

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'B', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.548/Lkw/2019
Assessment Year:2008-2009

Smt. Uma Devi (Deceased) Through L/h Shri Devendra Kumar 161, Harunnagla, Bareilly. PAN:BMEPD1526K	Vs.	Income Tax Officer-2(3), Bareilly.
(Appellant)		(Respondent)

Appellant by	Shri Vivek Agarwal, C.A.
Respondent by	Shri Harish Gidwani, D.R.
Date of hearing	18/08/2022
Date of pronouncement	30/08/2022

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order of learned CIT(A), dated 11/06/2019 pertaining to assessment year 2008-2009. In this appeal the assessee has raised the following grounds:

- "1. *The learned Assessing Officer has erred in imposing penalty of Rs.6,54,000/- u/s 271(1)(c) of the Income tax Act, 1961.*
2. *The learned Assessing Officer has erred to say that the assessee failed to comply with various notices issue by him. Actually the assessee has not received any notice as mentioned by AO. Thus the assessment framed u/s 144 on 12.02.2016 at income Rs21,35,620/- is uncalled for and unjustified.*
3. *That the A.O. should not have treated the Bank Deposits of Rs.21,000,00/- as unexplained. Actually this amount*

represented out of sale of Agriculture Land for Rs61,40,000/- situated in Village Harunagla. This fact was duly disclosed to ITO Ward 2(3) Bareilly in reply dated 19.01.2015 duly sent by speed post on 05.02.2015.

4. *That the A.O. has further erred to hold that the assessee has concealed the particulars of his income and thus imposed penalty of Rs.6,54,000/-. This penalty order has been passed without giving proper opportunity to assessee.*
5. *That the penalty imposed at Rs.6,54,000/- is highly excessive and uncalled for.*
6. *The penalty imposed by the learned Assessing Officer is bad in law and on the facts of the case."*

2. Learned counsel for the assessee, at the outset, submitted that assessee is an old lady of 75 years and had no taxable income and therefore, income tax return was not filed. However, because of deposit of Rs.21 lac in the bank account of the assessee, the case of the assessee was reopened u/s 147 of the Act and assessment proceedings were completed ex-parte qua assessee as none of the notices, issued by the Assessing Officer, were received by the assessee. Learned counsel for the assessee submitted that the fact of having passed the order by the Assessing Officer came to the notice of the assessee only when the penalty order u/s 271(1)(c) dated 12/08/2016 was passed. It was submitted that since it was not in the knowledge of the assessee regarding any assessment order passed against her therefore, no appeal was filed before learned CIT(A) and the only remedy left with the assessee was filing of a petition u/s 264 of the Act before Pr. CIT which was filed on 08/09/2017 and our attention was invited to page 3 of the paper book where a copy of petition u/s 264 was placed. It was submitted that this petition has not yet been decided despite a period of four years have passed. It was submitted that the assessee has a strong case regarding explanation of deposit in the bank account which

she had received from the sale of a land and in this respect our attention was invited to pages 6 to 18 of the paper book where a copy of agreement to sell land for Rs.61,40,000/- was placed. Learned counsel for the assessee submitted that before reopening of the case, the assessee had received a verification letter from the Assessing Officer to which reply was duly filed wherein the source of deposits was explained to him. Learned counsel for the assessee in this respect invited our attention to pages 4 & 5 of the paper book where a reply, submitted by the assessee dated 19/01/2015 explaining the source of Rs.21 lacs along with a copy of agreement to sell, was placed and which were submitted to the Assessing Officer. Learned counsel for the assessee submitted that the documents submitted to Assessing Officer in view of verification of transactions fully explain the deposit of Rs.21 lac and therefore, assessee has a fair chance to expect a favourable decision on petition u/s 264 of the Act. Therefore, it was prayed that the penalty will not be leviable. However, it was submitted that the penalty order, sustained by learned CIT(A), may be set aside to the Assessing Officer who can again initiate the same when the matter is finally decided by the authorities.

3. Learned D. R., on the other hand, submitted that the penalty proceedings are separate proceedings and this order may not be set aside as the penalty issue can be decided independently.

4. We have heard the rival parties and have gone through the material placed on record. We find that pages 4 & 5 of the paper book are a reply to letter dated 02/01/2015 issued by the Assessing Officer wherein the Assessing Officer required the assessee to explain the deposits of Rs.21 lacs. Pages 6 to 18 of the paper book are the copy of agreement to sell of land whereby the assessee claimed to have received Rs.21 lacs as part of total

proceeds of Rs.61,40,000/-. Despite of the fact that the assessee had replied to the verification letter and had filed copy of agreement to sell, explaining the source of deposit in the bank account, the Assessing Officer reopened the case of the assessee and completed the assessment ex-parte qua assessee by holding that the assessee was not able to explain her case and had not attended the proceedings. The assessee, on the other hand, has claimed that none of the notices issued by the Assessing Officer were received by her and therefore, the proceedings were not attended and the fact of having passed the assessment order came to the knowledge of the assessee when the penalty order u/s 271(1)(c) was passed by the Assessing Officer and only after that since the time for filing the appeal before learned CIT(A) has elapsed therefore, petition u/s 264 was filed on 08/09/2017, a copy of which is placed at page 3 of the paper book. As per the submissions of Learned counsel for the assessee, this petition has not yet been decided by learned CIT(A). In the appellate order against the penalty order u/s 271(1)(c) the learned CIT(A) has mentioned about the fact of having filed petition u/s 264 by the assessee but he also upheld the penalty against the assessee by holding that no one had appeared before him. Therefore, we find that both the orders i.e. assessment order and penalty order has been passed ex-parte qua assessee. The assessee could not file appeal before learned CIT(A) as the fact of assessment order having been passed by Assessing Officer was not in the knowledge of the Assessing Officer therefore, a belated petition has been filed u/s 264 of the Act. In view of the fact that assessee had claimed to have received the amount deposited in the bank account against sale of land, we deem it appropriate that the penalty order be kept in abeyance till the determining of the escapement of income. In view of the above, the penalty order is set aside to the file of the Assessing Officer with a direction to initiate proceedings

against the assessee after determining the result of the petition filed u/s 264 of the Act.

5. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 30/08/2022)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:30/08/2022
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar