

**IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH :: NAGPUR**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI KHETTRA MOHAN ROY, ACCOUNTANT MEMBER**

**ITA No. 213/NAG/2025
(Assessment Year : 2018-19)**

ITO, Ward-1, Yavatmal	vs	Sarika Shankarrao Zilpe through Legal Heir Shri Shankarrao Trimbakrao Zilpe, O, Jatra Road, Rangaripura, Wani, Yavatmal-445304 PAN : AAEPZ 7483 L
Revenue		Assessee

Assessee by	:	Shri Naresh Jakhota, CA
Revenue by	:	Shri Surjit Kumar Saha, Sr. DR
Date of hearing	:	25.02.2026
Date of pronouncement	:	11.05.2026

ORDER

PER KHETTRA MOHAN ROY, AM:

This appeal by the Revenue is directed against the order of Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi (for short, “**CIT(A)**”), dated 24/01/2025 passed under section 250 of the Income Tax Act, 1961 (for short, “**Act**”) which is emanating from assessment order passed u/s. 147 r.w.s. 144

r.w.s. 144B of the Act dated 22.03.2023 for the Assessment Year 2018-19.

2. Registry has pointed out that there is a delay of 04 days in filing the present appeal. Considering the minimal nature of the delay and the circumstances explained, the delay is condoned and the appeal is admitted for hearing.

3. Revenue has raised the following grounds of appeal:

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in adjudicating the appeal without examining whether the appeal filed was valid as per law it was filed by a person not registered on the e-filing portal as legal heir and hence an unauthorized authority?*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in taking cognizance of documents filed by a person other than the assessee and so not authorized as not registered as legal heir on the e-filing portal?*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that despite the assessee expiring on 13/05/2015 as claimed during appeal, during AY 2018-19 business transactions in respect of liquor sales continue to be done in her name in respect of Rs. 31,33,361/- and cash deposits amounting to Rs. 1,39,86,671 were done in her account and as such income continued to be earned in her name which was taxable?*
4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in adjudicating the appeal based on the documents furnished before it in contravention of Rule 46A (3) of the Income Tax Rule 1962*

by not seeking views from the Assessing Officer on the additional evidence furnished during appellate proceedings?

5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in adjudicating appeal based on documents filed for the first time during the appellate proceedings without recording reasons for admission of the same in violation the provision of Rule 46A (2) of the Income Tax Rule, 1962?*
6. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in taking cognizance of and adjudicating on documents filed by a person not registered as legal heir on e-filing portal and hence not authorized and in not considering the contents of the assessment order wherein the details of notices issued to the assessee and non-compliance are available?*
7. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not taking into account the fact that no documents were filed before the FAO during the assessment proceedings by the person conducting the business in her name or by the person filing the appeal?*
8. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in failing to appreciate the fact that the appellant does not come with clean hands as he has taken cognizance of the assessment order but not the various notices issued by the FAO as the same response filed during the appellate proceedings could have been given during assessment proceedings?*
9. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not calling for remand report from the Assessing Officer on the additional evidence filed during appellate proceedings and adjudicated on the same without taking the AO's views on these documents?*
10. *The appellant craves leave to add, amend, vary and/or alter any of the above grounds, as and when deemed necessary.”*

4. On perusal of the above grounds, the Department's main grievance is that Ld. CIT(A) entertained an invalid appeal filed by an unauthorized person (not a registered legal heir) and decided the case by admitting additional evidence in violation of Rule 46A, without obtaining a remand report from the Ld. Assessing Officer (**AO**).

5. Facts of the case in brief are that assessee did not choose to file return of income for A.Y. 2018-19. Based on the information available with the then Ld. Jurisdictional Assessing Officer (**JAO**), assessee made huge cash deposits in the bank account. In 148A(d) proceedings, a notice u/s. 148 was issued and served upon the assessee, but assessee did not file any return of income. On the information provided by the bank i.e. Yeotmal Urban Co-op Bank Ltd. in Form No. 61A, certified that assessee has made aggregate cash deposits of Rs.1,39,86,671/- in the name of the business being mentioned as M/s. Hotel Kingstar Restaurant. Therefore, Ld. AO completed the assessment u/s. 147 r.w.s. 144 of the Act considering the total credits made in the bank account as

unexplained cash credit and the entire amount of Rs. 1,39,86,671/- is added back to the total income of the assessee u/s. 69 of the Act. In addition to this, Ld. AO considering the details available in Form 26AS, an amount of Rs. 31,33,361/- is also added back to the total income of the assessee u/s. 69C of the Act.

6. Aggrieved with the order of Ld. AO, assessee preferred appeal before the Ld. CIT(A). Before the Ld. CIT(A), Legal Heir of the assessee submitted that assessee died long back on 23.04.2015 and the death certificate of the assessee communicated the Ld. AO on 18.04.2022. Even though in spite of submission of death certificate, Ld. AO completed the assessment in the name of a deceased person. The total addition of Rs. 1,71,20,032 has been made by the Ld. AO and raised a demand of Rs. 2,84,44,205/- in the hands of the deceased assessee. Before making the addition, Ld. AO failed to enquire about the fact that cash deposited in Yavatmal Urban Co-op Bank does not belong to the assessee, but belong to M/s. Hotel Kingstar Restaurant. Prior to making addition, no

independent enquiry is carried out about the death of assessee long back. The Ld. CIT(A) after considering the explanation of the LR of the assessee, allowed the appeal and deleted the addition holding as under:-

“7.13 It is now a settled position of law a notice u/s 148 of the Act issued to a deceased person is invalid and non est in the eyes of law. In this case, notice u/s 148 of the Act was issued against the deceased assessee. Since this is not a case falling under clause (a) of Section 159(2) of the Act, the proceedings pursuant to the notice issued u/s 148 of the Act could not be continued against the legal representative. Thus, the Assessing Officer was required to issue valid notices to the legal representative of the appellant. However, the Assessing Officer continued with the proceedings pursuant to the impugned notice which was issued in the name of a deceased person and passed an ex parte order in the name of the appellant.

7.14 Having been intimated about the appellant's death on 18/04/2022, the JAO was required to inform the Assessing Officer about this crucial fact of the case. As stated in Para 6 of the impugned assessment order itself, there was correspondence between the JAO and the Assessing Officer during the course of assessment proceedings. The assessment order in this case was required to be passed in the name of the legal representative of the appellant after issue of appropriate notices.

7.15 In view of the facts and circumstances of the case, the impugned notice u/s 148 of the Act is void ab initio and the proceedings u/s 147 of the Act initiated against the appellant who was already deceased at the time of such initiation are null and void. Accordingly, the impugned assessment order is bad in law and in facts; and is, therefore, quashed. In the

result, the impugned additions of Rs. 1,39,86,671/- and Rs.31,33,361/- are deleted.”

7. Aggrieved by the order of Ld. CIT(A), Revenue is in appeal before this Tribunal. Ld. DR submitted that vehemently supported the assessment order passed by the Ld. AO. It was submitted that assessee had failed to file the return of income despite having made substantial cash deposits in the bank account. Based on credible information received through Form No. 61A and Form 26AS, the Ld. AO rightly initiated proceedings u/s 147 of the Act. He further contended that assessee did not comply with the statutory notices issued during the reassessment proceedings, leaving the Ld. AO with no option but to complete the assessment u/s 144 r.w.s. 147 of the Act. It was further argued that the additions made u/s 69 and 69C of the Act were based on cogent material available on record. With regard to the issue of the assessee being deceased, Ld. DR submitted that mere technical defects should not invalidate the assessment proceedings when substantial evidence exists indicating undisclosed income. It

was argued that the legal heir had participated before the Ld. CIT(A), and therefore, the defect, if any, stands cured. The Ld. DR thus prayed that the order of the Ld. CIT(A) quashing the assessment be set aside and that of the Ld. AO be restored.

8. *Per contra*, Ld. AR strongly supported the order of Ld. CIT(A). It was submitted that the entire reassessment proceedings are void *ab initio* as the notice u/s 148 of the Act was issued in the name of a deceased person, who had expired on 23.04.2015, much prior to initiation of 147 proceedings. The Ld. AR submitted that the fact of death of the assessee was duly intimated to the department on 18.04.2022 along with the death certificate. Despite having knowledge of this crucial fact, Ld. AO failed to issue notice to the legal heir and proceeded to complete the assessment in the name of the deceased person, which is impermissible in law. It was further argued that as per settled legal position, proceedings initiated against a dead person are null and void and cannot be cured by invoking provisions of section 292B of the Act. The Ld. AR relied upon various judicial precedents to submit that such

defect goes to the root of jurisdiction. On merits also, the Ld. AR submitted that the bank account in question belonged to M/s. Hotel Kingstar Restaurant and not to the assessee in his individual capacity, and no proper enquiry was conducted by the Ld. AO before making the additions. Accordingly, the Ld. AR prayed that the order passed by the Ld. CIT(A), being legally sound and well-reasoned, be upheld.

9. We have heard the rival submissions and perused the material available on record. Learned counsel submitted a paper book running into 54 pages and also placed acknowledgment for communication of death certificate of the assessee to the Ld. AO on 18.04.2022. It is undisputed fact emerging from the record is that assessee had expired on 23.04.2015, i.e., much prior to the initiation of reassessment proceedings. The notice u/s 148 of the Act was issued in the name of the deceased person and the assessment was also completed in the name of the deceased assessee. We further observe that the fact of death of the assessee was duly brought to the notice of the Department on 18.04.2022 along with

supporting evidence. Despite being aware of this crucial fact, Ld. AO failed to take corrective measures by issuing notice to the legal representative in accordance with law and instead proceeded to complete the assessment in the name of the deceased person. It is a settled position of law that any proceedings initiated against a deceased person are void *ab initio* and are *non est* in the eyes of law. Such a fundamental defect goes to the root of jurisdiction and cannot be cured by invoking the provisions of section 292B of the Act. The proper course available to the Ld. AO was to initiate proceedings, if permissible under law, in the name of the legal representative as per the provisions of section 159 of the Act. In the present case, Ld. CIT(A), after appreciating the facts and legal position, has rightly held that the notice issued u/s 148 and the consequential assessment order passed u/s 147 r.w.s. 144 of the Act are invalid in the eyes of law and accordingly quashed the same. We do not find any infirmity in the well-reasoned order of the Ld. CIT(A). The same view has been taken by us in the case of *Late Jankidevi Nandlal Jaiswal through LR Amit Mohanlal Jaiswal vs. ITO* in ITA No. 238/NAG/2024, dated

27.03.2026. There is no scope to interfere in the cogent findings of Ld. CIT(A). Since the assessment order is non est, it is not necessary to delve upon the facts in detail.

10. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on 11.05.2026 under Rule 34 of Income Tax (Appellate Tribunal) rules 1963

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

sd/-
KHETTRA MOHAN ROY
ACCOUNTANT MEMBER

Nagpur: Dated: 11/05/2026

vr/-

Copy to:

1. The Assessee
2. The Revenue
3. The Pr.CIT concerned.
4. The DR, ITAT, Nagpur
5. Guard file.

By order

Senior Private Secretary
ITAT, Nagpur