

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.32/CTK/2022

Assessment Year : 2017-18

Kusum Mehta, C/O. R.J.Jewellers, Jaunliapatty, Cuttack	Vs.	Pr. CIT, Bhubaneswar-1
PAN/GIR No.ABBPM 2300 D		
(Appellant)	..	(Respondent)

Assessee by : Shri Mohit Sheth, AR
Revenue by : Shri M.K.Gautam, CIT DR

Date of Hearing : 18/01/2023

Date of Pronouncement : 18/01/2023

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id Pr.

CIT, Bhubaneswar-1, passed u/s.263 of the Act dated 11.1.2022 in Appeal No. ITBA/REV/F/REV5/2021-22/1038621618(1) for the assessment year 2017-18.

2. Shri Mohit Sheth, Id AR appeared for the assessee and Shri M.K.Gautam, Id CIT DR appeared for the revenue.

3. It was submitted by Id AR that the assessee expired on 12.10.2020. It was the submission that the information regarding death of the assessee has been orally intimated to the Assessing Officer. It was the submission that the death certificate had been issued by the Government of Odisha only on 8.3.2021. It was the submission that as the death certificate had been issued only on 8.3.2021, the assessee had applied for legal heir certificate, which was issued only on 28.2.2022. Ld AR has placed the copies of the death certificate and legal heir certificate before us. It was the submission that the assessment in the case of the assessee came to be completed on 28.8.201, the assessee was alive. After the said assessment order was passed, when the notice u/s.263 had been issued on 10.8.2021, the assessee was no more. Consequently, the assessee's email was also not available. Therefore, the legal heir did not know the proceedings having been initiated u/s.263 of the Act. It was the submission that without legal heir certificate, they could not upload the details in Income tax portal as the details would not be accepted without death certificate and legal heir certificate. It was the submission that the details had been uploaded on 21.3.2022. Ld AR has placed said screen shot before us. It was thus the submission that the order passed u/s.263 has been passed on a deceased assessee and, therefore, the order u/s.263 is liable to be quashed.

4. In reply, Id CIT DR submitted that there is no information available with the Pr. CIT in respect of the death of the assessee. Therefore, it

cannot be held that the Pr. CIT has passed order u/s.263 of the Act on a deceased assessee. It was the submission that he had no objection if the issue is restored to the file of the Pr. CIT for redoing the order u/s.263 of the Act on the legal heir after giving adequate opportunity of being heard. It was the submission that even there is no evidence available on record of the Assessing Officer that the legal heir has intimated the Assessing Officer regarding the death of the assessee.

5. We have considered the rival submissions. Admittedly, the facts remain that on the death of an individual, Government draws information in respect of death from the cremation spot or on the basis of doctor's death certificate. The State Government then issues the death certificate within 7 to 14 days. It is after this that the legal heir certificate is applied and obtained. Admittedly, the year 2020 & 2021 was the Covid period. The assessee died on 12.10.2020 due to cancer. The death certificate has been issued after nearly four months being 1.2.2021. Admittedly, there is no provision under which the legal heir could have intimated the revenue regarding the death of the assessee as they had no certificate issued by the statutory authorities to prove the death. Without the statutory authority certificate, the revenue would not accept the factum of the death either. It is only after obtaining the death certificate, the legal heir certificate can be applied for. The legal heir certificate has been issued to the assessee on 28.2.2022. Thus, a perusal of the screen shot of the e-filing of the revenue

authorities shows that legal heir certificate has been filed before the revenue authorities on 21.3.2022 and the same has been approved within 3-4 days. Thus, clearly, the revenue has acted fast when it received the legal heir certificate. However, there has been delay at the level of State Government in issuing necessary certificate. Fault cannot be placed on the Revenue or the assessee. The prayer of the Id CIT DR that the issues should be restored to the file of the Pr. CIT for re-adjudication of the issues in the name of the legal heir of the assessee cannot be acceded to because the proceedings would be a fresh proceedings by issuance of the show cause notice to legal heir of the assessee and the adjudication thereof and this would not be possible as the time limit for the proceedings are time barred. An appellate authority does not have the authority to extend the limitation. These being the facts and considering the fact that the addition in appeal is only of Rs.11 lakhs, and as the order u/s.263 has been passed on a deceased assessee, same stands quashed.

6. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 18/01/2023.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 18/01/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Kusum Mehta, C/O.
R.J.Jewellers, Jaunliapatty, Cuttack
2. The Respondent: Pr. CIT, Bhubaneswar-1
3. The CIT(A)-1, Bhubaneswar
4. DR, ITAT, Cuttack
5. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack



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