

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No.16/Bang/2020</b>
<b>Assessment year : 2008-09</b>

Smt. M. H. Mamatha Legal Heir of Late Shri. M. N. Harinath, No.947, 37 <sup>th</sup> Cross, Poornaprajna Layout, Uttarahalli, BSK 5 <sup>th</sup> Stage, Bengaluru – 560 061. <b>PAN : AEIPM 2644 G</b>	vs.	Income Tax Officer, Ward – 3[2][2], Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>
Assessee by	:	Shri. Narendra Sharma, Advocate
Revenue by	:	Shri. Priyadarshi Mishra, JCIT (DR)
Date of hearing	:	26.08.2020
Date of Pronouncement	:	.08.2020

**ORDER**

***Per A. K. Garodia, Accountant Member:***

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A)-3, Bengaluru, dated 18.11.2019, for Assessment Year 2008-09. The grounds raised by the assessee are as under:

1. *The Order of the learned Commissioner of Income Tax [Appeals] 3, Bengaluru, passed under section 250 of the Act dated 18/11/2019 in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.*
2. *The Appellant denies herself liable to be taxed over and above the reported total income of Rs. 4,05,750/- by the appellant on the facts and circumstances of the case.*

3. *The learned Commissioner of Income Tax [Appeals] failed to appreciate that the assessment order u/s. 143[3] r.w.s. 144 of the Act dated 21/03/2016 passed by the assessing officer is bad in law since the mandatory conditions for re-opening as envisaged in the Act to resume jurisdiction did not exist or having not been compiled with and consequently, the reassessment requires to be cancelled on the facts and circumstances of the case.*
4. *The learned Commissioner of Income Tax [Appeals] erred in not appreciating that the order of assessment is bad in law and void-ab-initio as the assessing officer had no reason to believe that the income of the Appellant has escaped assessment and the whole exercise of assessment u/s. 147 was based on the borrowed satisfaction obtained from the officer of the Joint Director of Income Tax [Intelligence and Criminal Investigation], Bengaluru and not on independent satisfaction arrived by the learned assessing office on the facts and circumstances of the case.*
5. *The learned Commissioner of Income Tax [Appeals] erred not in appreciating that the assessment proceedings u/s. 147 are further bad in law as the assessment order dated 21/03/2016, mandatory notice u/s. 148 dated 11/03/2015, notice u/s. 143 [2] dated 01/06/2015 were all issued in the name of a deceased person i.e., Late Sri. M. N. Harinath even though when the department was in knowledge about the demise of the Appellant on the facts and circumstances of the case*
6. *Without prejudice, the learned Commissioner of Income Tax [Appeals], erred in confirming the addition of Short Term Capital Gains amounting to Rs.1,30,00,000/- made by the learned assessing officer in the course of assessment proceedings by holding the impugned land conveyed to be a capital asset and invoking provisions of Section 50C of the Act thereof on the facts and circumstances of the case.*
7. *Without further prejudice to the above, the learned Commissioner of Income Tax [Appeals] failed to appreciate that the impugned land sold by the Appellant is an agricultural land and not exigible to tax as per the provisions of section 2[14] of the Act, on the facts and circumstances of the case.*
8. *Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself*

*liable to be charged to interest under section 234 A and 234 C of the Income Tax Act on the facts and circumstances of the case. Further the levy of interest under section 234 A Et 234 C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong on the facts of the case.*

9. *The Appellant craves leave of this Hon'ble Income Tax Appellate Tribunal to add, alter, delete or substitute any or all of the above grounds as may be necessary at the time of hearing of the appeal.*

10. *For the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice.*

2. In the course of hearing, it was submitted by learned AR of the assessee that as per ground No.5 raised by the assessee before the Tribunal, this is the grievance of the assessee that the mandatory notice issued by the AO under section 148 of the Income Tax Act, 1961 (hereafter called 'the Act') on 11.03.2015 and the notice issued by the AO under section 143(2) of the Act on 01.06.2015 were issued in the name of the deceased person i.e. person i.e., late Shri. M. N. Harinath even though the Department was in knowledge about the death of the assessee and therefore, such notices are bad in law and consequent Assessment Order is also bad in law. In support of this contention, he placed reliance on the following judicial pronouncements:

- a) Tribunal order of Delhi Bench of the Tribunal rendered in the case of ITO Vs. late Shri. Somnath Malhotra through Smt. Raj Rani Malhotra in ITA No.519/Del/2013 dated 02.07.2015 available on pages 28 to 34 of the Paper Book.
- b) Judgment of Hon'ble Delhi High Court rendered in the case of Rajender Kumar Sehgal Vs. ITO as reported in 101 taxmann.com 233 (Del) copy available on pages 54 to 58 of Paper Book.
- c) Judgment of Hon'ble Madras High Court rendered in the case of CIT Vs. M. Hemanathan as reported in 384 ITR 177 (Madras) copy available on pages 59 to 65 of the Paper Book.

3. He also submitted that the copy of notice issued by the AO under section 148 is available on page 22 of the Paper Book as per which it can be seen that

such notice was issued by the AO on 11.03.2015 and the same is issued in the name of the deceased assessee Shri. M. N. Harinath. He also submitted that on page No. 17 of the Paper Book is the letter submitted by legal heir of the assessee Smt. M. H. Mamatha on 24.02.2011 in which the AO was intimated that her husband Shri. M. N. Harinath having PAN No.AAPPH 3341 G has expired on 31.03.2009 and he has filed his return of income for Assessment Year 2008-09 on 31.03.2009 claiming a refund of Rs.92,900/- and the Xerox copy of the death certificate was also enclosed. He also pointed out that on page 18 of the Paper Book is a copy of letter dated 30.05.2012 issued by ACIT, Circle 2(1), Bengaluru, in the name of the deceased assessee Shri. M. N. Harinath as per which he has required about the details of immovable property sold during Financial Year 2007-08 relevant to the present Assessment Year i.e., 2008-09 and reply to this letter was submitted to the AO on 18.06.2012 / 21.06.2012 and as per this reply (the receipted reply available on page 19 of the Paper Book) also, it was intimated to the Department that Mr. M. N. Harinath had expired on 31.03.2009 and copy of the death certificate was enclosed. Thereafter, he pointed out that on page 20 of the Paper Book is another letter dated 11.06.2012 issued by ITO, Ward-2(3), Bengaluru, to Mr. M. N. Harinath on 11.06.2012 asking for some details and in reply to this letter submitted with the Department on 18.07.2012, copy available on page 21 of the Paper Book also, the legal heir of the said deceased assessee has intimated the Department that Mr. M. N. Harinath had expired on 31.03.2009 due to heart problem. He submitted that from these facts, it is apparent that the Department was in knowledge of the death of the assessee but inspite of this, the notices under section 148 and 143(2) of the Act were issued in the name of the dead assessee and therefore, these judgments are applicable and the consequent Assessment Order is bad in law and should be quashed.

4. As against this, learned DR of the Revenue supported the orders of authorities below. He submitted that he wants to place reliance on three judicial pronouncements and he submitted that he will file the copy of the judgments in

the course of the day. We waited till 4 PM on the next day i.e. 27.08.2020 but he has not filed the copy of those judgments.

5. We have considered the rival submissions. We have noted that these facts are not in dispute that the assessee Mr. M. N. Harinath had expired on 31.03.2009 and the return of income for Assessment Year 2008-09 was filed by him on 31.03.2009 during his life time because on this date, it is submitted before us that he died suddenly because of heart attack. It is also not in dispute that this fact of death of the assessee was intimated to the Department at least on 24.02.2011 as per the copy of letter available on page 17 of the Paper Book and this letter is in respect of assessee's claim for refund for the same Assessment Year i.e., Assessment Year 2008-09 and thereafter also, the fact of death of the assessee was intimated to the Department as per letter dated 18.06.2012 filed on 21.06.2012 and letter dated 18.07.2012 filed on same date but inspite of this, the AO has issued notice under section 148 of the Act on 11.03.2015 in the name of the dead assessee. In the light of these facts, now we examine the applicability of the various judgments cited by the learned AR of the assessee. As per the Tribunal order on which reliance has been placed by the learned AR of the assessee having been rendered in the case of ITO Vs. Late Shri. Somnath Malhotra through Smt. Raj Rani Malhotra (supra), it was noted by the Tribunal in that case that notice under section 148 of the Act was issued on 31.03.2010 in the name of the deceased assessee who had already expired on 06.12.2002 and therefore, the notice issued under section 148 was invalid and the assessment framed on the basis of the said invalid notice was void-ab-initio. In the case of Rajender Kumar Sehgal Vs. ITO (supra), it was noted by Hon'ble Delhi High Court that in another judgment rendered in the case of Vipin Walia Vs. ITO, 238 Taxman 1 (Delhi), it was held by Hon'ble Delhi High Court in that case that the ITO in that case was to initiate proceedings under section 147 of the Act against the deceased assessee for Assessment Year 2008-09 and the limitation for issuance of notice under section 147 / 148 of the Act was expiring on 31.03.2015 and on 27.03.2015, when an notice was issued, the assessee was already dead

and therefore, if the Department intended to proceed under section 147 of the Act, it could have done so prior to 31.03.2015 by issuing the notice to the LRs of the deceased assessee and beyond this date, it could not have proceeded in the matter even by issuing notice to the LRs of the assessee. By following this earlier judgment of Hon'ble Delhi High Court, Hon'ble Delhi High Court noted in the case of Rajendra Kumar Sehgal Vs. ITO (supra) that for Assessment Year 2010-11, the return of income was filed by the deceased assessee prior to his death on 17.01.2015 and thereafter, the notice was issued under section 148 in the name of deceased assessee on 29.03.2017 and it was held by Hon'ble Delhi High Court that the impugned reassessment notice and all consequent proceedings including the reassessment order have to be and are quashed. Similarly, in the case of CIT Vs. M. Hemanathan (supra) also, notice under section 263 was issued on 06.09.2013 whereas the assessee has already expired on 13.06.2013 but still the notice under section 263 was issued in the name of the dead assessee. Hon'ble Madras High Court has duly considered the provisions of section 292BB of the IT Act and held that the very initiation of the proceedings against the dead person and the continuation of the same despite having notice of factum of the death of the assessee cannot be approved. Hence, it is seen that all these judgments support the case of the assessee that the notice under section 148 issued by the AO in the name of the deceased assessee is not valid and the Assessment Order in pursuance to such invalid notice has to be quashed. Regarding the judgments on which the learned DR of the Revenue sought to rely upon but copy not filed before us, we would like to observe that this is not the claim of the revenue that he wants to rely upon a judgment of Hon'ble apex court or of Hon'ble Karnataka High Court in which a contrary view is taken under similar facts and therefore, even if some different view is taken in those judgments of any other High Court, which is not jurisdictional High Court, we have to follow those judgments in which the view in favour of the assessee has been taken and therefore, we do not wait further for him to file copy of those judgments and we follow the various judgments cited by learned AR of the assessee and in the facts of the present case,

we hold that the notice issued by the AO under section 148 is invalid notice because the same was issued in the name of the deceased assessee inspite of this fact that the factum of death of the assessee was duly intimated to the Department much prior to the issue of notice under section 148 of the Act in the name of the deceased assessee and the consequent Assessment Order is also invalid and the same is hereby quashed.

6. In view of this decision, other grounds raised by the assessee do not require any adjudication because when the Assessment Order itself is quashed, no other issue remains to be decided.

7. In the result, assessee's appeal is allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-  
**(BEENA PILLAI)**  
**Judicial Member**

Sd/-  
**(A.K. GARODIA)**  
**Accountant Member**

Bangalore,  
Dated: 28<sup>th</sup> August, 2020.  
/NS/\*

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|---------------|-------------------------|---------------|
| 1. Appellants | 2. Respondent           | 3. CIT        |
| 4. CIT(A)     | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.