

**Deepak Chhabra Vs. Ito**

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**Court :** Delhi

**Decided On :** Jan-30-2006

**Reported in :** (2006)203CTR(Del)102; [2006]154TAXMAN215(Delhi)

**Appeal No. :** IT Appeal Nos. 201 & 476 of 2005 30 January, 2006

**Appellant :** Deepak Chhabra

**Respondent :** ito

**Advocate for Pet/Ap. :** KR. Manjani,;for the Appellant; R.D. Jolly,;for the Responden

**Judgement :**

ORDER

By the Court

Aggrieved by an order passed by the Commissioner (Appeals), the revenue preferred an appeal before the Tribunal. During the pendency of the said appeal, Shri Hans Raj Chhabra, the assessed-respondent in the appeal passed away on 1-2-1999. Shri K.R. Manjani, advocate, appearing for the assessed accordingly filed an application on 31-3-2003 before the Tribunal pointing out that the assessed had passed away leaving behind two legal representatives namely, Shri Deepak Chhabra, his son and Dr. Smt. Sheetal Jhamb, his daughter. The application went to the extent of making a prayer for substitution of Shri Deepak Chhabra in place of the deceased assessed, relying upon a similar order passed

by the Tribunal in the wealth-tax appeals for the assessment year 1989-90. The Tribunal, however, did not advert to this application nor did it make any order of substitution of the LRs of the deceased assessed. By the order impugned in this appeal before us, the Tribunal eventually allowed the revenues appeal and set aside the order passed by the Commissioner (Appeals). Income Tax Appeal No. 201 of 2005 is directed against the said order of the Tribunal.

2. Shri Deepak Chhabra, one of the legal heirs of the deceased assessed then filed an application under section 254(2) of the Act for rectification of the order passed by the Tribunal. That application, it is significant to note, did not point out the omission of the Tribunal in making a proper order of substitution of the legal representatives. The Tribunal, all the same, dismissed the application, as it did not find any error apparent on the face of record. Income Tax Appeal No. 476 of 2005 is directed against the said order.

3. Appearing for the appellant in the appeals mentioned above, Mr. Manjani submitted that the Tribunal had committed a palpable error in ignoring the fact that the assessed had passed away during the pendency of the appeal and that no steps had been taken by the appellant-Revenue and no order for substitution was passed by the Tribunal. He contended that the order passed by the Tribunal being against a dead person was a nullity in the eye of law. He placed reliance upon the decision of this court in R. C. Jain through LR v. CIT & Ors. : [2005]273ITR384(Delhi) in support of that submission.

4. Alternatively, he submitted that even if the order passed by the Tribunal could not be termed as a nullity, this court could even at this stage, rectify the mistake committed by the Tribunal and substitute the LRs and remit the matter back to the Tribunal for a fresh hearing and disposal in accordance with law.

5. Mr. Jolly, counsel appearing for the respondent had no serious objection to the alternative course suggested by Mr. Manjani. He submitted that although there was no specific order of substitution, the fact that Shri Deepak Chhabra had appeared through Mr. Manjani and argued the appeal sufficiently showed that there was an implied substitution of the legal heirs of the deceased.

6. The material facts disclosed before us are not disputed. It is not denied that the deceased assessed had passed away during the pendency of the appeal before the Tribunal. It is also not in dispute that the factum of his death was placed on record by Mr. Manjani, counsel appearing for the appellant. So much so, the particulars of the LRs left behind by the deceased were also given and a prayer for substitution of one of them as a respondent made in the appeal. It is also common ground that the Tribunal did not notice the said application or made any order of substitution for final disposal of the appeal. The disposal of the appeal by the order impugned in IT Appeal No. 201 of 2005 was on the assumption that the deceased was alive, which assumption was factually erroneous. In the circumstances, therefore, the judgment does appear to have been rendered against a dead person and has to be treated as a nullity. The question, however is, whether there is any legal impediment in rectifying the error by making a proper order of substitution in the present appeal which is a continuation of the proceedings before the Tribunal. Both Mr. Manjam and Mr. Jolly, were agreeable to an order of substitution being made and the matter remanded back for fresh hearing in accordance with law. In the circumstances therefore, and keeping in view the fact that Mr. Manjani has offered to appear for not only Mr. Deepak Chhabra the appellant, but also the other legal representative, Dr. Smt. Sheetal Jhamb, we direct as under :

(i) The impugned order passed by the Tribunal is set aside.

(ii) Shri Deepak Chhabra and Dr. Smt. Sheetal Jhamb shall stand substituted in place of the deceased assessed as his legal representatives in the appeal before the Tribunal.

(iii) The matter shall stand remanded back to the Tribunal for a fresh hearing and disposal in accordance with law.

The parties are directed to appear before the Tribunal on 27-3-2006. Mr. Manjam shall file his Vakalatnama on behalf of both the legal representatives on that date.

In the light of the above order, IT Appeal No. 476 of 2005 is rendered infructuous and is accordingly disposed of.

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