

आयकर अपीलिय अधिकरण
दिल्ली पीठ " जी ", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

आअसं . 7829/दिल्ली/2017 (नि . व. 2009-10)
ITA NO.7829/DEL/2017 (A.Y.2009-10)

Smt. Sangeeta Saini W/o & L/H
Of Late Shri Nirmal Kant Saini,
17-E, Banglow Road, Kamla Nagar,
New Delhi 110007
PAN: AARPK-3426-H

..... अपीलार्थी / Appellant

बनाम Vs.

Income Tax Officer,
Ward 35(2), New Delhi

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा / Appellant by : Shri Salil Agarwal, Sr. Adv. with
Shri Shailesh Gupta, CA
प्रतिवादीद्वारा / Respondent by : Shri Dharamvir Singh, CIT(DR)
सुनवाई की तिथि / Date of hearing : 15/04/2024
घोषणा की तिथि / Date of pronouncement : 28/06/2024

आदेश / ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-12, New Delhi dated 12.10.2017, for assessment year 2009-10.

2. The assessee in appeal has primary assailed the order of CIT(A) in upholding the addition of Rs. 75,00,000/- on account of capital gains claimed as exempt u/s. 47(1) of the Income Tax Act 1961, (hereinafter referred to as 'the Act') and

rejection of assessee's claim of deduction u/s. 54/s54F of the Act. The assessee vide application dated 29.05.2023 has raised an additional ground of appeal challenging validity of order dated 21.03.2014 passed u/s. 263 of the Act. The additional ground raised by the assessee, reads as under:

"That the impugned assessment so framed in pursuance to order passed by PCIT us 263 of the Act is bad in law and on facts, in as much as, the order so passed us 263 of the Act was on deceased/ dead person and also without satisfying the statutory preconditions envisaged in the Act, as such, any proceeding in pursuance to the said invalid order is void - ab - initio, without jurisdiction and is liable to be quashed, as such."

3. Shri Salil Agarwal, appearing on behalf of the assessee submitted that the assessee by way of additional ground of appeal has raised jurisdictional issue challenging validity of order passed u/s. 263 of the Act, as the same has been passed in the name of a dead person. He pointed that the assessee Shri Nirmal Kant Saini died on 21.01.2013, the assessee informed about the death of Shri Nirmal Kant Saini to CIT for the first time on 12.02.2014 and in all subsequent communications i.e. dated 24.02.2014, 12.03.2014 and finally on 20.03.2014, the assessee has been mentioning about demise of Nirmal Kant Saini. The aforesaid communications are at page 25 to 28 of the paper book. Despite the fact that CIT was informed about the death of Nirmal Kant Saini and the CIT has noted this fact in his order, still the CIT passed order u/s. 263 of the Act dated 21.03.2014 in the name of a dead person. He submitted that any order passed by Income Tax Authority in the name of dead person is non-est.

4. Per contra, Shri Dharamvir Singh representing the Department vehemently opposed admission of additional ground of appeal at this belated stage. The Id.

DR submitted that present proceedings before the Tribunal are against the order of CIT(A) upholding addition made in assessment order passed u/s. 143 (3) r.w.s. 263 of the Act. The assessee, if was aggrieved by the order of CIT passed u/s. 263 of the Act, should have assailed the said order before the Tribunal, as the order passed u/s 263 is an appealable order. Since, the assessee accepted the said order it has attained finality. The AO has passed the assessment order in compliance of the order passed u/s.263 of the Act, which was not appealed by the assessee. Now, the assessee in subsequent proceedings u/s. 143(3) r.w.s 263 of the Act, cannot raise additional ground assailing validity of order passed u/s. 263 of the Act. He further stated that the additional ground raised by the assessee is a mixed question of fact and law which requires fresh examination of facts. Hence, the additional ground should not be admitted.

5. Rebutting the objections raised by the Id. DR, the Id. Counsel for the assessee submitted that the assessee has raised a legal ground; the legal issue can be raised at any stage. He asserted that there is no requirement of examination of facts afresh, as the CIT in order passed u/s. 263 of the Act has recorded the fact of death of assessee, still be passed the order in the name of a dead person. Since, the order in pursuance of which the assessment order has been passed is itself non-est, any subsequent proceedings arising there from are vitiated and are liable to be quashed.

6. On merits of the addition, the Id. Counsel for the assessee submitted that the assessee had filed return of income for impugned assessment year on 29.10.2099 declaring total income of Rs. 4,04,200/- . The AO issued notice dated

21.08.2010 u/s. 143(2) of the Act, raising various queries. The assessee vide letter dated 20.06.2011 furnished reply to notice, the said replies are at pages 2 & 3 of the paper book. The assessee furnished a supplementary reply to notice on 27.06.2011, the same is at page 4 of the paper book. The assessee in continuation to his earlier replies furnished another reply on 19.10.2011, along with reply the assessee had furnished detailed list of HUF properties that were partitioned. The said reply is at page 5 to 7 of the paper book. The Id. Counsel submitted that a perusal of aforesaid replies would show that the assessee had furnished complete details of HUF properties including the fact of Rs. 75,00,000/- received by the assessee and the name of person from whom said amount was received. The AO after considering the detailed submissions of the assessee made no addition with regard to Rs. 75,00,000/- received by the assessee. It is not a case where the AO had not made inquiries. The AO did make inquiry regarding receipt of Rs. 75,00,000/- by the assessee during the relevant period. After having examined the details furnished by the assessee, the Assessing Officer was satisfied that no addition in respect of Rs. 75,00,000/- is warranted, hence, accepted the returned income. Nevertheless, the assessee had made detailed submissions before the CIT in proceeding u/s. 263 of the Act. It was explained to the CIT that the assessee had received Rs. 75,00,000/- from one of the coparceners of HUF. There were litigations going on between the assessee and Roop Kant and others coparceners. The assessee had filed civil suit before the Hon'ble High Court, the Hon'ble Court had ordered status quo, during the pendency of status quo order one of the coparceners had sold HUF property. The assessee thereafter filed another civil suit, the coparceners who had sold the property in order to settle

the dispute paid Rs. 75,00,000/- to the assessee. A memorandum of understanding to this effect was entered between the parties on 22.04.2008. The said memorandum of understanding is at page no. 150 to 156 of the paper book. The Id. Counsel also referred to family tree at page no. 107 of the paper book to show the relation between the assessee and Roop Kant. The assessee thereafter filed an application for withdrawal of the civil suit before the Hon'ble High Court. The application of assessee was allowed by the Hon'ble High Court vide order dated 24.08.2008.

7. Per contra, Ld. DR vehemently defended the impugned order on merits and prayed for dismissing appeal of assessee. The Id. DR pointed that assessee did not file any appeal against the order passed u/s. 263 of the Act. Thus, the assessee accepted findings of the CIT. The AO consequent to the directions of CIT has passed the assessment order u/s. 143(3) r.w.s 263 of the Act and has made addition, accordingly. The CIT(A) has rightly confirmed the same.

8. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee has raised an additional ground of appeal challenging validity of the order passed u/s 263 of the Act, on the ground that the said order has been passed in the name of a dead person. The Department has objected to admission of additional ground at this belated stage. It is an admitted position that the order passed u/s 263 of the Act dated 21.03.2014 was not challenged by the assessee. The AO framed the assessment on the basis of said order. It is in the proceedings arising from assessment order

u/s 143(3) r.w.s. 263 of the Act, the assessee has raised an additional ground of appeal challenging validity of the order passed u/s. 263 of the Act (supra).

9. It is a well settled principle that legal ground which goes to the root of validity of order can be raised any stage. If there is any jurisdictional defect in the order, the same can be challenged at any stage. The present assessment proceeding germinate from the order passed u/s. 263 of the Act. If, there is any inherent flaw in the order passed u/s. 263 of the Act which renders the said order non-est, the subsequent proceedings arising there from are vitiated. Therefore, we do not find any infirmity in the application filed by the assessee for admission of additional ground challenging validity of the order passed u/s 263 of the Act on a jurisdictional issue. Thus, the additional ground raised by the assessee is admitted for adjudication on merits.

10. In additional ground of appeal the assessee has assailed validity of order passed u/s 263 of the Act in the name of a dead person. The Id. Counsel for assessee has pointed that the assessee has informed about the death of Nirmal Kant Saini to the CIT vide letter date 12.02.2014, 24.02.2014, 12.03.2014 and 20.03.2014. The said communications are at pages 25 to 28 of the paper book. A perusal of aforesaid letters show that in initial three letters though it was not specifically mentioned that Nirmal Kant Saini had died but from reading of the said communications it can be gathered that Nirmal Kant Saini had died and the legal heir Smt. Sangeeta Saini, wife of late Nirmal Kant Saini is in the process of gathering documents. However, in the letter dated 20.03.2014 it was expressly mentioned that Nirmal Kant Saini expired on 21.01.2013 and his death certificate

was also placed on record. The CIT has taken cognizance of the said letter and in para 2 of the order passed u/s. 263 of the Act dated 21.03.2014 has recorded this fact. The relevant extract of the said order is reproduced here in under:

2". The case was posted for hearing u/s. 263 of IT Act on 20.03.2014, wherein Sh. Rakesh Malhotra, authorized representative attended and filed reply. In his reply assessee has stated as under that the assessee Sh. Nirmal Kant Saini had expired on 21.01.2013"

Thus, from the reading of the above observations by the CIT, it is explicitly clear that it was in the knowledge of CIT that Shri Nirmal Kant Saini had expired, still the CIT passed order u/s. 263 of the Act in the name of 'Nirmal Kant Saini'. It is not the case of revenue that the Department was not informed about the death of Shri Nirmal Kant Saini in proceedings u/s 263 of the Act. The Hon'ble Apex Court in the case of *PCIT vs Maruti Suzuki India Ltd 107 taxmann.com 375* has held that assessment order passed in the name of non-existing entity would be without jurisdiction and was to be set aside. In the instant case, the CIT after having knowledge of death of Nirmal Kant Saini was mandatorily required to pass an order in the name of legal heir of the deceased, whereas, the order was passed in the name of Nirmal Kant Saini i.e. in the name of a dead person. The order passed in the name of a dead person is illegal and bad in law. Hence, any subsequent proceedings arising there from are non-est.

Since, the assessment order dated 23.03.2015 stem from the order held to be bad in law, the said assessment order and the subsequent proceedings arising there from are vitiated. In the result, assessee succeeds on additional ground of appeal.

11. Since, we have held the assessment order non-est, the grounds raised by the assessee in appeal on merits of the addition have become academic and hence, not deliberated upon.
12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on Friday the 28th day of June, 2024.

Sd/-

(AVDRESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली / Delhi, दिनांक/Dated 28/06/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI