

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B” : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

I.T.A. No. 583/HYD/2020

Assessment Year: 2011-12

Laxmi Bai Mandala, HYDERABAD [PAN: ADYPM2208D]	Vs	Income Tax Officer, Ward-10(3), HYDERABAD
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(Appellant)

(Respondent)

For Assessee : Shri T.Chaitanya Kumar, AR
For Revenue : Shri Rohit Mujumdar, DR

Date of Hearing : 15-07-2021

Date of Pronouncement : 30-08-2021

ORDER

PER S.S.GODARA, J.M. :

This assessee's appeal for AY.2011-12 arises from the CIT(A)-6, Hyderabad's order dated 31-08-2020 passed in case No.10426/2018-19/A3/CIT(A)-6, in proceedings u/s.144 r.w.s.147 of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The assessee appears to have filed a petition dt.13-07-2021 seeking to raise the following substantive grounds:

*PETITION FILED UNDER RULE 11 OF
INCOME TAX APPELALTE TRIBUNAL RULES 1963*

1. The Appellant filed appeal against the order dated 31-08-2020 passed by the Commissioner of Income Tax (Appeals)-6 Hyderabad. In the appeal memorandum, the Appellant has raised grounds with

respect to additions made by the assessing officer. However, legal grounds with respect to Notice issued under section 147 R.W.S 148 to a dead person could not be continued against the legal representative and moreover, section 292B also could not resorted.

ADDITIONAL GROUND / GROUNDS

12. *"On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals)Assessing Officer grossly erred in issuing notice u/s 147 r.w.s 148 Legal representative.*

13. *"Whether the learned Commissioner of Income Tax (Appeals)Assessing Officer has erred in law and on facts in declaring the assessment order as void and a nullity or not?"*

16. *Whether the learned Commissioner of Income Tax (Appeals)Assessing Officer has erred in law and on facts and the circumstances of the case in concluding that the notice u/s.148 has not been served on proper person?"*

17. *Whether the learned Commissioner of Income Tax (Appeals)Assessing Officer has erred in law and on facts and the circumstances of the case in concluding that the notice issued in the name of the deceased person renders the assessment order null and void even if the order is passed in the name of the legal heir. The fact that the legal heir attended the proceedings does not make it a curable defect u/s 292BB*

It is submitted that the facts relating to the above legal grounds are already on record before the authorities below. Therefore, there is no necessity of fresh investigating into facts for adjudicating the additional grounds. In view of the laid out in the judgement of Hon'ble Supreme Court in the case of CIT Vs. N.T.P.C. (229 ITR 383 – SC), the additional ground raised above deserves admission and adjudication on merits. It is further submitted that the non-filing of the above ground before authorities below is on account of the fact that the Appellant was confident on its main stand. The Appellant is now been advised to raise the above additional ground as abundant caution.

In the aforesaid circumstances, it is prayed that the Hon'ble Tribunal may be pleased to admit the additional ground/grounds raised above, and adjudicate the same on merits".

3. The Revenue has strongly contested admission of the assessee's foregoing petition on the ground that the same tends to give altogether a new colour to the pleadings already made in the main appeal. Suffice to say, hon'ble apex court's landmark decision in National Thermal Power Co. Ltd., Vs., CIT [229 ITR 383] (SC); as considered in tribunal's Special Bench's decision All Cargo Global Logistics Ltd., Vs. DCIT (2012) [137 ITD 217](SB) (Mumbai), holds that *we can very well entertain a new ground going to root of the matter so as to determine correct tax liability of a taxpayer provided all the relevant facts are on record*. We go by the very analogy and find that the assessee's foregoing petition seeking to raise its additional substantive ground deserves to be accepted. Ordered accordingly.

4. We now come to the basic facts pertaining to the instant legal issue. There is no dispute *qua* the twin basic facts that this assessee herein late Laxmi Bai had expired on 26-07-2013 (death certificate pg.3), where as the Assessing Officer issued his re-opening notice on 12-04-2017 (pg.74 of the paper book). That being the case, we quote hon'ble Bombay high court's decision in W.P.No.404 of 2019 Rupa Shyamsundar Dhumatkar Vs. ACIT, 05-04-2019 and hon'ble Gujarat high court's decision in Special Civil Application No.15172 of 2018, dt.10-12-2018 Chandreshbhai Jayantibhai Patel Vs. ITO to hold that such a re-opening initiated against a dead person is a nullity. We adopt the very reasoning *mutatis mutandis* herein as well and quash the impugned re-opening/re-assessment taken recourse to by the learned lower authorities. Ordered

accordingly. All other pleadings on merits are rendered infructuous.

5. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 30th August, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 30-08-2021

TNMM

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Copy to :

1.Laxmi Bai Mandala, Flat No.409, 4th Floor, Metro Residency, Raj Bhavan Road, Somajiguda, Hyderabad.

2.Income Tax Officer, Ward-10(3), Hyderabad.

3.CIT(Appeals)-6, Hyderabad.

4.Pr.CIT-1, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.