

**Practical aspects of legal
obligations of representative
assessee and executor on death
of individual.**

BY CA P P SINGH

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- ❑ Post-qualification experience of around 22 years in the field of direct & indirect tax particularly income tax, service tax and VAT ,sales tax and GST.
- ❑ Experience of handling the litigation matters and advisory matters of Direct taxes particularly income tax and indirect tax like GST, service tax, DVAT, CST, Central Excise and other related matters.
- ❑ Authored the book **DNA of GST Audit and Annual return, The DNA of TDS&TCS (including withholding tax, advance tax and equalisation levy)** ,Background material on GST for empowerment of girl students ICAI, New Delhi
- ❑ Guest faculty for certification course on GST & Certification course on appeal and representation ICAI , New Delhi
- ❑ Corporate trainer and guest Faculty with **Indian Institute of Management(IIM)**, NIFMS, Faridabad(Institute of Minister Finance),ICAI New Delhi and ICSI, New Delhi and other trade association.
- ❑ Guest faculty at NACIN(National academy of customs, indirect taxes and narcotics)
- ❑ Articles on various topics of taxation and other legal matters.

TAX UPDATE



Practical aspects of legal obligations of representative assessee and executor on death of individual.

CONTENTS

- Obligation to pay tax , interest , penalty by the legal representative of the liabilities of the deceased
- Filing of income tax return of deceased by successor
- Demand of tax etc.
- Assessments of deceased person, notice etc.
- Applicability of Penalty provisions/ prosecution
- Filing of appeal etc.
- FAQ

Legal provisions under income tax law

Death- universal truth
Can we manage in better way
for avoiding litigation-under tax law
and among successor?

Legal history of provisions:

Section 24B introduced first time to recover tax from legal representative in 1922 Act by Indian income tax (2nd amendment Act) 1933

Now in new income tax act 1961 section 159/168/176(4)

headings	Section	Chapter
Legal representatives.	159	XV
Chargeability of tax in the hands of executor	168	XV
Death of professional and discontinuation.	176(4)	XV

Comparisons of section 24B of 1922 act Vs. 159 of IT Act 1961

Section 24B

- Legal representative liable to tax only.
- No concept of deemed assessee although tax liability on Legal representative
- No personal liability
- No reassessment of prior period AYs prior to AY corresponding to the PY in which death.

Section 159

- Legal representative liable to any sum
- concept of deemed assessee
- Personal liability of legal representative section 159(4)
- Reassessment of prior Ays possible

Assessee

```
graph LR; A[Assessee] --- B[Actual assessee]; A --- C[Deemed assessee]; A --- D[Assessee in default];
```

Actual
assessee

Deemed
assessee

Assessee
in default

Section 2(7) "assessee" means a person by whom [any tax] or any other sum of money is payable under this Act, and includes—

(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income [or assessment of fringe benefits] or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person ;

(b) every person who is deemed to be an assessee under any provision of this Act ;

(c) every person who is deemed to be an assessee in default under any provision of this Act ;

Tax liability etc. till death of individual

• **Section 159**

Tax liability on income of estate of deceased of individual after death till complete distribution to beneficiaries

• **Section 168**

profession is discontinued by death

• **Section 176(4)**

Liabilities of legal representative
to pay dues of deceased

- 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.[S-159(1)]

Meaning of legal representative

As per section 2(29) legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908.

Definition as per CPC is wide and inclusive one and here legal representative is not only legal heir but also executor, legatee and administrator in possession of estate of deceased without being any title as legal heir but seek to represent the estate of deceased.

Agent holding power of attorney from the executor of a deceased person is a legal representative.

Class –I heir u/s 8 of the Hindu succession Act 1956 is also legal representative.

As per section 2(11) legal representative" **means** a person who in law represents the estate of a deceased person, and

includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

Legal representative Vs. representative assessee

A receiver falls within the definition of representative assessee by reference to income as per section 160(1) in respect of income which the Court of Wards, the Administrator- General, the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by or under any order of a court, receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager;

But receiver is not legal representative because receiver is appointed for the benefit of certain person where as legal representative has obligations as well

Liabilities of legal representative to pay dues of deceased.

- ❑ 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.[S-159(4)]
- ❑ The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be **limited to the extent to which the estate is capable of meeting the liability.** .[S-159(6)]

Meaning of estate:

The estate of a deceased person is the bundle of rights, powers, immunities and liabilities which survive him. With reference to a living person, "estate" means the interest he has in lands and other subjects of property ; it designates property, real or personal, in which he has a right or interest. The degree, quantity, nature and extent of interest which he has in property is his "estate", signifying everything of which riches or fortune may consist. The aggregate of a man's proprietary rights constitutes his estate, as distinct from those rights which are often called personal and which determine his status. Proprietary rights are valuable and are always worth something; they may be jus in rem or jus in personam; rights of either sort are proprietary, if they are the elements of a man's wealth which he can dispose of at his pleasure, or pass on to others.[**B. Rajeevi R. Hegde vs Addl. Agricultural Income-Tax 1981 127 ITR 855 Ker HC**]

Situation

Assessed but demand not paid

Legal representative(s) liable to pay tax

Assessment open but not completed

Legal representative(s) to comply notices and reply

ITR filed assessment not initiated

AO has to bring Legal representative(s) to comply notices and reply

ITR not filed

Legal representative(s) to file ITR

Notice issued but not complied

Legal representative(s) to file ITR under section 142/148 or other complinaces

- ❑ Survival and continuation of assessment/ income escaping assessment proceedings against the deceased, continue in the name of legal representative
- ❑ Demand, recovery proceedings or any other proceedings continue against the legal representative
- ❑ Filing of ITR, statement etc. by legal representative

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 sub-section (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.

Legal representative shall be deemed assessee for the purpose of income tax Act.

- The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.[S-159(3)]

Applicability of other provisions to Legal representative for the purpose of income tax Act.

□ The provisions of [section 161\(2\)](#), [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.[S-159(5)]

Income once assessed in the hand of representative shall not be assessed again under other provisions.
[Section 161(2)]

Where any person is, in respect of any income, assessable under this Chapter(**CHAPTER XV-LIABILITY IN SPECIAL CASES**) in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act.

**Right of
representative
assessee to
recover tax paid
(section 162)**

- (1) Every representative assessee who, as such, pays any sum under this Act, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the sum so paid.
- (2) Any representative assessee, or any person who apprehends that he may be assessed as a representative assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal), a sum equal to his estimated liability under this Chapter, and in the event of any disagreement between the principal and such representative assessee or person as to the amount to be so retained, such representative assessee or person may secure from the Assessing Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount.
- (3) The amount recoverable from such representative assessee or person at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which such representative assessee or person may at such time have in his hands additional assets of the principal.

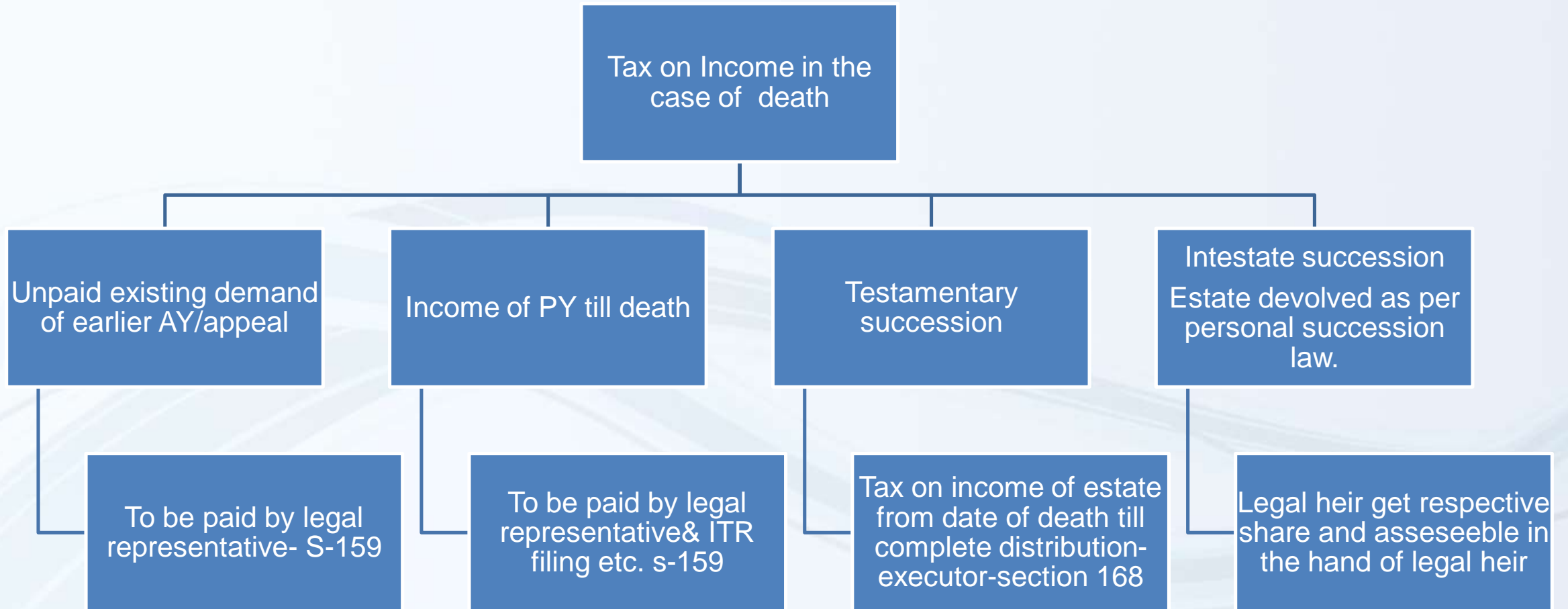
**Remedies
available to AO
against property
vested or in the
control of
representative
assessee.
(section 167)**

The Assessing Officer shall have the same remedies against all property of any kind vested in or under the control or management of any representative assessee as he would have against the property of any person liable to pay any tax, and in as full and ample a manner, whether the demand is raised against the representative assessee or against the beneficiary direct.

Deemed assessee

- Every representative assessee shall be deemed to be an assessee for the purposes of this Act.[S-160(2)]

Tax, interest etc. liability and ITR/assessments/appeal in the case of death



Computation of income of the deceased

As a legal heir, you have to file the return on behalf of the deceased for income till the date of death.

Computation of the income of the deceased from **the start of the financial year till the date of death**, and thereby the tax payable on it in the same manner as if the deceased was alive for all the five heads of income including business income, rental income, capital gain, other sources on the basis of invoice issued of supply made, bank Statements, investments and other relevant documents necessary for deduction and investments made and income tax calculation.

Income earned **after the date of death** from the assets inherited from the deceased is taxable in the hands of the legal heir.

Legal heir should include income inherited from the deceased in his own income while filing own income tax return.

Illustrations –income

“N” who has a rental income of Rs 30,000 per month and interest income of Rs 10,000 per month dies on 20th Sep 2017. Her legal heir needs to file the return on behalf of “N” for the period 1st April 2020 to 20th Sep 2020.

The income to be included in the return of “N” to be filed by legal heir would be :

Income from House Property Rental Income (From 1st April 2020 to 20th Sep 2020)	₹30000*5 months & 20 days	₹ 1,70,000
Income from other Sources Interest Income (From 1st April 2020 to 20th Sep 2020)	₹ 10000*5months & 20 days	₹ 56,667

Illustrations –income

“N” who has a rental income of Rs 30,000 per month and interest income of Rs 10,000 per month dies on 20th Sep 2017. Her legal heir needs to file the return on behalf of “N” for the period 1st April 2020 to 20th Sep 2020.

The income to be included in the return of legal heir to be filed by him/her would be :

Income from House Property Rental Income (From 1st April 2020 to 20th Sep 2020)	₹30000*6 months & 10 days	₹ 1,90,000
Income from other Sources Interest Income (From 1st April 2020 to 20th Sep 2020)	₹ 10000*6months & 10 days	₹ 63,333

Issue: deduction from house property income

issue : claim for deduction of property tax, generally paid for the whole FY either in the beginning of the FY or end of the FY.

1. Paid by deceased for the whole FY
2. paid by the legal heir for the whole FY.

Issue: Standard deduction u/s 24b

issue: interest on borrowings

1. All the EMI regular both by the deceased and legal heir.
2. Default in payment of EMI – all the defaulting EMI of deceased paid by legal heir only
3. Few EMI not paid by deceased which was latter paid by legal heir.
4. Defaulting EMI paid by legal heir but out of estate of the deceased only
5. Defaulting EMI paid by legal heir but out of own fund by only by the legal heir.

Tax liability of the deceased- to be paid by the legal heir:

The legal heir is responsible for paying taxes liable on the Income tax return of the deceased. However, he is not personally liable for the taxes due. The liability of the legal heir is limited to the extent to which the assets he inherited are capable of meeting the liability.

For instance, if a person receives Rs 80 lakhs as his share from his father's property and his father tax liability is Rs 95 lakhs, then he cannot be made liable to pay more than Rs 80 lakhs. The liability of the legal heir shall be limited to the value of the assets inherited.

Liability in case of penalty, fine , interest demand:

The legal heir is responsible not only for the tax payable, but also for the other sum i.e. penalty, fine or interest which the deceased would have been liable had he not died. It means that the penalty proceedings for a default by the deceased can also be initiated against the legal heir. However, his liability would be limited to the extent of the assets inherited from the deceased.

Continuity of proceedings- Notice etc.

Continuity of proceedings only if proceeding initiated against deceased before his death, otherwise fresh proceeding in the name of legal heir.

Where demand notice already served on the deceased during his life time , no need to serve fresh demand notice on legal representative for recovery of demand. Sukhvansh narain singh Vs, collector (1980)(All HC)

Reassessment proceedings including notice etc-

- If executor/executors appointed under a will – all such executor/executors
- Intestate deceased- administrator(s) appointed- all such administrator(s)
- Intestate deceased- administrator not appointed- all the legal heirs.

Assessment order should be in the name of legal representative and not in name of deceased if made it will be nullity.

Refund of legal representative could not be adjusted against demand of deceased

para-6 of order :

In my considered opinion, the Assessing Officer was not right in adjusting the refund amount payable to the petitioner against the outstanding dues of his late father by relying on [Section 159\(4\)](#) of the Act. The refund which has become payable to the petitioner is out of his personal case having no connection or/and nexus with that of the case of his late father. It is not the case of the Department that the refund which has become payable to the petitioner does not belong to the petitioner but in fact belongs to his late father which the petitioner is now claiming in his capacity as a legal representative of his late father. **[Hasmukhalal vs Income-Tax Officer And Ors. on 21 March, 2001 2001 251 ITR 511 MP HC**

Whether penalty can be imposed on legal representative ?

If demand not paid of the deceased liability – legal representative become assessee in default – liable for imposition of penalty Raj kumar Vs ITO (ALL HC) 47 ITR 510

Delay or non submission of return – penalty yes.

Penalty for concealment of income u/s 271(1)©- yes

Prosecution –no gangabai Vs. state of tamil nadu (1981) 177 ITR 284.

Activities on income tax portal

Register as legal heir:

The legal heir has to register at the income tax website as a legal heir.

Registration as a legal heir is mandatory for e-filing of return on behalf of the deceased person. PAN of both the deceased person and the legal heir should be registered in the e-filing portal.

However, if the deceased person PAN is not registered, then the legal heir can register on behalf of the deceased. Following are the steps for the registration of Legal heir:

Step 1 – Go to [income tax department e-filing portal](#).

Step 2 – Login to e-filing portal using legal heir credentials

Step 3 – Go to My Account and register as Representative.

Step 4 –

Select the type of Request – New Request

Select the Add/Register as representative – “Register yourself on behalf of another person”.

Select the category to register as Estate of deceased/as ‘Deceased (Legal Heir).

Details required for registration:

- PAN of the Deceased
- Surname of the deceased
- Middle Name of the deceased
- First Name of the deceased
- Date of Death
- Bank account details of Legal heir.

Details required for registration : if the date of death entered is for a period for which return filing timelines have lapsed u/s 139.

Attach the following documents as attachments

- Copy of the PAN card of Deceased
- Copy of the PAN card of the legal heir
- Copy of Death Certificate
- Copy of Legal Heir Proof.

Legal Heir Proof:

- Legal Heir Certificate issued by Court of Law /Local Revenue Authority.
- Surviving family member certificate issued by the Local Revenue Authority.
- Family Pension certificate issued by Central/State Government.
- Registered will.
- Letter issued by the banking or Financial Institution in their letter head, with official seal and signature mentioning the particulars of nominee or joint account holder to the account of the deceased at the time demise.

In the case of filing of appeal against the order where death of the assessee.









































Copy of the order passed in the name of the deceased (Mandatory only if the reason for registration is 'Filing of an appeal against an order passed in the name of deceased').

Any other compliances/ delay in return filing .

Copy of the order /notice (Mandatory only if the reason for registration is 'Filing of return of income/form of period in which deceased was alive through condonation request' (or) 'A notice/order received from Income Tax Department in the name of the applicant for compliance on behalf of a deceased')

A Success Message will be displayed confirming the submission of request to 'Register as Legal Heir'.

Request will be sent to the e-Filing Admin for approval. The e-Filing Admin will check the authenticity of the request details and may Approve/Reject the request and Upon Approval/Rejection, an e-mail and SMS will be sent to the user who raised the request.

Services Available	Link to relevant Website	Step By Step Guide	Grievance Redressal
Return Filing			
Registration of Taxpayer on e-Filing website			
File Income tax Return			
File AIR Return	NSDL		
View e-Filed Returns/ Forms			
Locate Tax Return Preparer			
Outstanding Tax Demand Status			
Submit Response to Outstanding Tax Demand			
How to Submit Request for Rectification			
Status of Tax Refund	NSDL		
How to Request for Refund Re-issue? (in case of refund failure)			
Request for Resending Intimation Order u/s 143(1)/154			
Register as Legal Heir (applicable in case of any deceased taxpayer)			
Response to Defective Notice			
Compliance Module			



Type here to search







Welcome to e-Filing portal AMIT!

Your one step solution to Income Tax Needs





Profile Status : 66% Complete


You can avail following services:

-  **File Return**
File return through e-file menu
-  **File Forms**
File forms through e-file menu
-  **e-Verify Return**
Verify your return
-  **Other Services**
Avail other available services

For more details: [View Guided Tour](#)

Update Profile to avail following services

-  Condonation Request
-  Download Pre-filled XML
-  Register as Representative
-  Register to Act on behalf of Another Person
-  Authorize Another Person to act on behalf of Self
-  Manage ITD Reporting Entity Identification Number(ITDREIN)

Individual  

Language Preference: English

[Change Password](#)

Profile: 66% Completed


- My Bank Account >
- My Demat Account >
- Register DSC >
- E-filing Vault-Higher Security >
- Secure Access Message >
- Static Password >
- Aadhaar OTP Login >
- Jurisdiction Details >
- Source of Income >
- Authorised Signatory for Income tax Returns/Forms >
- Representative Assessee >
- Portugese Civil Code Applicability >

Activity Log

Last log out	
Last log In	22-Mar-2021, 5:12 PM

Last update	24-Apr-2021, 2:50 AM
-------------	----------------------

Profile [Edit](#)

Name AMIT PAL SINGH GOOLLER	Date of Birth 24-Jan-1970	PAN ACKPS8250J
Gender Male	PAN Status --	Aadhaar Number XXXXXXXX6256 Linked 
Citizenship Others	Do you have a valid Passport Number? No	Passport Number --
Residential Status --		

Contact [Edit](#)

The contact details will be used for all future communications.

Mobile

Primary (-) 9810020420	Secondary (-) --
Residential/ Office (Mobile) --	Residential/ Office (Landline) --

Email

Primary (-) palneepa@yahoo.com	Secondary (-) --
Address D-9GROUND FLOOR, GREEN PARK MAIN, -	Communication to be addressed to --

 HP



AMIT PAL SINGH
GOOLLER

Individual

Language Preference: English

[Change Password](#)

Profile: 66% Completed

[My Bank Account](#)

[My Demat Account](#)

[Register DSC](#)

[E-filing Vault-Higher Security](#)

[Secure Access Message](#)

[Static Password](#)

[Aadhaar OTP Login](#)

[Jurisdiction Details](#)

[Source of Income](#)

[Authorised Signatory for Income tax Returns/Forms](#)

[Representative Assessee](#)

[Portugese Civil Code Applicability](#)

Activity Log

Representative Assessee

Profile

[Edit](#)

Name	PAN	DSC Registered	DSC expiry date
DAVINDER PAL	AGYPP5305M	No	-

Profile

[Edit](#)

Name	PAN	DSC Registered	DSC expiry date
DAVINDER PAL	AGYPP5305M	No	-


Items per page: 5

|< < 1 - 2 of 2 > >|


[Back](#)

HP

Register as Representative Assessee





A user can register to act as representative assessee of another person for carrying out their activities in e-filing under certain circumstances 

Active Request (1) Inactive Request (1)

[+ Create New Request](#) 

HP

Category : Deceased (Legal Heir) [View Details](#)

Transaction ID : 7491439767	<ul style="list-style-type: none"> 13-Aug-2019 Request Approved  08-Aug-2019 Request Sent. Pending Approval 	PAN of Deceased (Legal Heir) : AGYPP5305M
---------------------------------------	---	---

[< Back](#)



Create New Request

* Indicates mandatory fields

Please enter the mandatory details to register as representative.

Category of assessee who you want to represent *

- As Court of Wards
- Deceased (Legal Heir)
- Lunatic or Idiot
- Mentally Incapacitated
- Minor
- Oral Trust

[Continue >](#)

1

Create New Request

2

Verify Request

3

Submit Request

Create New Request

* Indicates mandatory fields

Please enter the mandatory details to register as representative.

Category of assessee who you want to represent *

Deceased (Legal Heir) ▾

Details of the Deceased

PAN *

Name as per PAN *

Date of Birth *

Date of Death *

in the name of deceased

Submit service request such as refund re-issue/rectification etc of proceedings concluded in the name of deceased

Filing of return of income/form of period in which deceased was alive through condonation request

A notice/order received from Income Tax Department in the name of the applicant for compliance on behalf of a deceased

of the deceased

Details of the Bank Account of the Legal Heir

Bank Name	Bank Account Number	Account Type	IFSC
<input type="radio"/>	xxxx xxxx xxxx 3040	Savings	PSIB0000536
<input type="radio"/>	xxxx xxxx xxxx 3040	Savings	PSIB0000040

[+ Add Bank Account](#)

Documents to be uploaded (max file size for each document is 5MB)

1.Copy of PAN Card of the deceased *

[Attach File](#)

2.Copy of Death Certificate *

[Attach File](#)

4.Copy of the order passed in name of the deceased

 Attach File

5.Copy of the order /notice

 Attach File

Please provide below information relating to attachment

Reference Number of Order/Notice

Date of order/Notice



Is the language of the attachment English or Hindi

Yes No

6.Copy of Letter of Indemnity *

 Attach File

[< Back](#)

[Continue >](#)

Welcome Back, AMIT



ACKPS8250J
XXXXXXXX6256
+91 9810020420
palneepa@yahoo.com

Logged in As

Self

Self

Legal Heir

Contact Details [Update](#)

Bank Account [Update](#)

Your account is not secure with e-vault [Secure Account](#)

Total Outstanding Demand [Nil](#)

Activity Log

Last log out

Last log In Mar 22, 2021, 5:12:36 PM

File your return for the year ended on 31-Mar-2021

For Assessment Year 01-Apr-2021 to 31-Mar-2022

[File Now](#)

> [Tax Deposit](#)

> [Recent Filed Returns](#)

> [Pending Actions](#) 0

> [Recent Forms Filed](#)

> [Grievances](#)

Chargeability of tax in the hand of executor

(1) Subject as hereinafter provided, the **income of the estate of a deceased person** shall be chargeable to tax in the hands of the 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.

Glossary of terms:

Executor: The person, who would administer the estate of the testator, after his death, in accordance with the provisions / directions under the Will. He is appointed by the testator himself under / by his Will. Executor has to act like a trustee. Besides, even any such legatee, who undertakes to carry out the wishes of a testator, will be treated as a trustee.

Administrator: The person, to whom Letters of Administration is granted, by the competent Court, for administration of the estate of any such testator, who had not appointed any person as an executor under / by his Will. Such administrator can also be appointed by the Court, in cases, where the testator had appointed one person as executor under the Will, but such person refuses to act so as executor, or he is legally incapable to act as so, or he dies, before the death of testator, or before the Will has been proved, or before he has been able to execute the Will fully. The distinction between an executor and administrator is that, the executor can be appointed by the testator under his Will, whereas the administrator can be appointed only by the competent Court.

Probate: When the competent Court grants letters of administration, which is annexed with the Will, then it is said to be grant of probate. Probate means the copy of a Will, which is certified under the seal of a competent Court, with a grant of administration to the estate of the testator. It is the **conclusive evidence** about the due execution and validity of the Will, and about the testamentary capacity of the testator.

Glossary of terms:

Executor and trustee : executor is representative of the testator for all purposes while trustee is the representative of the legatees or the beneficiaries.

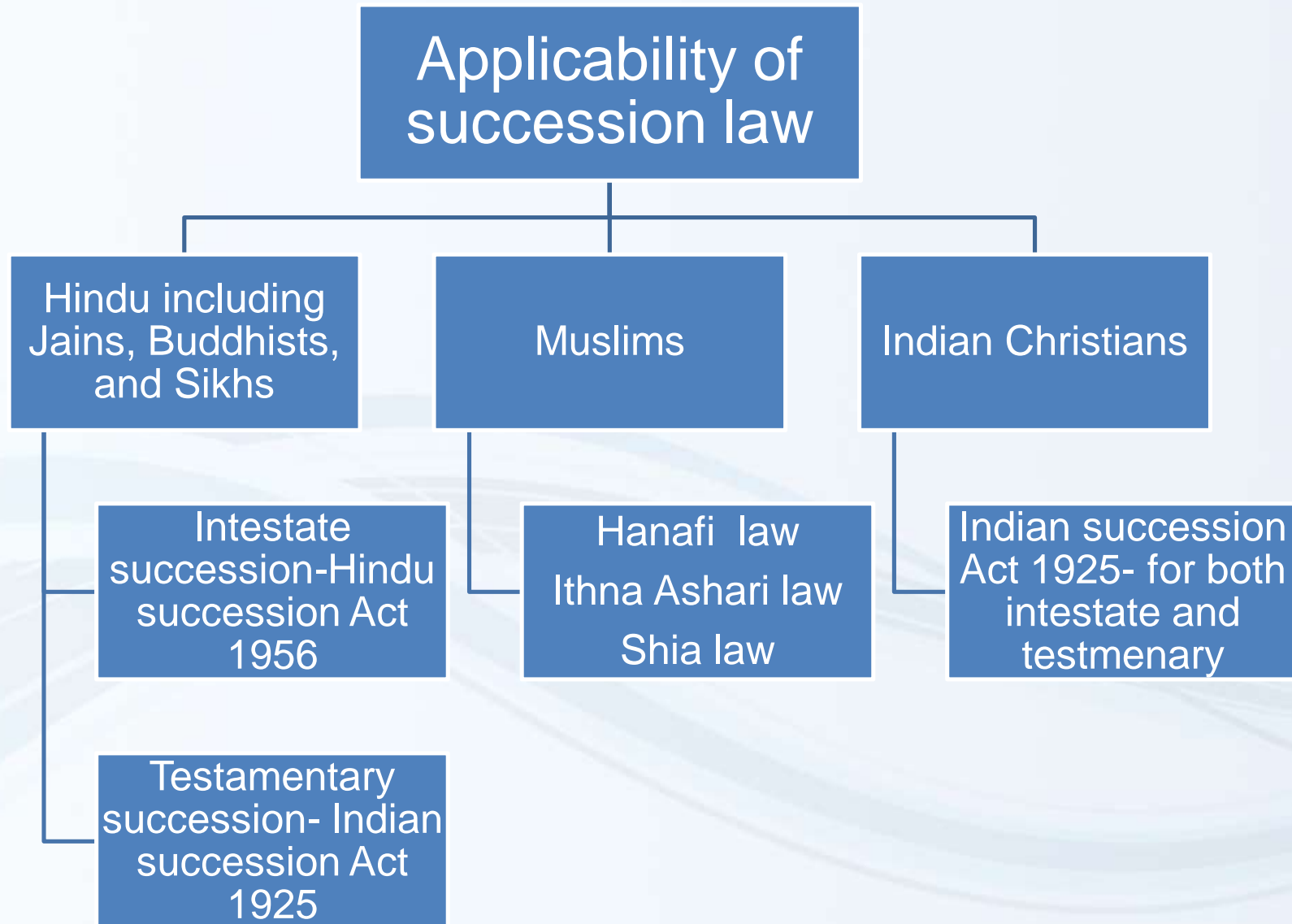
Legatee / Beneficiary: A person, to whom the property will pass under the Will. He is the person, to whom the property of the testator would be bequeathed under the Will.

Estate: The property of the testator remaining or left after his death.

Intestate succession: succession without a valid will

Testamentary succession : succession with a valid will.

Applicability of succession law



Chargeability in the hand of executor

❑ Income estate of deceased person from death till complete distribution to the beneficiaries of the estate according to their several interests.

❑ **Legal status for assessment :**

Only one executor: as individual

More than one executor (property in different country or location) : AOP

❑ Residential status: same as status of deceased individual in the year of death – if non resident then taxed in the hand of executor as non resident for several years till complete distribution among beneficiary.

Note: residential status of executor is irrelevant.

Applicability of section 168 in the case of testamentary succession only and not in the case of intestate succession.

Executor separate income to be separately assessed – two assessments (1) as executor (2) as personal

Commissioner of Income-tax Vs. Estate of Late A.V. Viswanatha Sastri [1980] 121 ITR 270 (MAD.)

Whether where deceased was carrying on legal profession, legal fees due to deceased as on date of his death was one of assets left by deceased and would become part of his estate liable to estate duty but such arrears of fees could not be taken as income of estate so as to brought it to charge under section 168 - Held, yes.

Facts:

The deceased was carrying on legal profession when he died on 4-1-1966, after executing a will on 2-1-1966, appointing his son to be the executor of the will. The son had collected the arrears of professional fees due to the deceased after his death for the assessment years in question. The ITO proceeded on the basis that the combined operation of the provisions of sub-section 168 and 176(4) made the executor liable in respect of (1) income of the estate which came into his hands, and (2) any sum received by the executor after the discontinuance of profession by reason of the death of the person concerned or otherwise. He, therefore, held that the executor having received income of the estate as well as the professional fees due to the deceased, both were assessable in his hands and that the professional fees received after the death of the deceased need not be separately assessed in his hands and it was only on that basis that the legal fees received was assessed under the head 'Profession'. The AAC upheld the assessment. The Tribunal held that section 168 would not apply as the arrears of professional fees due to the deceased could not be taken to be the income from the estate of the deceased and that the arrears of income if at all could be assessed only in the hands of son of deceased under section 176(4) separately as the recipient and not as an executor.

As regards applicability of section 176(4), a fiction is created by law under this provision. As per the said fiction, the executor, viz. , son of the deceased, was the recipient of the arrears of professional income, which was due to the deceased and which were assessable to income-tax, if he had received them before he died. Therefore, the arrears of professional fees were liable to income-tax under section 176(4) in the hands of the recipient, viz., son of the deceased, as his income and chargeable to tax as his income as income from other sources in the year of receipt and could not be tacked on and clubbed with the income of the estate of the deceased and brought to tax in the hands of the executor along with the income of the estate.

Section 176(4):Where any profession is discontinued in any year on account of the cessation of the profession by, or the retirement or death of, the person carrying on the profession, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the aforesaid person had it been received before such discontinuance.

CIT Vs. Smt. Dhanalakshmi HIGH COURT OF MADRAS [1995] 82 TAXMAN 517 (MAD.)- non applicabilty of 168 to intestate succession.

Facts: Deceased assessee died leaving behind his wife 'P', his mother and his four daughters. All of them were assesseees in their individual capacity. The deceased owned a building along with his brother. For the assessment year 1976-77, wife of the deceased 'P' filed return and claimed herself to be the administrator of the estate of the deceased and the assessment was required to make in respect of income under section 168 in the representative capacity. The ITO rejected her claim on the ground that they took the estate as tenants-in-common, as provided under section 19(2) of the Hindu Succession Act and, consequently, each of them, was entitled to one-sixth of the income, and since the deceased had died intestate, one-sixth of the income was liable to be assessed in the hands of each heir. On appeal, the Commissioner (Appeals) also rejected the assessee's appeal on the ground that 'P' had not been granted letter of administration by any competent authority. On second appeal, the Tribunal set aside the order of the Commissioner (Appeals) on the ground that the estate of the deceased was being factually administered by the wife of the deceased and no partition took place among the heirs of the deceased.

Held : *Explanation under section 168 states that it would be applicable only in the case of a specific legatee. Legatees are entitled to succeed to the estate in accordance with the terms of the will. In the instant case, the deceased had not executed any will in favour of the legatees. In the absence of the fact that the succession is testamentary succession section 168 cannot be made applicable. Explanation to section 168 states that in this section 'Executor' includes an administrator or other person administering the estate of a deceased person. This does not mean that the administrator includes the de facto administrator. Section 168 applies to a case where succession is a testamentary succession. But in the intestate succession, section 168 will have no application. In the instant case, the deceased had not left a will bequeathing the property to any of the legatees. In such circumstances, since the succession in the present case happened to be an intestate succession, section 168 could not be made applicable to make an assessment in a representative capacity. Therefore, the Tribunal was not justified in holding that the income of the estate of deceased person subsequent to the date of death was assessable under section 168 in the hands of the executor.*

Section 168 may be invoked even before probate is obtained . First Additional Income-tax Officer Vs. Mrs. Suseela Sadanandan [1965] 57 ITR 168 (SC)

Provision of section 168 is mandatory or optional to assessing officer-mandatory :*In terms of section 168 and, particularly of the Explanation to that section, the income-tax authorities had no discretion except to tax the income in the hands of the executor who is in de facto management of the property. The income arising from the undistributed personal estate of the deceased or the undistributed share of his interest cannot, therefore, be taxed in the hands of the assessee who was not the administrator of the estate at that time. CIT Vs. Mrs. Usha D. Shah[1979] 2 Taxman 154 (Bom.)*

Executor, being the sole beneficiary :*The income received by the executor of an estate during the course of its administration belongs to him and he alone is liable to be assessed as such even if he is the sole beneficiary. The title of the residuary legatee accrues only when the administration is complete and after the residue is ascertained and not till then. This principle is enshrined in section 168. In the instant case, therefore, the Tribunal's order, setting aside the order of the Commissioner under section 263 by which assessee's income as executor of his father's estate was sought to be included in his personal assessment, was justified. CIT Vs. Bakshi Sampuran Singh [1980] 4 Taxman 539 (Punj. & Har. HC)*

If more than one executors – assessment in AOP: Section 168 of the Income-tax Act, 1961—Executors—Assessment of—Deceased left two wills covering different properties situated in India and England and appointed different and distinct sets of executors for each will—ITO made single assessment under section 168 in status of AOP for aggregate income from Indian and foreign estate in the hands of executor of one of the wills without serving notices on all other executors—Executors present voluntarily furnished all requisite details and did not object to inclusion of income from foreign property covered by other will—Whether properties comprised in each will constituted one single composite estate after death of deceased—Held, yes—Whether impugned single assessment under section 168 in status of aop valid under law—Held, on facts, yes.[H H **Maharani Vijaykunverba Saheb Vs CIT** [1982] 8 Taxman 60 (Guj.)

C/F loss of deceased to be set off against income taxable in the hand of executor:
Assessment of—Deceased died in middle of assessment year—He was assessed as individual up to date of his death and his executors were assessed as AOP for remainder of assessment year—Executors claimed set off of carried forward capital loss incurred by deceased against certain capital gains in their assessment—Whether set off of impugned capital loss could be allowed notwithstanding difference between executors' status and that of deceased—Held, yes—Whether treatment of executors as AOP is only for statistical purposes and incidence of tax is really on estate of deceased—Held, yes CIT Vs. **G.B.J. Seth [1981] 6 Taxman 318 (MP)**

Notice of assessment to all the executors- generally:First Additional Income-tax Officer Vs. Mrs. Suseela Sadanandan [1965] 57 ITR 168 (SC)

exception: The executrix, who was taxed in the status of AOP, appeared to have furnished to the ITO the relevant information relating to income derived from the England property and did not object to its inclusion even when she was afforded full opportunity of being heard. They could not, therefore, plead, at a later stage as a last resort or an afterthought, that the assessment of the said income was not permissible unless all the executors were served and collectively taxed as "AOP". Section 168 merely prescribes the method for making an assessment in a special case and does not bear upon the ITO's initial jurisdiction but deals with the matter incidental to it. Any procedural omission or commission by the ITO in the exercise of his jurisdiction would nullify the assessment only if such omission, error or breach is so fundamental as could not be waived because it effects inherent jurisdiction. In the instant case, since the few executors, who were present before the ITO, had voluntarily furnished the requisite information and had not objected to the inclusion of foreign income, they must be taken to have exercised the option of abandoning the plea that such income was not taxable in their hands, and, having not raised an objection at the appropriate time, must be taken to have waived the same. .[H H Maharani Vijaykunverba Saheb Vs CIT [1982] 8 Taxman 60 (Guj.)

Whether executor is entitled to any deduction?

No expenses allowed like expenses on sradh ceremony, expenses of obtaining probate of will, letter of administration, death duty etc. while computing income and tax of estate.

Thank You

**THANK YOU
CA PP SINGH**

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