

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : I. T. A. No. 119 of 2016

Reserved On : September 01, 2016

Pronounced On : September 09, 2016

M/s Josh Builders & Developers Pvt. Ltd. Appellant

vs.

The Principle Commissioner of Income Tax-I,
Chandigarh Respondent

CORAM : HON'BLE MR. JUSTICE S. J. VAZIFDAR, CHIEF JUSTICE.

HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Sanjay Bansal, Senior Advocate
with Mr. Brij Mohan Monga, Advocate
for the appellant.

Ms. Urvashi Dugga, Advocate
for the respondent.

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DEEPAK SIBAL, J. :

The present appeal filed under Section 260-A of the Income Tax Act, 1961 (for short – the Act) is at the instance of the assessee and impugns therein the order passed by the Income Tax Appellate Tribunal, Chandigarh (for short – the Tribunal).

In the present appeal, which pertains to the Assessment Year 2011-12, the appellant (hereinafter referred to as – the assessee) seeks annulment of the assessment proceedings on the ground that preceding such assessment, no valid notice, as contemplated under Section 143(2) of the

Act was issued and served upon the assessee.

Though four substantial questions of law were sought to be raised in the body of the present appeal, the following two were pressed at the time of hearing :-

“(i). Whether the Hon'ble Tribunal acted illegally and perversely by misdirecting itself in law as well as on facts by reversing the order of the CIT (A) and restoring that of the Assessing Officer when neither notice under Section 143(2) of the Act was issued nor served, during the course of assessment proceedings ?

“(ii). Whether the Hon'ble Tribunal on the facts and in the circumstances of the case was right in law in applying the provisions of Section 292-BB of the Act in the case of the assessee when the notice though not proved to be issued by the Assessing Officer was also not served on the assessee - company ?”

We are of the opinion that in the order impugned before us, the Tribunal has essentially decided questions of fact and that this appeal raises no substantial questions of law for adjudication on our part.

The assessee is a private limited Company and is in the business of Real Estate. On 09.09.2010, a survey operation under Section 133-A of the Act was carried out at the business premises of the assessee's group, during the course of which, an amount of ₹ 1,50,00,000/-

was voluntarily surrendered by the group. Out of the aforesaid amount, ₹ 1,00,00,000/- was surrendered by the assessee as income from business. The assessee filed its return on 30.03.2013, in which the surrendered amount of ₹ 1,00,00,000/- was declared under the head 'Closing Stock' in the credit side of its profit and loss account. However, its impact was nullified by setting off the same against business loss of the current year. In the final assessment dated 31.01.2014, the Assessing Officer, being of the view that the assessee had deliberately tried to set off its undisclosed income with intent to escape liability of paying the due taxes, added the voluntarily surrendered amount of ₹ 1,00,00,000/- to its income for the relevant Assessment Year.

The assessee challenged the assessment before the Commissioner of Income Tax (Appeals)-2, Chandigarh (for short – the Commissioner). It was submitted by the assessee that the assessment was required to be annulled for want of any valid notice under Section 143(2) of the Act, issued and served on the assessee preceding such assessment. After traversing the record, the Commissioner was of the view that a notice dated 28.09.2012 under Section 143(2) of the Act, which had been issued to the assessee was invalid, as the same had been issued prior to the filing of the return. Another notice dated 27.11.2013, which had been issued to the assessee being beyond the time prescribed under proviso to Section 143(2) (ii) of the Act, was also held to be invalid. The Commissioner further found that another notice dated 20.08.2013 under Section 143 (2) of the Act had

been issued to the assessee by the Assessing Officer, but on the ground that there was no evidence of service of this notice upon the assessee, as also finding no reference of the same in the assessment order, allowed the assessee's appeal and ordered the annulment of the assessment impugned before him.

The Revenue, being aggrieved by the aforesaid order by the Commissioner, laid a challenge to the same by way of an appeal before the Tribunal, where the Revenue not only produced a copy of the notice dated 20.08.2013 issued under Section 143(2) of the Act, but also produced record in the shape of Speed Post entries and the Dispatch Register of the Department to prove service of the above-said notice upon the assessee. It was further submitted that the assessee had, at no point of time during the assessment proceedings, raised any objection with regard to non-service of notice, and therefore, in view of the provisions of Section 292-BB of the Act, the assessee could not raise the issue of non-service of notice dated 20.08.2013 upon him and on the basis thereof, seek annulment of the assessment proceedings.

The Tribunal, while agreeing with the Commissioner that the notices dated 28.09.2012 and 27.11.2013 were invalid, after accepting the above-referred submissions raised on behalf of the Revenue and relying upon the provisions of Section 292-BB of the Act, reversed the findings of the Commissioner with regard to annulment of the proceedings, after holding that the notice dated 20.08.2013 was valid. Since the Commissioner

had decided the appeal of the assessee only on this issue, the matter was remanded to the Commissioner to adjudicate upon the appeal on merits.

It can thus be seen that the notice dated 20.08.2013 was declared by the Tribunal to be a valid notice by recording findings essentially based on facts produced before it, which included Speed Post entries, copies of the Dispatch Register of the Department and the actual notice dated 20.08.2013 issued under Section 143 (2) of the Act. The assessee, having not raised any objection with regard to issuance and service of a valid notice during the assessment proceedings and rather, without any objection, having voluntarily taken part in such proceedings, were facts, which were also considered and held against the assessee. It was further observed that even the Commissioner had recorded that the notice dated 20.08.2013 duly existed in the assessment records and qua this finding of the Commissioner, the assessee had not filed any appeal or cross-objection. After arriving at a conclusion that the aforesaid notice had been issued, reliance was placed upon the provisions of Section 292-BB of the Act to ultimately reject the case set up by the assessee.

Section 292-BB of the Act reads as under :-

"292BB. Notice deemed to be valid in certain circumstances. — *Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him*

in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was —

- (a) not served upon him; or*
- (b) not served upon him in time; or*
- (c) served upon him in an improper manner:*

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

Learned senior counsel appearing on behalf of the assessee drew our attention to the Dispatch Register to show that in the same, entry No. 6018 had been allotted to notices under Section 143 (2) and 142 (1) of the Act, both of which were dated 20/22.08.2013. It was submitted that the same number could not have been allotted to two different notices issued under two different provisions. It was further submitted that only the notice under Section 142 (1) of the Act bearing Sr. No. 6018 had been received by the assessee and not the notice under Section 143 (2) of the Act, as sought to be projected by the Revenue. It was thus submitted that the notice dated 20.08.2013 issued under Section 143 (2) of the Act, which was relied upon by the Revenue, had been fabricated only to validate the assessment proceedings.

It is true that the same number in the Dispatch Register has been allotted to both the notices, but that cannot lead to a conclusive determination that two notices, under different provisions of the Act, to the

same assessee cannot be dispatched under the same number, especially when the Tribunal, after going through the Dispatch Register, has factually determined the issue against the assessee.

Learned senior counsel for the assessee further submitted that the findings recorded by the Tribunal that no objection had been taken by the assessee before the Assessing Officer with regard to issuance of an invalid notice is wrong as such objection had specifically been taken in the reply submitted by the assessee during the assessment proceedings.

We have gone through the reply submitted by the assessee before the Assessing Officer. The relevant portion of the same reads as under :-

“...Further this is to inform your good self that the assessee has filed the return on 30.03.2013 therefore the notice issued u/s 143(2) before 30.03.2013 is invalid.”

A perusal of the afore-quoted response only shows that the objection so raised by the assessee before the Assessing Officer was that the notice issued under Section 143(2) of the Act before 30.03.2013 was invalid. Thus, such objection was taken only with regard to the earlier refused notice dated 28.09.2012 and cannot be taken to be an objection to any notice issued after the filing of the return by the assessee including the notice dated 20.08.2013.

From the above, it is abundantly clear that the Tribunal has essentially determined questions of fact. The conclusion being a possible

view cannot be termed as perverse. Therefore, we are disinclined to interfere in the present appeal and resultantly, order dismissal of the same.

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>



**(S. J. VAZIFDAR)
CHIEF JUSTICE**

**(DEEPAK SIBAL)
JUDGE**

September 09, 2016

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