

**IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE**

ITAT No. 187 of 2024

**SUBBULAKSHMI DEVADOSS
VS
UNION OF INDIA AND ORS.**

BEFORE:

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR**

For the Appellant : Mr. S. M. Surana, Ld. Adv.
Ms. Swapna Das, Ld. Adv.
Mr. Bhaskar Sengupta, Ld. Adv.
Mr. Siddharta Das, Ld. Adv.

For the Respondents : Mr. Soumen Bhattacharjee, Ld. Adv.
Mr. Aryak Dutt, Ld. Adv.
Mr. Ankan Das, Ld. Adv.

Hearing concluded on : 01.12.2025

Judgment on : 23.12.2025

Uday Kumar, J:-

1. This appeal, preferred by the Assessee/Legal Heir under the mandate of Section 260A of the Income Tax Act, 1961 ('the Act'), is directed against the order of the Income Tax Appellate Tribunal (ITAT), 'B' Bench, Kolkata, dated May 29, 2023, concerning Assessment Year (A.Y.) 2014-15. The challenge is not merely academic; it is mounted against the Tribunal's decision to proceed ex-parte and the consequential confirmation of a colossal, unsubstantiated addition of Rs. 7,74,32,498/- to the income of the deceased assessee, late Dr. Nirmal Palit, under Section 68 of the Act.

2. The fundamental dispute transcends the quantum of the addition; it addresses the jurisdictional competence of the Revenue and the Tribunal to proceed against an improper legal entity. The core question before this Bench is whether the entire assessment framework was fatally vitiated due to the ITAT's failure to identify, notify, and assess the proper statutory representative of the deceased's estate, thereby rendering the resultant tax liability a legal nullity.

3. THE UNCONTROVERTED FACTS AND THE STATUTORY ANOMALY

- (i) The relevant facts are crucial for determining the correct legal framework is that the original assessee, late Dr. Nirmal Palit, passed away leaving behind his estate. It is an uncontroverted fact that the deceased left a registered Will, pursuant to which an Executor (Shankar Sinha) was unequivocally appointed. The Appellant, Smt. SubbulakshmiDevadoss, is merely one of the Legal Heirs, and emphatically not the sole statutory representative designated under the operative document of the Will. This complexity is further underscored by the fact that a contested Probate Proceeding remains pending before the District Court at Murshidabad, though this fact does not *ipso facto* negate the Executor's statutory capacity under the Income Tax Act.
- (ii) The procedural miscarriage is glaring: the ITAT, fully apprised of the assessee's demise and the existence of the Will, failed in its mandatory duty to bring the appointed Executor on record

under the specific provisions of the Act. Instead, the Tribunal elected to pass the final order *ex-parte*. The recorded justification for this highly consequential decision—relying solely upon a tenuous, informal, and unverified "telephonic communication" from the Appellant expressing disinterest—is astonishing. To leverage such unsubstantiated hearsay to confirm a tax liability approaching Rs. 8 Crores is an act of procedural laxity incompatible with the standards of a quasi-judicial body.

(iii) Recognizing this patent jurisdictional flaw, this Court had previously intervened, allowing applications to implead the Executor and other beneficiaries *vide* orders dated October 4, 2024, and August 13, 2025. This judicial corrective action highlighted the ITAT's initial legal omission.

4. Based on the facts and the rival contentions of the parties, this Court frames the following two substantial questions of law for determination:

- (i) Whether the Ld. Income Tax Appellate Tribunal erred in passing the order *ex-parte* without bringing on record the executor administering the estate as per explanation of section 168 of the Act, of the deceased assessee?
- (ii) Whether the order of the Learned ITAT is perverse in confirming the addition of Rs. 7.74,32,498/- without appreciating the fact that the creditors arose in the earlier years for supply of material to the company which constructed the hospital /

nursing home building clearly emerging from the facts and order of learned CIT(A)?

5. Learned Counsel for the Appellant, Mr. S.M. Surana, vehemently asserted that the ITAT's order suffers from incurable procedural and jurisdictional defects. He submitted that the Tribunal committed a fundamental error by assessing the estate against a mere legal heir when a Will existed.
6. Drawing strength from the established ratio of this Court in Sri I.M. Thapar v. Commissioner of Income Tax, (1979) 116 ITR 797 (Cal), Mr. Surana argued that the Executor alone is the sole "representative assessee" under the mandatory specific provision of Section 168 of the Act, rendering the assessment against any other person illegal and void *ab initio*.
7. Furthermore, he contended that the Tribunal's reliance on an unverified, informal telephone call to justify an *ex-parte* order confirming a tax liability of nearly Rs. 8 Crores was a patently arbitrary action, constituting a gross violation of the fundamental principle of *audi alteram partem*.
8. *Per contra*, Learned Counsel for the Revenue, Mr. Soumen Bhattacharya, opposed the appeal, submitting that the Appellant had been afforded due notice before the Tribunal. He argued that the Appellant's subsequent communication, following the service of notice, expressing disinterest in the proceedings amounted to a waiver of the right to be heard, thereby

justifying the Tribunal's decision to proceed *ex-parte* and conclude the matter on its merits in the interest of finality.

9. The Jurisdictional Primacy of Section 168 and the Assessee's Identity

- (i) We first address the jurisdictional identity of the Assessee. The Income Tax Act institutes a clear, distinct framework for taxing the estates of deceased persons. While Section 159 applies to general Legal Representatives, Section 168 is the specific, mandatory, and overriding provision that operates when a Will exists and an Executor is appointed.
- (ii) The legal position is authoritatively settled by this Court in **Sri I.M. Thapar v. Commissioner of Income Tax, (1979) 116 ITR 797 (Cal)**. This binding precedent unequivocally mandates that the Executor alone is the proper 'representative assessee' under Section 168, responsible for the income derived from the estate until the administration is complete. Any assessment made against a mere legal heir, circumventing the Executor, constitutes a fundamental error that is fatal to its validity *ab initio*. The ITAT's decision to proceed against the Appellant, ignoring the explicit mandate of Section 168, demonstrates a patent misapplication of the statutory scheme and a jurisdictional failure to identify the correct legal persona of the assessee. The assessment, therefore, stands vitiated on the threshold question of jurisdiction.

10. Denial of Natural Justice and Procedural Arbitrariness

The second limb of our analysis concerns the procedural fairness. The ITAT's decision to confirm a tax liability of nearly Rs. 8 Crores *ex-parte*, predicated solely on a wholly unverified and informal telephonic communication, is procedurally indefensible and demonstrates an arbitrary exercise of quasi-judicial power.

11. The right to be heard (*audi alteram partem*) is the indispensable bedrock of judicial integrity. The standard for deeming a waiver of this fundamental right must be rigorous, requiring clear, unambiguous, and formally documented consent. The Tribunal's reliance on mere tenuous hearsay to finalize a matter of this monetary and legal magnitude, especially when the identity of the proper statutory representative was unsettled and required formal representation to defend the Section 68 addition (which deals with unexplained cash credits), constitutes a gross violation of Natural Justice. As affirmed by the Hon'ble Apex Court in cases like **M. C. Mehta v. Union of India (1987 SCC (1) 395)**, a decision arrived at in violation of Natural Justice is an absolute nullity. The ITAT's conduct, therefore, constitutes an incurable procedural defect, necessitating the setting aside of its order.
12. Having established a dual, incurable vitiation—a jurisdictional flaw concerning the identity of the assessee under Section 168, compounded by a procedural flaw concerning the fundamental right to be heard—the Tribunal's consequential findings on the merits (confirming the addition of Rs. 7,74,32,498/- under Section 68) cannot be legally sustained. The

factual confirmation was recorded without the benefit of evidence and explanation from the entity mandated by law to represent the estate, rendering the findings wholly consequential and voidable.

- 13.** We therefore conclude that both Substantial Questions of Law (i) and (ii) must be answered in the affirmative. The Tribunal's order stands vitiated by gross and incurable procedural and jurisdictional irregularity.
- 14.** Consequently, the Impugned Order of the Income Tax Appellate Tribunal dated May 29, 2023, in ITA No. 2111/Kol/2019 for A.Y. 2014-15, is hereby set aside and quashed in its entirety.
- 15.** The matter is remanded to the Income Tax Appellate Tribunal, 'B' Bench, Kolkata, for a fresh hearing *de novo* and disposal in accordance with law, subject to the following mandatory directions:
 - a. The ITAT shall first determine the proper person to represent the deceased's estate (Executor, legal heir, and beneficiaries) under the scheme of the Act, taking into account the facts of the pending Probate Suit and the specific applicability of Sections 159 and 168.
 - b. The ITAT shall thereafter ensure that the representative(s) are given a full, proper, and reasonable opportunity of being heard to adduce evidence regarding the nature and genuineness of the Rs. 7,74,32,498/- liability under Section 68.
 - c. The remand proceedings shall be completed expeditiously, preferably within six months from the date of the receipt of this judgment.

- 16.** Since the Impugned Order is set aside, the consequential demand ceases to be immediately enforceable. The Respondents/Revenue Authorities are restrained from initiating or continuing any coercive recovery proceedings against the Appellant or the estate of the deceased, Dr. Nirmal Palit, to realize the disputed demand for A.Y. 2014-15, until the matter is finally decided by the ITAT pursuant to this remand order. The Appellant shall, however, furnish a suitable undertaking to the Assessing Officer (AO) within four weeks, assuring that the properties of the deceased's estate shall not be alienated or encumbered to the extent of the disputed tax liability, pending final adjudication.
- 17.** The appeal is disposed of in the aforementioned terms. There shall be no order as to costs.
- 18.** Urgent certified copy of this judgment, if applied for, be issued to the parties on usual terms.

I AGREE

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)