ld.AR in the cases of Aemala Venkateswara Rao (supra) and Late Tanguturi Venkata Subbayya (supra). For the sake of clarity and convenience, we extract relevant part of the order of this Tribunal in para No.7.1 in the case of Late Tanguturi Venkata Subbayya Vs. ITO, Palakol (supra) which reads as under :

“7.1. In the instant case, there is no dispute that the assessee had expired and notice was issued on dead person. Though subsequently, notice u/s 143(2) was issued in the name of his wife and the same cannot validate the invalid notice. The notice issued on a dead person is held to be invalid as discussed earlier in this order. Once the notice issued u/s 148 is invalid, subsequent proceedings also become invalid and renders the assessment infructuous. Hence, respectfully following the view taken by this Tribunal in the case cited supra, we quash the notice u/s 148 and cancel the assessment made u/s 143(3) r.w.s.147 of the Act.”

7.1. In the instant case, there is no dispute that the notice u/s 143(2) was issued on a dead person and the order u/s 263 was also passed on a dead person. Therefore, taking consistent view, we hold that the issue of notice u/s 143(2) on a dead person is invalid and renders the assessment made u/s 143(3) r.w.s. 263 void-ab-initio. Accordingly, we quash the notice u/s 143(2) and the consequent assessment made u/s 143(3) r.w.s. 263 and allow the appeal of the assessee.

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

Order pronounced in the open court on 12th March, 2020.

Sd/-

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 12.03.2020

L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee– Late Deverasetty Venkata Subba Rao, LR D.Ravikumar, 18-1-41, Sattenapalli, Guntur
2. राजस्व/The Revenue – Income Tax Officer, Ward 1(3), Guntur
3. The Pr.Commissioner of Income Tax, Guntur
4. The Commissioner of Income Tax (Appeals)-1, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam