Taxation and Assessment of a Deceased Person

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Introduction

Benjamin Franklin had quoted once "In this world nothing can be said to be certain, except death and Taxes". It is really ironic that even death cannot let a person escape from the payment of taxes. There are certain provisions under the Indian Income Tax act which levied tax liability on the Income of the deceased person. The taxes are collected from the deceased assessee through his legal representative in the eyes of law. After death of an assessee his legal heir has to go through various legal compliances and troublesome procedures like filing of Income Tax returns, attending the assessment proceedings on the behalf of the deceased

Responsibilities of a Legal Heir under Income Tax Act

When a person dies, the legal heir have to register himself as legal heir of the deceased person in the income tax department and apart from assets and liabilities, there are other things also which get transferred to him. These include the responsibility to inform the concerned assessing officer, to file the last income tax return on behalf of the deceased, surrendering the documents like permanent account number etc. He is responsible for the tax payable, and also for the other sum i.e. penalty, fine or interest which the deceased would have been liable had he not died. However, his liability would be limited to the extent of the assets inherited from the deceased. In case, the deceased person has received any notice before their death, then the legal heir will be held responsible to carry out the proceedings after the death of the deceased person. The Supreme Court in the case of Girijanandini Devi v. Bijendra Narain Choudhar, 1967 held that "Death of the person liable to render an account for property received by him does not affect the liability of his estate. It was submitted that therefore, even after his death, deceased Jayantibhai does not cease to be an assessee and consequently, the legal representative is responsible for filing the return of income and answering to the notice".

Asssessment of a dead Person

Section 159 of the Act creates a fiction and provides that where a person dies his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased. Therefore, although the assessee was dead, a fiction is created where under he is kept alive for the purposes of payment of the tax and the legal representative is made responsible for the payment thereof. Section 159 of the Income- Tax Act lays down the liabilities of the legal representatives of a deceased person. Section 159 of the act is read as under:

(1)Where a person dies, his legal representatives shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under Section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of subsection (1),-

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub- Section (2) of Section 161, Section 162 and Section 167 shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of subsection (4) and sub- section (5),

be limited to the extent to which the estate is capable of meeting the liability. B.- Representative assessees General provisions

Thus, Section 159(1) imposes a liability on the legal representatives to pay any sum (including interest and penalty) in the like manner and to the same extent, as the deceased, had he not died. Liability to pay "any sum" arises only after an order is passed either for assessment or for penalty or for interest. Section 159(2) provides that (1) for making assessment in the hands of legal representatives and (2) for levying any sum (including interest and penalty) in the hands of legal representatives, proceedings taken against the deceased before his death would continue against the legal representatives. Clause (b) of Section 159 deals with a situation where no proceeding were initiated against the deceased, but could have been initiated against him, since he had expired and the same can be initiated against the legal representatives. Thus it is clear from the analysis of Section 159 of the Act as noticed above that the legal representative of the deceased is liable for filing the returns and payment of taxes. It is, however, restricted to the extent of inheritance to the estate of the deceased by the legal representatives.

In Kamalesh Kumar Mehta v. CIT [1977] 106 ITR 855, the Calcutta High Court had held that "Section 159 of the Act does not provide for annulment of any assessment, reassessment or re computation under section 147 of the Act. On the other hand, it expressly provides for continuance of the assessment, reassessment and re computation from the stage at which they stood on the date of the death of the assessee against his legal representative who in terms of sub-section (3) of section 159 of the Act is deemed to be an assessee and he is liable to pay the tax which the deceased assessee would have been liable to pay if he was alive, as stated in section 159(1) of the Act."

In Mahabir Prasad v. Jage Ram,1971 the Supreme Court has held that where in a proceeding a party dies and one of the legal representatives is already on the record in another capacity, it is only necessary that he should be described by an appropriate application made in that behalf that he is also on the record as an heir and legal representative and even if there are other heirs and legal representatives and no application for impleading them is made, within the period of limitation prescribed by the Limitation Act, the proceedings will not abate.

Responsibilities of an executor

Parliament has made a special provision in section 168 in respect of income from the estates of persons dying testate, by--in effect, deeming the continued existence of the deceased testator till such time as the administration of his estate is completed by the distribution of all the legacies in terms of his will. The undistributed income from such estate is made assessable by treating it as the income of an individual or association of persons depending upon whether there is only one or a plurality of executor or administrator. Section 168 of the Income Tax act held as under:

Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of executor, (a) if there is only one executor, then, as if the executor were an individual; or

(b) If there are more executors than one, then, as if the executors were an association of persons;

And for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

(2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

(3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests.

(4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee.

Explanation-In this section, 'executor' includes an administrator or other person administering the estate of a deceased person. "

A bare perusal of sub-section (1) of section 168 divulges that the income of the estate of the deceased shall be chargeable to tax in the hands of the executor. Sub-section (4) clarifies that if any income of the estate stands distributed to, or applied to the benefit of any specific legatee of the estate during that previous year, then that part of the income shall be excluded from the total income of the executor. However, such income shall be included in the total income of the previous year of such specific legatee. This shows that but for any distribution a to specific legatee, the assessment is required to be made on the executor on the total income from the estate of the deceased for the period from the date of death to the date of complete distribution to the beneficiaries to the estate according to their several interests on year to year basis.

The Hon'ble Supreme Court in the case of Navnit Lal Sakarlal v. CIT [1992] 193 ITR 161 wherein though the estate duty assessment had become final, yet, since the estate duty was not paid by the executor and the residual estate distributed among the beneficiaries, the Hon'ble Supreme Court held that as per section 168(3) of the Income-tax Act, the executor will continue to be separately assessed in respect of the estate remaining to be distributed to the beneficiaries

Method of Computation of Income of the deceased Person

Both Sections 159 and 168 of the Act deal with assessment on legal representatives. Section 159 of the Act is meant to enable the revenue to make an assessment on the legal representative in respect of the income which accrued to or was received by the deceased. Section 168 of the Act 'authorises an assessment on the legal representative in respect of the income which accrues to him after the death, the estate being vested in him.. When we read section 159 in juxtaposition to section 168, the position which emerges is that whereas the income earned by the deceased up to the date of his death is chargeable to tax in the hands of legal representative u/s 159 as he have to file the income tax return on the behalf of the deceased assessee, however the income arising from the estate of the deceased after the date of his death up to the date of complete distribution is chargeable to tax in the hands of executors on year to year basis. Thus, income of a deceased for the year of his death is bifurcated into two parts, viz., up to the date of his death which is taxed in the hands of legal representatives and from the date of his death till the year ending or up to the date of complete distribution to the beneficiaries, whichever is earlier, in the hands of the executors. However the assessment is of the executor or executors, as the case may be, for all practical purposes, it is the assessment of the deceased

Validity of the Proceedings against a dead person

It is a settled legal principle that a notice issued in the name of the dead person is unenforceable in law. The notice is issued to a dead person could be termed as nullity. Section 159 clearly states that the notice is required to be issued in the name of the heirs of the deceased assessee In the case of Rasid Lala v Income Tax officer, the Gujarat High Court held that wherein the reassessment proceedings had been initiated after the death of the assessee and the notice was issued against a dead person, held that the reassessment proceedings having been initiated against the dead person and that too after a long delay, even if section 159 of the Act is attracted, in that case also, the notice was required to be issued against and in the name of the heir of the deceased assessee. The court held that in the facts and circumstances of the case, section 159 of the Act would not be of any assistance to the revenue and, accordingly, set aside the impugned notice issued under section 148 of the Act. Section 292BB is in place to take care of contingencies where an assessee is put on notice of the initiation of proceedings, but who takes advantage of defective notices or defective service of notice on him.

However notice issued to a dead person if responded by the legal representatives will be treated as valid notice as response to the notice would implies his participation in the assessment proceedings In the case of Smt. Kaushalyabai , the Madhya Pradesh High Court took the view that the issue, whether a notice on a dead person should be treated to be a procedural irregularity under Section 292B of the Act or whether it would be a nullity remained academic as the widow, i.e. Kaushalyabai had already participated in the proceedings. In the facts of that case, it was noticed that the widow of the assessee, namely Kaushalyabai, had participated in the proceedings. The defect, if any, stood automatically cured. After the notice was received by Kaushalyabai, though in the name of her late husband, returns were filed under protest. This makes a world of difference. Once returns are filed, it definitely amounts to active participation and submitting to the jurisdiction of the Assessing Officer for the purpose of re-opening of the assessment.

Penalty proceedings cannot be concluded against Legal Heir

As per Section 271(1)(c) penalty can be levied only on that person who has concealed the particulars of income or filed inaccurate particulars of income. The word "such person" in Section 271(1)(c) clearly mandates the authority to levy penalty only on the same person who has filed the return of income and concealed the particulars or filed inaccurate particulars in such return. Since the provisions of Section 271 (1) (c) of the Act depend upon the guilty animus or mens rea on the part of the assessee concerned, naturally, as legal representative, the wife cannot be held liable to defend those penalty proceedings or be held guilty of any mens rea on the part of the husband. Therefore, unless the penalty proceedings are concluded against a living assessee, the legal heirs cannot be held liable to face those proceedings or pay any sum determined as penalty payable under Section 271 (1) (c) of the Act.

Conclusion

Often, we observed that the legal representatives are not aware about the activities done by the deceased prior to his death. For example a semi literate wife of a deceased may not be aware about the different sources of income his husband might be receiving before his death; in that case she has to spend her little savings on the services of professionals to comply the requirements on her behalf. It is cruel that sometimes to fulfil the tax demands they have to sell the assets inherited to them through the deceased.