

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.7957/Del./2019
Assessment Year 2010-2011

Shri Anoop Kumar Bishnoi Legal Heir of Bhupendra Kumar Bishnoi, D-1028, New Friends Colony, New Delhi – 110 025. PAN AAIPB8027G (Appellant)	vs.	The Income Tax Officer, Ward-28(1), Room No.1214, Civic Centre, New Delhi – 110 002. (Respondent)
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For Assessee :	Shri Arun Kishore, C.A.
For Revenue :	Shri R.K. Gupta, Sr. D.R.

Date of Hearing :	01.09.2021
Date of Pronouncement :	01.09.2021

ORDER

This appeal filed by the Assessee is directed against the Order Dated 29.07.2019 of the Ld. CIT(A)-10, New Delhi, relating to the A.Y. 2010-2011.

2, Facts of the case, in brief, are that the assessee is an individual and had filed his return of income declaring total income of Rs.29,06,000/- which included agricultural

income of Rs.19,25,800/-. The case of the assessee was reopened after recording reasons under section 147 of the I.T. Act, 1961 on the basis of AIR information that assessee has made cash deposit of Rs.29,06,000/- in his Savings Bank Account. Accordingly notice under section 148 of the I.T. Act was issued on 30.03.2017. The assessee filed objections which was disposed-off by the A.O. by passing a speaking order. The A.O. noted that assessee through his legal-heir did not avail the opportunity of filing any return in response to notice under section 148 of the I.T. Act. The Authorised Representative of the Assessee was kept on objecting the reopening of the assessment on the ground that there is no provision in the Income Tax Act to intimate that assessee had died. The A.O. noted that the legal-heir did not discharge his duty of getting the PAN closed and did not cooperate in completion of the assessment proceedings. Since the assessee was not filing the details of the source of Rs.29,06,000/-deposited in the Savings Bank Account, the A.O. completed the assessment under section 144 of the I.T. Act, 1961, determining the total income of the assessee at

Rs.9,53,200/- by adding an amount of Rs.7,00,711/- to the total income of the assessee on account of unexplained cash deposit.

2.1. In appeal, the Ld. CIT(A) dismissed the appeal of the assessee by observing as under :

“3. Before going through the merits of the case or the grounds of appeal it is imperative to decide on the maintainability of the appeal u/s 249 of the Act r.w. Rule 45. The appeal has been manually filed whereas the Rule 45 has been amended and it has been mandatory to file the appeal electronically after 01/04/2016 as per the prescribed procedure. Thus, in view of the Rule 45 of the IT Act, 1961 the manual appeal is not a valid appeal and deserves to be rejected.

4. Secondly, the appeal has been filed by quoting the PAN of Sh. Bhupendra Kumar Bishnoi who was not alive at the time of filing of appeal. Therefore,

the appeal in the name of a dead person is not maintainable. It should have been filed by citing PAN of legal heir and cancelling the PAN of the dead person. Because of citing of the PAN of Sh. Bhupendra Kumar Bishnoi in Form-35 (filed manually), it caused generation of notice u/s 250 from the computerized system in the name of dead person, which was not a valid notice. It also indicates that the legal heir has not got the said PAN of dead person deactivated. Thus, the appeal so filed has inherent jurisdictional defect hence not maintainable.

5. *In view of the above observations, the appeal is hereby rejected and dismiss without going into the merits of the case.”*

3. Aggrieved with such Order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :

- “1. (i) That the Order of Ld. CIT(Appeals)-10 (CIT-A) Dated 29.07.2019 on facts of the case and in law is illegal, unjust, opposed to facts and suffers from the vice of Arbitrariness.
- (ii) That each Ground of Appeal is an independent ground, without prejudice to the other.
2. That the Ld. CIT-A has erred in dismissing the appeal on Technical Ground without adjudicating on application made along with appeal to accept hard copy in place of online filing.
3. That the Order of Ld. CIT-A is against the principles of natural justice, since he has not allowed any reasonable time to rectify the effect in filing of the appeal.
4. That the Order of the Ld. CIT-A is bad in the eyes of law, since the technical defect in filing of the appeal manually, was not pointed out for 18 months from the date of filing of appeal.

5. *That the Order of the Ld. CIT-A on Facts of the Case and in law is illegal, since section 249 read with applicable rules as prevailing during AY 2010-11 is the applicable law, in accordance with which manual filing of appeal is permitted.*

6. (i) *That on Facts of the Case and in law, the Order of CIT-A is illegal in raising technical objection of filing appeal under the PAN of the deceased, when all notices u/s 148, 142(1), assessment order dated 29-12-2017, notice of hearing from CIT(A)-10 dated 28-05-2019 and even the appellate order dated 29-07-2019 refer to the same PAN of the deceased, while only the appellant is being singled out for using a wrong PAN with reference to applicable rules.*

(ii) *That when technicalities are pitted against dispensation of justice technicalities have to be over-ruled, in the interest of justice.*

(iii) That the Ld. CIT-A be directed to ignore technicalities, accept the manual appeal filed and to adjudicate the appeal after taking submissions of the appellant.

7. *(i) That the Ld. CIT-A Grossly erred in refusing to accept the written submission of the appellant dated 29-03-2019 when presented by the authorized representative CA Deepak Kumar.*

(ii) That the appeal has been disposed off against all principles of justice, appellants written submissions were not taken on record before disposing off the appeal.

8. *That on Facts of the Case and in law, the issue of notice u/s 148 is illegal, since:*

a) Ld. Income Tax Officer has issued notice u/s 148 without proper application of mind and without recording proper satisfaction after verification of records.

b) Notice has been issued to a deceased - non-existent person which is an invalid notice.

c) Notice is issued on wrong foundation that no return was filed by the appellant, whereas in the assessment order A.O. admits the income as declared in the ITR.

9. That the assessment made in the name of Anoop Kumar Bishnoi L/H of Late Sh. Bhupendra Kumar Bishnoi u/s 144 / 147, on facts of the case and in law, is illegal, since no notice u/s. 148 was issued in the name of the assessed person. On the basis of notice issued to deceased, no assessment can be made on the Legal Heir. The jurisdiction to made assessment u/s 147 in the name of Legal Heir was missing in the instant case.

10. That on the Facts of the Case and in law, the Order of Ld. AO dated 29-12-2017 is illegal, since notice u/s 148 was not validly served on the

assessee and no preliminary enquiry before issue of this notice was made.

11. *That the Legal Heir of the deceased by filing ITR of Late Sh Bhupendra Kumar Bhisnoi for AY 2014-15 as Legal Heir, amounts to due intimation to the IT Department of death of the appellant.*
12. *That on the Facts of the Case and in law, the basic foundation on which notice u/s 148 is issued, is erroneous, since all credits in the Saving Bank Account do not represent income which may have escaped assessment.*
13. (i) *That in the Facts of the Case and in law, the assessment made by the Ld. AO is illegal, since the addition of Rs.7,00,711/- is made without referring to any section under which the income is added. The appellant is prevented from establishing its defense and availing its privileges and benefits under the IT Act.*

(ii) That at the most it can be presumed that the Ld.AO has made the addition of Rs.7,00,711/- u/s 68 of The IT Act in respect of unexplained credits, but the said addition u/s 68 is not maintainable as the Savings Bank Account does not represent the books of accounts maintained by the assessee, as such no addition can be made u/s. 68.

14. That the illegal assessment be annulled and the additional income of Rs.7,00,711/- be deleted.”

4. I have heard the rival arguments made by both the sides and perused the record. I find the Ld. CIT(A) dismissed the appeal filed by the assessee on the ground that the same was filed manually instead of electronically and further the appeal has been filed by quoting the PAN of Shri Bhupendra Kumar Bishnoi who was not alive at the time of filing of appeal and, therefore, the appeal in the name of a dead person is not maintainable. Considering the totality of the facts and circumstances of the case and in the interest of justice, I deem it proper to restore the issue to

the file of the Ld. CIT(A) with a direction to grant one more opportunity to the assessee to file the appeal electronically by the Legal-Heir of the deceased person. The Ld. CIT(A) shall condone the delay, if any, and admit the appeal and decide the issue on merit, after giving due opportunity of being heard to the assessee. I hold and direct accordingly. Grounds raised by the Assessee are allowed for statistical purposes.

5. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court on
01.09.2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated 01st September, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.