**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision : 25.9.2019

CWP-716-2018 (O&M)

Jagroop Singh **...... Petitioner**

Versus

Principal Commissioner of Income Tax, and another
...... Respondents

CWP-37279-2018 (O&M)

Jasbir Kaur **...... Petitioner**

Versus

Principal Commissioner of Income Tax,--2, Ludhiana and another
...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE HARNARESH SINGH GILL
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Present : Mr. S.K.Mukhi, Advocate
for the petitioner.

Mr. Sandeep Goyal, Advocate for
Mr. Chetan Sood, Advocate
for the respondent.

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<u>AJAY TEWARI, J. (Oral)</u>

1. This order shall dispose of abovesaid two petitions as common questions of law and facts are involved therein. However, the facts are being extracted from **CWP-716-2018.**

2. This petition has been filed against the order dated 22.3.2017

under Section 264 of the Income Tax Act, 1961 (for short 'the Act') passed by the Principal Commissioner of Income Tax-2, Ludhiana.

3. The precise ground taken by the learned counsel for the petitioner is that the petitioner was earlier residing at ward No 3, Model Town, Doraha, Punjab up till the year 2011. Thereafter, he shifted to a house near Aarjoo Hospital, College Road, VPO Karamsar, Rara Sahib, District Ludhiana, Punjab.

4. In the financial year 2013-14, the Assessing Officer received some information regarding cash deposit in the bank account of the petitioner and issued him notice under Section 147 of the Act. As per the petitioner, since he had shifted his address, he had never received that notice. After about one year i.e. on 19.3.2015 ex-parte assessment order was passed. On 4.6.2015, the Assessing Officer issued him a show cause notice for penalty under Section 271 (1) (c) of the Act. Interestingly, on this occasion the Assessing Officer sent notice at the new address of the petitioner and it is only then, as per the petitioner that he came to know about the entire issue and this is the precise ground on which the petitioner has been agitating before the various authorities.

5. Learned counsel for the petitioner has argued that firstly, there was no evidence with the Assessing officer that the petitioner had evaded the service of the notice and rather the transmission of the second show cause notice (dated 4.6.2015) to the new address clearly shows that the Assessing Officer was himself aware that the address of the petitioner had changed and that is why, he had sent the notice at the new address. The only prayer made in the petition is that the petitioner should be heard before assessment order passed and any subsequent penalty proceedings

etc. are taken against him.

6. Counsel for the respondent has argued that the case was taken up when the information was received from the bank of the petitioner about the cash deposit and registered notice acknowledgment due was sent to him at the address mentioned in the Bank account. That notice was never returned with the endorsement that the petitioner is not living at the address. As per him, after the assessment and penalty, when the recovery was to be made then the new address was traced out on field visits.

7. In our considered opinion, though no fault can be found with the initial process initiated by the Income Tax authorities (in sending notice by registered post acknowledgment due at the address reflecting in the bank account) yet it did come to their knowledge that the petitioner had shifted his address. Not only that, against the penalty order the petitioner had filed an appeal and the Tribunal accepted these facts as giving rise to reasonable cause and set aside the penalty proceedings and that order was never challenged. It is the further case of the petitioner that actually no tax is exigible on this entire transaction because it arose from the sale of agricultural rural land and within a few days, the petitioner had purchased similar agricultural land.

8. Keeping in view the entire conspectus of facts, we deem it appropriate to direct the Revenue to re-examine the issue regarding the exigibility of tax and, to this end, we set aside the assessment order.

9. Parties through counsel are informed that the petitioner shall now appear before the Assessing Officer on 23.10.2019 to justify his claim that the transaction is not exigible to tax.

10. Petitions stand disposed of.

11. Since the main cases have been disposed of, pending application if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

25.9.2019
anuradha

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No