

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES 'SMC', JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य के समक्ष  
Before : Shri Vijay Pal Rao, Judicial Member

आयकर अपील सं./ITA No. 1336/JP/2018  
निर्धारण वर्ष/Assessment Years : 2009-2010

Smt. Usha Kapoor L/h late Shri Som Prakash Kapoor 4/266, Jawahar Nagar, Jaipur	बनाम Vs.	The ITO Ward- 6(4) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADIPK 4486 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Khandelwal, CA  
राजस्व की ओर से / Revenue by : Shri Abhishekh Sharma , Addl. CIT- DR

सुनवाई की तारीख / Date of Hearing : 30/09/2019  
घोषणा की तारीख / Date of Pronouncement : 29 /10/2019

आदेश / ORDER

PER VIJAY PAL RAO, JM

This appeal by the assessee is directed against the order dated 16-10-2018 of Id. CIT(A), Ajmer for confirming the penalty u/s 271(1)(c) of the Act for the Assessment Year 2009-10 wherein the assessee has raised following grounds of appeal.

“That the Id. CIT(A) has erred seriously in law and on facts in sustaining the order passed by the AO u/s 271(1)(c) of the I.T. Act, 1961 for levying penalty for Rs. 1,96,000/- ignoring the vital fact that no such penalty can be levied on the legal heir of the deceased assessee. The same may kindly be deleted.”

2.1 Brief facts of the case are that the assessee is an individual and expired on 25-07-2013. The assessee filed the return of income u/s 139 of the Act. Subsequently, the AO reopened the assessment on the basis of information that the assessee sold an immovable property bearing Plot NO. 38, Hill View Enclave, Kho Rebarain, Tehsil-Sanganer, Jaipur for a consideration of Rs. 10,97,730/-. This transaction of sale of property was not declared by the assessee in the return of income filed u/s 139 of the Act. The AO issued notice u/s 148 of the Act on 08-03-2016. In response to the notice issued u/s 148 of the Act, the widow of the deceased assessee filed the return of income and also accepted the Long Term Capital Gain of Rs. 8,67,806/- during the assessment proceeding before the AO. The AO accordingly made an addition of Rs. 9,06,866/- on account of Long Term Capital Gain. The legal heir of the assessee accepted the assessment order. Subsequently, the AO initiated penalty proceedings u/s 271(1)(c) of the Act and levied the penalty of Rs. 1,96,000/- vide order dated 24<sup>th</sup> May, 2017.

2.2 The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

2.3 Before the Tribunal, the Id.AR of the assessee submitted that reassessment proceedings were initiated much after the demise of the assessee on 25-07-2013. He further submitted that even if the AO has made some addition on account of

Long Term Capital Gain arising from sale of property by the deceased assessee then penalty u/s 271(1)(c) of the Act cannot be levied against the legal heir. In support of his contentions, the Id.AR of the assessee relied on the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs Tika Ram through L/h Smt. Munni Devi, 174 Taxman 317.

2.4 On the other hand, the Id. DR relied on the orders of the authorities below and submitted that it is a clear case of concealment of particulars of income and the assessee did not disclose the transaction of sale of immovable property and the capital gain had arisen from said transaction. Therefore, the legal heir of the assessee is responsible for tax liability of the deceased assessee and also liable for penalty u/s 271(1)(c) of the Act.

2.5 I have considered the rival submissions as well as the material available on record. There is no quarrel that the transaction of sale of immovable property took place in the financial year 2008-09 and thereafter the assessee expired on 25-07-2013. Till the assessee expired, no action was taken by the AO but thereafter the assessment was reopened by issuing notice u/s 148 of the Act on 8-03-2016 which is much after the demise of the assessee. The wife of the deceased assessee responded to the notice u/s 148 of the Act and also participated in the assessment proceedings. Further she had also accepted the Long Term Capital Gain arisen

from said transaction. So far as the liability of the legal heir to pay due tax on the income of the deceased assessee is concerned, there is no quarrel that legal heir of the assessee has to discharge the tax liability of the deceased assessee. However, the legal heir of the assessee cannot be charged to pay penalty u/s 271(1)© of the Act when a person who has committed the default is no more to explain the reason for such default. Therefore, in such circumstances, non-availability of deceased assessee to explain the reasonable cause for committing default itself is bona fide explanation on the part of the legal heir which is covered u/s 273B of the Act. In the case of CIT vs Tikka Ram through L/H Smt. Munni Devi (supra), the Hon'ble Punjab & Haryana High Court while dealing with the identical issue has observed and held in para 3 (6) as under:-

“3. CIT vs Tikka Ram through L/H Smt. Munni Devi (P&H) (174 Taxman 317): In this case the legal heir had filed return declaring the additional income as per reasons framed for initiation action u/s 148 and assessment order was passed on the returned income. Ld. AO imposed penalty u/s 271(1)© on the legal heir and same was sustained by the Id. CIT(A). On further appeal the Hon'ble ITAT , Chandigarh deleted the penalty and same was sustained by the Hon'ble P&H High Court by observing as under:-

6. *We find that the Tribunal has found as a matter of fact that in response to notice issued under section 148 of the Act, the legal heir of the assessee (i.e. wife) herself filed the revised return of income at Rs. 5,87,520/- which includes the unexplained income of the assessee. As the assessee had died, the legal heir being unaware of the source of investment filed return of income including the impugned only to demonstrate her bona fides and willingness not to prolong any litigation with the revenue. We find that in this case ostensibly the assessee had died and his legal heir, namely, his wife, was not in a position to explain the circumstances leading to the impugned investment and it was under these circumstances that she accepted the charge made out by the assessing*

*officer in the notice under section 148 of the Act. Therefore, in the instant case, the disclosure made by the legal heir of the assessee was bona fide and voluntary with a view to avoid litigation and therefore, deletion of penalty under section 271(1)(c) of the Act in the present case is justified.’’*

Accordingly, in view of the facts and circumstances of the case as well as following the decision of Hon'ble Punjab & Haryana High Court cited in the case of CIT vs Tikka Ram through L/H Smt.Munni Devi (supra), the penalty levied u/s 271(1)(c ) of the Act against legal heir of the deceased assessee is not sustainable in law and the same is deleted. Thus the solitary ground of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 29/10/2019.

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:-  
\*Mishra

29 /10/ 2019

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-Smt. Usha Kapoor, L/h Late Prakash Kapoor, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 6(4), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A),
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.1366/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar