

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES “F” : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
ITA.No.5381/Del./2017
Assessment Year 2013-2014

Late Shri Rajan Ray, 303, Mansarovar 90, Nehru Place, New Delhi – 110 019. PAN AAPR0470K	vs.	The ACIT, Circle-67(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Suresh Malik, C.A.
For Revenue :	Shri Gurneel Singh, Sr. DR

Date of Hearing :	12.03.2020
Date of Pronouncement :	12.03.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-21, New Delhi, Dated 17.05.2017, for the A.Y. 2013-2014, challenging the disallowance of Rs.53,86,965/- under section 10(10A) of the I.T. Act, 1961 and addition of Rs.11,71,280/- on account of fee from TPIL, Singapore.

2. Briefly the facts of the case are that the A.O. passed the assessment order under section 143(3) Dated 15.03.2016 in the name of assessee Shri Rajan Ray. The assessee filed appeal before the Ld. CIT(A) on 13.04.2016. The Ld. CIT(A) decided the appeal of assessee on 17.05.2017 in the name of assessee "Rajan Ray". The First Appellate Proceedings were attended by Shri Suresh Malik, C.A. However, the present appeal shows it is filed in the name of "Late Shri Rajan Ray" and verification have been done by Ms. Lavanya Ray, Legal-Heir of the assessee who is stated to be wife of the deceased assessee. Form No.36 is signed on 17.08.2017 and filed in the O/o. Tribunal on 21.08.2017.

3. We have heard the Learned Representatives of both the parties.

4. On enquiry from Counsel for Assessee Shri Suresh Malik, C.A. who has appeared before the Ld. CIT(A) also, he has intimated that assessee was expired on 10.10.2016, copy of the death certificate is placed by him on record. It would show that after filing of the appeal before the Ld. CIT(A) assessee was expired and on the day of

passing of the First Appellate Order, the assessee no more survive. The Counsel for Assessee could not intimate as to why amended Form No.35 was not filed before the Ld. CIT(A) intimating the death of the assessee. As such, the Legal-Heirs of the assessee were not brought on record even before the Ld. CIT(A). Shri Suresh Malik, C.A. continuously appeared for deceased assessee before the Ld. CIT(A) even after his death. As such, the course is wholly impermissible and invalid under the Law. The Counsel for Assessee could not appear for a dead person before the Ld. CIT(A). Since revised Form No.35 was not filed before the Ld. CIT(A) bringing Legal-Heir of assessee on record, therefore, the Ld. CIT(A) under this mistaken belief passed the First Appellate Order in the name of dead person i.e., "Rajan Ray" without bringing Legal-Heir on record. Thus, the Order of the Ld. CIT(A) is entirely nullity and void in Law. It was the duty of the Counsel for Assessee to intimate the Ld. CIT(A) about the death of the assessee, other wise, this mistake would not have been committed on record. Since the Order passed by the Ld. CIT(A) in the name of dead person is nullity and

void in Law, therefore, present appeal is not maintainable and is liable to be dismissed. However, in the interest of justice, we set aside the impugned order of the Ld. CIT(A) and restore the matter in issue to the file of Ld. CIT(A) with a direction to the Legal-Heir of the assessee to file amended Form No.35 before the Ld. CIT(A) bringing legal representatives on record by intimating the Ld. CIT(A) about the death of the assessee. The Ld. CIT(A) may thereafter proceed in accordance with Law by giving reasonable, sufficient opportunity of being heard to the assessee, if appeal is filed in accordance with Law and Rules. Appeal of the Assessee is allowed for statistical purposes.

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

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 12th March, 2020

VBP/-

Copy to

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.