

-आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद।

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘A’**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.159/Ahd/2020
निर्धारण वर्ष/ Asstt.Year: 2017-18**

Late Shri Keshavlal Somnath Panchal Through Widow & Legal Heir Smt.Champaben Keshavlal Patel B-101, Shanti Residency Arun, Nirnaynagar, Chandlodiya Ahmedabad 382 481. PAN : BIPPP 5899 G	Vs.	ITO, Ward-4(2)(2) Ahmedabad.
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(Applicant)		(Responent)
Assessee by :		Shri P.F. Jain, AR
Revenue by :		Shri Dilipkumar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 06/03/2020

घोषणा की तारीख /Date of Pronouncement: 16/03/2020

आदेश/O R D E R

PER RAJPAL YADAV, VICE-PRESIDENT

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-4, Ahmedabad dated 27.1.2020 passed for the Asstt.Year 2017-18.

2. Assessee has raised six grounds of appeal, but in brief, her grievance is that the Id.CIT(A) has erred in dismissing the appeal being non-maintainable and confirmation of addition of Rs.57,01,100/-.

3. Brief facts of the case are that, on the basis of data analysis and information gathered during the phase of on-line verification under ‘operation

clean money', the AO came to know that cash was deposited in saving bank account No.30814030119 with State Bank of India, Nirnaynagar Branch during the demonetization period. Cash deposited by the assessee during this period amounted to Rs.10,32,000/-. The AO further found that total credit entries in this account were of Rs.57,01,099/-. These transactions included cheque transactions also. The bank account was in the name of Keshavlal Somnath Panchal. He did not file his return of income. Therefore, a notice under section 142(1) was issued on 12.3.2018 calling the assessee to prepare a true and correct return of income of which he is assessable under the Income Tax Act. According to the AO, the assessee did not file return nor responded to the notices issued on ITBA portal/speed post. He accordingly passed *ex parte* assessment order under section 144 of the Act and made addition of Rs.57,01,100/-. Dissatisfied with the assessment order, the appellant, Smt. Champaben Keshavlal Patel being legal heir of late Shri Keshavlal Somnath Panchal filed appeal before the first appellate authority. The Id.CIT(A) has dismissed the appeal by holding that it was filed manually and not on-line. The Id.CIT(A) has reproduced complete assessment order in the impugned order from page no.2 to 19. Thereafter, she has recorded a brief finding holding that as per Rule 45 of the Income Tax Rules, the assessee was required to submit appeal electronically through the portal of the Department, and since he filed the appeal manually, therefore, it was not maintainable.

4. The assessee has filed an application for early hearing. During the course of hearing of the application, we were of the view that appeal itself deserves to be disposed of, because, Id.CIT(A) has disposed of the appeal on technical ground. Therefore, we gave opportunity to both the sides to argue the appeal on merit also.

5. The Id.counsel for the assessee while impugning orders of the Revenue authorities submitted that Shri Keshavlal Somnath Panchal expired on

2.10.2017; notice under section 142(1) was issued on 12.3.2018. Thus, this notice was issued on a dead person. The assessment order has also been passed on dead person. Hence, assessment order is *void ab initio* and deserves to be quashed. As far as dismissal of the appeal by the Id.CIT(A) is concerned, he filed a note; contents therein read as under:

“1. With reference to above appeal against order u/s.144 has been made as appeal before the CIT(A) was manually filed , as the assessee has died even before assessment proceedings initiated.

2. The appeal has been dismissed by the CIT(A) simply on the ground that manual appeal is not maintainable .

3. As per Rule 45 of Income-Tax Rules,1962 mentioned under Part-X under the heading Appeals, sub-rule 2(d) , it has been mentioned that in case, where the assessee has the option to furnish the return of income in paper form by furnishing the electronically in accordance with Clause-(a) of Sub-Rule -2 or in paper form.

4. The manner of furnishing return of income has been given in Rule-12- Part-III under the heading "Assessment Procedure", Return of Income.... in Clause-3 of this Rule in the Table manner of furnishing return of income has been given. At Sr.No.1 of Table, where return is to be filed in ITR-5, in Col.C , there is option as reproduced below:-

(C) In any other case as mentioned in Clause (D) there is Option for filing return in paper form.

(Copy of Rule-45 for filing appeal to CIT(A) and Part-III Rule 12 for mode of filing return of income enclosed.

5. As assessee being deceased, no return of income was filed by him and as per earlier returns of income on record of department, assessee was filing return in Form - ITR-V.

6. Therefore, the appeal to CIT(A) was filed manually read with Rule 45 and Rule-12 of Income-tax Rules,1962 .

7. *Therefore, the dismissal of manual appeal by the Hon'ble CIT(A) as non-maintainable is respectfully submitted to be against the relevant Rules as mentioned above.”*

6. In this way, he argued that orders of both the authorities should be quashed. On the other hand, the Id.DR was unable to controvert the contentions of the Id.counsel for the assessee.

7. We have considered rival submissions and gone through the record carefully. We find that before service of notice under section 142(1) Shri Keshavlal Somnath Panchal had already expired. His legal heirs did not file return for this assessment year. Therefore, the right course for the AO is to find out L/Rs, and more particularly, L/R who has inherited assets and liabilities of Shri Keshavlal Somnath Panchal because L/R is liable to pay taxes of the deceased only equivalent to the property inherited from the deceased. For example, in the present case, if the assessment order is finalized, but later on Smt. Champaben Keshavlal Patel comes forward and states that she has not inherited any property from Shri Keshavlal Somnath Panchal, then demand cannot be recovered. Other L/Rs. if any would take an objection that they have not served any notice under section 142(1) or under section 148 etc. Therefore, procedure followed by the AO in the present case is patently illegal. Service of notice upon a dead person under section 142(1) would not authorise him to assume jurisdiction to pass assessment order on the L/Rs. also. The right course for him is to explore jurisdiction for issuing a notice on the L/Rs. of Shri Keshavlal Somnath Panchal. This aspect could have been examined by the Id.CI(A). Had she gone through written submissions taken note in para -2 of the impugned, wherein it was alleged that Shri Keshavlal Somnath Panchal died on 2.10.2017, then his appeal could have been allowed to be entertained manually as provided in Rule 45 and 12 of the Income Tax Rules.

8. After going through the above provisions, and keeping in mind note placed by the ld.counsel for the assessee explaining the procedure required to be followed in the present case, we are satisfied that ld.CIT(A) ought to have entertained the present appeal, and should have decided on merit. Therefore, we set aside the orders of the ld.CIT(A) and restore the issue to the file of the ld.CIT(A) for re-adjudication.

9. The observation made by us for explaining the position contemplated in section 159 of the Income Tax Act for assessing the legal heirs will not impair or injure the case of the AO, and will not cause any prejudice to the defence/explanation of the assessee or other legal heirs in future. This observation is made only for the purpose of explaining the situation.

10. With the above observation, appeal of the assessee is allowed for statistical purpose.

11. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 16th March, 2020 at Ahmedabad.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT**