

A.F.R.

Court No. - 32

Case :- INCOME TAX APPEAL No. - 14 of 2002

Petitioner :- Commissioner Of Income Tax-1

Respondent :- M/S Kant Travels

Petitioner Counsel :- S.C. (A.N. Mahajan),A.Kumar,B.J.Agarwal,D. Awasthi,G. Krishna,R.K. Upadhyay,S.Chopra

Hon'ble Ashok Bhushan,J.

Hon'ble Prakash Krishna,J.

(Per Hon'ble Ashok Bhushan,J)

Heard Shri Shambhu Chopra, learned counsel for the appellant and Shri S.D. Singh, learned counsel for the assessee.

This appeal under Section 260-A of the Income Tax Act, 1961 hereinafter called the "Act, 1961") has been filed against the judgment and order of the Income Tax Appellate Tribunal (hereinafter called the "Tribunal") dated 19/9/2001 passed in ITA No. 1200/Alld./94 for the Assessment Year 1989-90.

Appeal has been admitted on following two substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the Tribunal is justified in upholding that the notice issued U/S 148 of the Act without specifying the status of the assessee is invalid in the eyes of law?

2. Whether on the facts and in the circumstances of the case, the Tribunal is justified in upholding that the validity of notice U/s 148 without specifying the status of the assessee could not be saved under the provisions of Section 292-B of the Act?"

The brief facts of the case which is necessary for answering the above two substantial questions of law are: A notice under Section 148 of the Act, 1961 was issued to the assessee namely:M/s Kant Travels 917, Daraganj, Allahabad on 12/8/1991, in response to which the assessee filed his statement on 05/9/1991 stating that he has already filed return on 17/5/1991 which may be treated in compliance to the above notice. The assessee appeared before the Assessing Officer. Notices under Section 143 (2) were issued, in response to which the assessee

through his Advocate appeared before the Assessing Officer and assessment order was passed by the Assessing Officer on 16/11/1993, completing the assessment on total income of 1,56,040/-. The assessee filed an appeal before the CIT(Appeals) on 07/1/1994 against the assessment order dated 16/11/1993. The said appeal was dismissed by order dated 20/4/1994. In the appeal following four grounds were taken which are quoted below:

“1. Because on the facts and circumstances produced on record. The learned ITO was not justified in estimating the fare receipts at 295000/- as against Rs.228358/- which has been shown.

2. Because there was no justification of addition of Extra profit of Rs.66602/- in the total income.

3. Because the assessing officer has wrongly rejected registration in spite of form no.12 filed and no opportunity was given in this regard.

4. Because on the last day i.e. 16.11.93 the working partner was confined to bed hence could not attend the assessment proceedings.”

The appeal was dismissed by CIT (Appeals) against which the assessee filed an appeal before the Tribunal being ITA No. 1200/Alld./94. In the appeal filed before the Tribunal no ground was taken challenging the validity of the notice issued under Section 148 of the Act, 1961. However, permission was sought by the Tribunal to raise additional ground i.e. (I) “That the order passed under Section 148 in the status of URF is illegal and without jurisdiction.” The Tribunal, considered the aforesaid additional ground and held that notice under Section 148 of the Act, 1961 is bad in law, hence the assessment framed is bad and void-abinitio.

The Revenue has filed this appeal challenging the order of the

Tribunal dated 19/9/2001.

Learned counsel for the appellant contended that notice under Section 148 of the Act, 1961 was issued in the name of M/s Kant Travels 917, Daraganj, Allahabad on 12/8/1991, in response to which the statement was filed referring to earlier return filed on 17/5/1991. The Department being well aware of the identification of the assessee, was issued notice under Section 148 of the Act, 1961 and he having participated in the proceedings, cannot be allowed to turn round and challenge the notice issued under Section 148 of the Act, 1961 as without jurisdiction. Present is not a case where notice has been issued in favour of one assessee and the assessment has been framed against another assessee. The notice was issued against the firm and the assessment has been framed against the firm. In support of his submission, Shri Shambhu Chopra, learned counsel for the appellant has placed reliance on the judgments of Calcutta High Court and Punjab & Haryana High Court in **Swaran Kanta Vs. Commissioner of Income Tax**, 176 ITR 291; **Commissioner of Income Tax Vs. Rajbir Singh**, 233 ITR 126 and **Mulchand Rampuria Vs. Income-Tax Officer & Anr**, 758 ITR 252.

Shri S.D. Singh, learned counsel for the respondent submits that there being no valid notice issued under Section 148 of the Act, 1961, the entire proceedings are vitiated and void-abinitio. He submits that the assessing officer can assume jurisdiction to proceed with the assessment only when a valid notice is served. He submits that the assessee having earlier filed his return as a registered firm and the notice was issued to the assessee as an unregistered firm is invalid and no error has been committed by the Tribunal in setting-aside the assessment order. He further submits that the mere fact that no objection was raised by the assessee before the Assessing Officer or the CIT (Appeals) shall not validate the proceedings which were void-abinitio. He has placed reliance on the various judgments of this Court as well as of Calcutta High Court in **Bhagwan**

Devi Saraogi Vs. Income-tax Officer, [1979] 118 ITR 0906, Sri Nath Suresh Chand Ram Naresh Vs. Commissioner of Income-tax, [2006] 280 ITR and Commissioner of Income-tax Vs. Ram Das Deokinandan Prasad (HUF), [2005] 277 ITR 0197.

Shri S.D. Singh, learned counsel for the respondent further submits that Section 292-B of the Act, 1961 can cure only mistake or defect in the notice, but when the notice itself is not valid, Section 292-B is not attracted and the Revenue cannot claim any benefit on the basis of Section 292-B.

We have considered the submission of the learned counsel for the parties and have perused the record.

The facts, which are on record clearly mentions that a notice under Section 148 of the Act, 1961 was issued to the assessee namely:M/s Kant Travels 917, Daraganj, Allahabad on 12/8/1991 for the Assessment Year 1989-90.

Learned counsel for the Revenue has submitted that in the acknowledgement which was submitted by the assessee, assessee was described in the same manner i.e. M/s Kant Travels 917, Daraganj, Allahabad. The assessment order noticed that notice was issued on 12/8/1991. The assessee filed his statement on 05/9/1991 referring that he has already filed his return on 17/5/1991 which may be treated in compliance to the above notice. It was noticed that the return was earlier filed by the assessee on 17/5/1991 disclosing the income of Rs.89,440/- for the Assessment Year 1989-90 and thereafter a revised return was also filed. The assessee continuously appeared through his counsel and participated in the proceedings and at no point of time he had raised any objection regarding validity of the notice nor any objection regarding description of the assessee. Books of accounts and other documents were called from the

assessee. From the facts which have come on the record including the order of assessment, it is clear that the assessee at no point of time had any doubt about the proceedings or notice under Section 148 of the Act, 1961 has not been issued against the assessee. Neither any objection was raised before the assessing officer nor even in appeal before the CIT (Appeals) regarding the validity of the notice issued under Section 148 of the Act, 1961. Even when the appeal was filed before the Tribunal no such objection was raised and the objection was raised only as an additional ground before the Tribunal challenging the validity of the notice issued under Section 148 of the Act, 1961. The assessment order also indicates that the assessee has been assessed as an unregistered firm which is clear from Column.5 of the assessment order dated 16/11/1993.

The submission of Shri S.D. Singh, learned counsel for the respondent is that the assessee is a registered firm and the proper description of the assessee was not there in the notice issued under Section 148 of the Act, 1961. The assessee was addressed in the notice as M/s Kant Travels 917, Daraganj, Allahabad and the assessing officer proceeded to assess the assessee as an unregistered firm. The fact that the assessee participated in the proceedings and filed his statement referring to his return which has been earlier filed on 17/5/1991 clearly proves that there was no doubt about the identity of the assessee as was disclosed in the aforesaid notice. The assessee throughout participated in the proceedings treating to be a notice issued against the assessee. In the facts of the present case, the fact that the assessee was a registered firm and the notice did not mention it a registered firm is not of much consequence.

Section 292-B of the Act, 1961 has been inserted by the Taxation Laws (Amendment) Act, 1975 which is to the following effect:

**“ [Return of income, etc., not to be invalid
on certain grounds.**

292B. No return of income, assessment, notice,

summons or other proceedings, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.].”

Section 292-B of the Act, 1961 provides that no return of income, assessment, notice, summons or other proceeding, shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons provided such notice or summon is in substance and effect in conformity with or according to the intent and purpose of this Act.

Section 148 of the Act, 1961 mandates service of notices on the assessee requiring him to furnish return of his income. No particular format of notice has been provided under Section 148 of the Act. The key words in Section 148 are service of notice on the assessee. There cannot be any dispute to the proposition that the service of notice under Section 148 of the Act, 1961, is a precondition for proceeding with the assessment or re-assessment.

The present is not a case where the assessee is denying service of the notice. The assessee was issued a notice under Section 148 of the Act, 1961 in response to which he appeared before the Assessing Officer and participated in the proceedings. No objection was taken by the assessee at any point of time regarding invalidity of the notice issued under Section 148 of the Act, and it is only when his appeal was dismissed by the

CIT(Appeals) he filed an appeal before the Tribunal, taking additional ground. The facts of the present case clearly proves that the notice is in substance and effect in conformity with and according to the intent and purpose of the Act. The intent and purpose of the Act is to inform the assessee that income has escaped assessment. The provisions of Section 292-B of the Act, 1961 is fully attracted and present is not a case where notice under Section 148 can be said to be invalid.

The Tribunal in its judgment dated 19/9/2001 has allowed the appeal on the sole ground that notice under Section 148 is not valid since it does not indicate that the notice is issued to a registered firm or to an individual who may be carrying the proprietary business or the firm whether registered or unregistered. The Tribunal took the view that notice is addressed in such a manner that it does not specify the status of the assessee and in view of the fact that the status of the assessee has not been specified, the notice is not valid in the eyes of law. Holding that the notice was valid, the appeal was allowed and the entire proceedings were set-aside. The status of the addressee in the notice under Section 148 of the Act, 1961 should be relevant when the notice is addressed to a different entity and the assessment is framed against another entity. However, when the entity to whom the notice is addressed and the entity against whom the assessment is framed is one, the notice cannot be said to be invalid.

In the case of **Commissioner of Income-Tax Vs. Ishwar Singh & Sons**, 131 ITR 480, a notice under Section 148 of the Act, was issued to one Arjun Singh Johar, proprietor of M/s. Ishwar Singh and Sons which notice was served on one Sri Maheshwar Singh. Pursuant to that notice Sardar Sampuran Singh, younger brother of Arjun Singh, filed a return in the name of M/s Ishwar Singh and Sons, proprietor, Sardar Sampuran Singh and the assessment was made on the respondent-assessee taking his status as that of an HUF. In this context, the Division Bench of this Court

laid down following at page 485 which is quoted below:

“It would be seen that there is an apparent conflict in these two decisions. We do not think that we should go into the question as to which of these two decisions we should follow or that there is any distinguishing feature in the facts of either of these cases when compared with the facts of the instant case. For the purpose of the present case suffice it to say that this contention was not urged on behalf of the revenue before the Tribunal and hence we do not think that we should express any opinion on it. We, therefore, do not entertain this contention. On the facts as found by the Tribunal it is clear that the notice under Section 148 was issued to an entity which was, as a matter of fact, non-existent and was at any rate different from the entity which filed the return in response to that notice. The notice had been issued to Sardar Arjun Singh, individual, and the return was filed by Sardar Sampuran Singh, karta of his HUF. The two are absolutely distinct entities in law, as also, as a matter of fact, and thus a valid assessment could not be made on the assessee, HUF, as no notice had been issued to it under Section 148 of the Act. We have already indicated above that the issue of notice under Section 148(1) is the condition precedent to the validity of an assessment under Section 147. It is a jurisdictional issue and unless such a notice is issued the ITO does not get jurisdiction to make an assessment on a particular assessee. In this view of the matter, in our opinion, the Appellate Tribunal has been right in holding that the assessment in question was not valid in law.”

The question of status of assessee and correct description is a relevant factor, but the description of the status may or may not invalidate

the proceedings. Sometimes, it may not invalidate the proceedings and can be saved under Section 292-B of the Act, 1961, and in some cases the invalidity may go to the very root of the proceedings.

A Division Bench of the Calcutta High Court had considered the issue of status of the assessee in **Mahabir Prasad Poddar Vs. Income-Tax Officer, "B" Ward, Distt. 1(2), Calcutta & Ors**, 102 ITR, 478. Following was laid down at pages 489-490 which is quoted below:

"We do not think that the wrong description, of the status of an assessee can have the effect of invalidating the proceedings for assessment initiated after obtaining the sanction of the Commissioner when the sanction is in terms granted to the initiation of proceedings against the assessee. If the status of the assessee was wrongly described, it can always be corrected by the Income-tax Officer in the course of the assessment proceedings, but that cannot affect the validity of the assessment proceedings. The position would of course be different where the status is so inextricably mixed up with the question as to who is the assessee that the description of the status one way would be referable to one assessee while the description of the status the other way would be referable to another assessee. Where such is the case, the description of the status may be indicative of the fact that a particular assessee is sought to be proceeded against and if sanction of the Commissioner is obtained for proceeding against that assessee, such sanction cannot be availed of for the purpose of initiating proceedings against another assessee who would be indicated by the description of the status the other way."

Present is a case where the assessee was addressed as M/s Kant

Travels 917, Daraganj, Allahabad and was assessed as an unregistered firm. The assessee does not dispute its status as a firm, but the only distinction sought to be made is that it is a registered firm. We are not persuaded to accept the distinction of status of the unregistered firm and registered firm is of such nature that it may vitiate the entire proceedings, moreso, when the assessee which is a firm had participated in the proceedings in response to the notice issued under Section 148 of the Act without raising any objection.

The Calcutta High Court in the case of **Mulchand Rampuria** (supra) laid down following after considering Sections 148 and 292-B at page 763 which is quoted below:

"In my opinion the section is very clear in this respect as the section specifically empowers the Assessing Officer that before making the assessment and reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to do so under the said section within such period mentioned therein. A notice under this section is a condition precedent to the validity of any assessment under section 147 of the said Act. The notice would be invalid if it does not specify the correct assessment year or is not signed, or is issued to a dead man or to the assessee as an individual when the correct status of the assessee is that of a Hindu undivided family. This principle has already been settled by the court in several judgments. After the enactment of section 292B which came into force on October 1, 1975, no notice shall be deemed to be invalid merely by reason of any mistake, defect or omission therein if the notice "is in substance and effect in conformity with or according to the intent and purpose of this Act."

Now the cases cited by the learned counsel for the respondent needs to be considered.

In the case of **Bhagwan Devi Saraogi** (supra) a notice was issued under Section 148 of the Act, 1961 to one Smt. B.D. Saraogi and others. The notice was challenged on the ground that it does not indicate whether B.D. Saraogi and others was a firm or an association of persons. Following was laid down at page 5 which is quoted below:

“As I have already observed in the instant case the notice does not even mention A.O.P. On the basis of the aforesaid decisions I must, therefore, hold that the notice in the instant case is invalid and on the basis of the invalid notice the ITO does not acquire any jurisdiction to reopen the assessment and to proceed with the reassessment proceeding. The failure to issue a valid notice deprives the ITO of the jurisdiction conferred on him under the Act and the proceedings taken by the ITO in pursuance of an invalid notice must necessarily be illegal and void. In this view of the matter, I do not consider it necessary to decide the further question whether the sanction given by the Commissioner in the instant case was mechanical or not.”

There cannot be any dispute to the proposition as laid down above. The proceedings for re-assessment can be initiated only after service of valid notice. The notice in the above case had no indication that notice was given to the principal officer by an association of persons. On the said ground the notice was struck down. The said case is clearly distinguishable.

In **Commissioner of Income-tax Vs. Ram Das Deokinandan Prasad** (supra) a notice was issued to the assessee in his individual capacity and the income was sought to be reassessed was that of the Hindu undivided family of which the assessee was the karta. The Division Bench of this Court in the said background held that the notice to reassess the income of Hindu undivided family was invalid. In the above case clearly there was difference of entity. When a notice was served on an individual,

assessment cannot be framed against the Hindu undivided family. The said case is also clearly distinguishable.

The last case cited by Shri S.D. Singh, learned counsel for the respondent is **Sri Nath Suresh Chand Ram Naresh** (supra). In the said case also the reassessment was made of a Hindu undivided family where a notice was issued in the name of an individual and the defect of the notice was pointed out by the assessee, but the Income Tax Officer did not cure the defect. The Court held the assessment to be invalid. In the aforesaid background, it was held that when the notice was issued to a wrong person, Section 292-B shall not be applicable. The said case is also clearly distinguishable.

In view of the foregoing discussion, we are of the view that present is not a case where notice under Section 148 of the Act, 1961 can be said to be illegal and without jurisdiction. The Tribunal committed error in allowing the appeal of the assessee on the aforesaid ground. However, since the Tribunal has not entered into other grounds raised in the appeal, it is appropriate that the matter may be remitted to the Tribunal for deciding the appeal afresh.

In the result, both the substantial questions of law as noted above are answered in favour of the revenue and against the assessee. In the result, the appeal is allowed. The order of the Tribunal dated 19/9/2001 is set-aside. The matter is remitted to the Tribunal to decide the appeal afresh.

Parties shall bear their own costs.

Order Date :- 25.4.2012

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