



Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA Nos.201/2005 & 476/2005</p> <p>DEEPAK CHHABRA Appellant Through: Mr.K.R. Manjani, Adv.</p> <p>versus</p> <p>THE INCOME TAX OFFICER Respondent Through: Mr.R.D. Jolly, Adv.</p> <p>CORAM: HON'BLE MR. JUSTICE T.S. THAKUR HON'BLE MR. JUSTICE B.N.CHATURVEDI</p> <p style="text-align: center;"><u>ORDER</u> 30.01.2006</p> <p>Aggrieved by an order passed by the Commissioner of Income Tax (Appeals), the Revenue preferred an appeal before the Income Tax Appellate Tribunal. During the pendency of the said appeal, Shri Hans Raj Chhabra, the assessee-respondent in the appeal passed away on 1st February, 1999. Shri K.R. Manjani, Advocate, appearing for the assessee accordingly filed an application on 31st March, 2003 before the Tribunal pointing out that the assessee 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-assessee, relying upon a similar order passed by the Tribunal in the Wealth Tax appeals for the assessment year 1989-1990. The Tribunal, however, did not advert to this application nor did it make any order of substitution of the LRs of the deceased assessee. By the order impugned in</p>

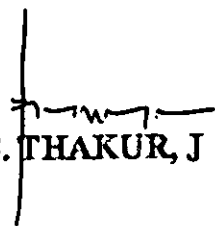



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		<p>this appeal before us, the Tribunal eventually allowed the Revenue's appeal and set aside the order passed by the Commissioner of Income Tax. ITA No.201/2005 is directed against the said order of the Tribunal.</p> <p>Shri Deepak Chhabra, one of the legal heirs of the deceased-assessee 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. ITA No.476/2005 is directed against the said order.</p> <p>Appearing for the appellant in the appeals mentioned above, Mr.Manjari submitted that the Tribunal had committed a palpable error in ignoring the fact that the assessee 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 <u>R.C. Jain (Decd.) Vs Commissioner of Income Tax & Ors.</u> (273 ITR 384) in support of the submission.</p> <p>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</p>



Sr. No.	Date	Orders
		<p>back to the Tribunal for a fresh hearing and disposal in accordance with law.</p> <p>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.</p> <p>The material facts disclosed before us are not disputed. It is not denied that the deceased-assessee 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 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 make any order of substitution for final disposal of the appeal. The disposal of the appeal by the order impugned in ITA No.201/2005 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 proper order of substitution in the present appeal which is a continuation of the proceedings before the Tribunal. Both Mr.Manjani and Mr.Jolly, were agreeable to an order of substitution being made and the matter remanded back</p>



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		<p>for fresh hearing in accordance with law. In the circumstances, therefore, a</p> <p>keeping in view the fact that Mr.Manjani has offered to appear for not on</p> <p>Mr.Deepak Chhabra- the appellant, but also the other legal representat</p> <p>Dr.Smt.Sheetal Jhamb, we direct as under:</p> <p>i) The impugned order passed by the Tribunal is set aside.</p> <p>ii) Shri Deepak Chhabra and Dr.Smt.Sheetal Jhamb shall stand substitut</p> <p>in place of the deceased assessee as his legal representatives in the app</p> <p>before the Tribunal.</p> <p>iii) The matter shall stand remanded back to the Tribunal for a fresh hear</p> <p>and disposal in accordance with law.</p> <p>The parties are directed to appear before the Tribunal on 27th Mar</p> <p>2006. Mr.Manjani shall file his Vakalatnama on behalf of both the le</p> <p>representatives on that date.</p> <p>In the light of the above order, ITA No.476/2005 is rendered infructu</p> <p>and is accordingly disposed of. DASTL</p> <p style="text-align: right;">  T.S. THAKUR, J </p> <p style="text-align: right;">  B.N.CHATURVEDI, J </p> <p>JANUARY 30, 2006</p> <p>ga</p>