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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 2nd February, 2018*

\+ **W.P.(C) 10870/2017 and CMNo. 44503/2017**

SKY LIGHT HOSPITALITY LLP ..... Petitioner

Through Mr. C. S. Aggarwal, Sr. Adv. with Mr. Gautam Jain, Mr. Madhur Aggarwal and Mr. Uma Shankar, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE -28(1), NEW DELHI ..... Respondent

Through Mr. Zoheb Hussain, Sr. Standing Counsel

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. *(ORAL)*

Sky Light Hospitality LLP, a limited liability partnership, who had on 13.05.2016 taken over and acquired rights and liabilities of M/s Sky Light Hospitality Private Limited upon conversion under the Limited Liability Partnership Act, 2008, has filed the present writ petition impugning notice dated 30.03.2017 for the assessment year 2010-11 under Section 147/148 of the Income Tax Act, 1961 ('Act' for short).

2. Petitioner also impugns the order dated 09.11.2017 passed by the Assessing Officer, the Assistant Commissioner of Income Tax, Circle-28

(1) New Delhi, rejecting objections against initiation of proceedings under Section 147/148 of the Act.

3. Contentions raised by the petitioner in brief are:-

(i) Notice under Section 147/148 of the Act dated 30.03.2017 was addressed and issued to M/s Sky Light Hospitality Pvt. Ltd., PAN No. AALCS3800N, a company which had ceased to exist and was dissolved on 13.05.2016. This notice issued to a dead juristic person is invalid and void in the eyes of law.

(ii) Section 292B of the Act is inapplicable as (a) issue of notice in the name of the Assessee to be assessed is a jurisdictional pre-condition and (b) the Assessing Officer after due application of mind and deliberation had issued notice to M/s Sky Light Hospitality Pvt. Ltd. Impugned order dated 09.11.2017 is relied. Accordingly, this is not a case of error, mistake or omission on the part of Assessing Officer. The Assessing Officer had intentionally issued notice under Section 147/148 of the Act to M/s Sky Light Hospitality Pvt. Ltd. and not in the name of Sky Light Hospitality LLP.

(iii) There is lack of live nexus and "reasons to believe" are mere reasons to suspect that do not establish that income had escaped assessment.

4. The respondent has contested the contentions raised. Error or

mistake in addressing the notice under Section 147/148 of the Act to M/s Sky Light Hospitality Pvt. Ltd. was not a jurisdictional error, but an irregularity and procedural lapse. Section 292B is relied and is applicable. No prejudice has been caused. The assessment proceedings are pending and would be decided on merits. Reasons to believe are elaborate and detailed and reflect honest and objective belief that income has escaped assessment.

5. In the present case, the return for the assessment year 2010-2011 filed by M/s Sky Light Hospitality Pvt. Ltd. was processed under Section 143(1) of the Act and was not subjected to scrutiny assessment.

6. We begin by referring to the reasons to believe. The relevant portion of the reasons to believe read as under:-

> *"1. A Tax Evasion Petition (TEP) has been sent by ADIT lnv, Unit-3(1), Delhi vide F.No./ADIT(Inv.)/U-3(1)/2016-17/563 regarding the assessee.*
>
> *(a). Brief facts of the case: The assessee was previously called M/s Sky Light Hospitality Pvt Ltd. is presently known as M/s Sky Light Hospitality LLP having converted into LLP from company on 13.05.2016 under Limited Liability Partnership Act, 2008.*
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> *(b). The assessee entered into purchase of property with M/s Omkareswar Properties Pvt Ltd. situated at Mauja Shikohpur on 28.01.2008 for which payment was done against purchase of land on 09.08.2008 (vide cheque no. 0978951 amounting to Rs. 7,95,00,000/·) and for license fee paid to Haryana Govt through Omkareshwar properties (Rs. 7,43,44,500/- on 11.08.2008). Further, then the*

assessee entered into a collaboration agreement, dated 05.08.2008, with M/s DLF Retail Developers Ltd. (herein referred to as "DLF") to construct commercial complex with its own investment (DLF's) and in return DLF was entitled to retain 50% of the total super area and Qther 50% to be retained by the assessee. The assessee received amounts of Rs. 5 crores on 03.06.2008 and Rs. 10 crores on 27.03.2009 under the agreement. Further, another agreement was entered on 07.10.2009 (FY 2009-10 pertaining to AY 2010-11), whereby it was provided that due to adverse market conditions and slowdown in the economy, the land owner had agreed to transfer entire development rights and all other rights in favour of developer (DLF) on receipt of entire consideration of Rs. 58 crores. Thus, further Rs. 35 crores were received on 07.10.2009 (during FY 2009-10 pertaining to AY 2010·11). Balance of Rs. 8 crores were received on 25.07.2012. It is also to be noted that the possession of above land was handed over by the assessee to DLF on 05.08.2008.

(c). From the above and on the basis of submissions made by the assessee during assessment proceedings of AY 2013-14, it is found that the assessee had claimed to have received advance of Rs. 5 crores from DLF even before the purchase of land, for which agreements were signed later. Further, assessee after purchasing the said land made payment to· convert the land from agricultural use to non-agricultural use. Also, the collaboration agreement entered with the DLF (from which it had taken loan to buy the land) was done in a short time and sold 50% rights. Further along with looking the agreement dated 07.10.2009 it should be understood that the assessee went into a business agreement to make quick business profit with DLF. Thus, in all the amounts received are the business profits which has escaped assessment in the respective year.

(d). Further, assesse had contributed Rs. 35,00,00,000/· to the capital of M/s Saket Courtyard Hospitality vide cheque no. 411355 dated 16.3.2010 drawn on Standard Chartered Bank. However, a loss of Rs. 3,27,55,695/- was allocated by firm to the assessee and net capital decreased to Rs.

31,72,43,305/-. The assessee has also not been able to satisfactorily explain the source of Rs. 35,00,00,000/-.

(e). Thus, the amount of Rs. 35,00,00,000/- received by the assessee during FY 2009-10 (pertaining to AY 2010-11) has escaped assessment.

(f). Further, assessee had purchased land at Bikaner for a consideration of Rs. 79,56,530/- for which the source of money has not be satisfactorily explained in reply to summons by the investigation. Thus, the above amount of Rs. 79,56,530/- has escaped assessment

2. In view of the above peculiar facts the undersigned has reason to believe that the income of the assessee has escaped assessment as per the provisions stipulated in Explanation2 (b) to Section 147 of the Act which reproduced below:

"where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance of relief in return;"

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6. In view of the above case laws and the material available on record, it is evident that there is a "Live Link" between the material available on record and the escaped income, as mentioned in the above case laws.

7. Considering the factual matrix, Information received, statutory provisions and legal principles, the undersigned has reason to believe that the assessee has not disclosed fully and truly material facts necessary or assessment and there has been an escapement of income to the tune of Rs. 35,79,76,530/· or more chargeable to tax for the assessment year 2010·11 and hence it is a fit case for initiation of proceedings in terms of section 147 of the I.T. Act,1961.

8. Accordingly, necessary approval u/s 151 of the l.T. Act, 196l is solicited for issuance of notice u/s 148 of the l.T. for Assessment Year 2010-11."

7. The "reasons to believe" mention that M/s Sky Light Hospitality Pvt. Ltd. who had filed the return for the assessment year 2010-2011, was converted into limited liability partnership on 13.05.2016 under the Limited Liability Partnership Act, 2008. Thus, it is accepted, is factually correct. Reference is made to the Tax Evasion Report received from the Investigation Unit of the Income Tax Department. Peculiar and specific details relating to transactions between the assessee and third party are mentioned in paragraph (b). Facts were ascertained by the Investigation Unit. Paragraph (c) of the "reasons to believe" refers to the Assessment Order for the year 2013-2014 and the findings recorded. Copy of the said Assessment Order has been placed on record and was passed on 31.03.2016. In paragraph (d) and (e) reference is made to contribution of Rs.35 crores towards capital in another concern. As per Profit and Loss account, the assessee had suffered loss of Rs.3.27 crores and the net capital had decreased to Rs.31.72 crores. The assessee as per Tax Evasion Report had not been able to satisfactorily explain source of Rs. 35 crores. Accordingly, this amount of Rs.35 crores had escaped from assessment. Paragraph (f) refers to purchase of land at Bikaner for Rs.79,56,530/-. Source of money for purchase of this land had not been satisfactorily

explained before the Investigation Unit.

8. Tax Evasion Report received from the Investigation Unit dated 17.03.2017 placed on record is detailed and elaborate. We are not reproducing the report or its' contents as this is not required and necessary.

9. After going through the reasons, we are satisfied that the "reasons to believe" show and establish a live link and connect with the inference drawn that income had escaped assessment, which is required for issuance of notice under Section 147/148 of the Act. Reasons to believe refer to several facts and information that had come to knowledge and was available with the Assessing Officer. At this stage, when notice is issued under Section 147/148 of the Act, firm and conclusive findings are not required for merits would be examined and thereafter final finding recorded in the assessment order. As long as, there is honest and reasonable opinion formed by the Assessing Officer and the "reasons to believe" are not mere "reasons to suspect", the courts should not interject to stop the adjudication process and scrutiny on merits. Absolute certainty is not required at the time of issue of notice and at the same time, "reasons to believe" must not be based on mere suspicion, gossip or rumour. The said test and criteria, we have no hesitation in holding, is satisfied in the present case. There is evidence and material on record to justify issue of notice under Section 147/148 of the Act.

10. Next question relates to validity of notice issued in the name of the M/s Sky Light Hospitality Pvt. Ltd. The notice had also mentioned the PAN Number of the said company. The legal position is that this company had ceased to exist and was dissolved upon conversion into a limited liability partnership as per Section 56 of the Limited Liability Partnership Act, 2008 with effect from 13.05.2016.

11. There is substantial and affirmative material and evidence on record to show that issue of notice in the name of M/s Skylight Hospitality Pvt. Ltd. was a mistake. Conversion of the private limited company into a limited liability partnership with effect from 13.05.2016 was noticed and mentioned in the tax evasion report, the reasons to believe recorded by the Assessing Officer, the approval obtained from the Principal Commissioner and the order under Section 127 of the Act. PAN number of the limited liability partnership was also mentioned in some of these documents. The error or mistake was that the notice did not record the aforesaid conversion of M/s Skylight Hospitality Pvt. Ltd. into M/s Skylight Hospitality LLP. In fact, the notice under Section 147/148 of the Act was not in conformity with the file noting, i.e., "reasons to believe" and approval from the Principal Commissioner.

12. The petitioner relying on the impugned order dated 19th November, 2017 had submitted that the Assessing Officer did not accept

the said mistake and had asserted that the notice in the name of M/s Skylight Hospitality Pvt. Ltd. was rightly issued. Reliance was placed on the judgment of the Supreme Court in ***Mohinder Singh Gill & Anr. Vs. Chief Election Commissioner***, ***New Delhi & Ors.,*** (1978) 1 SCC 405. This contention is flawed and without merit. Assessing Officer in the order dated 19.11.2017 has tried to defend the notice issued in the name of M/s Skylight Hospitality Pvt. Ltd., whereas the legal position is that the said company had ceased to exist and had been converted into a limited liability partnership, a factum recorded in the tax evasion report, the reasons to believe, the approval granted by the Principal Commissioner and the order under Section 127 of the Act. Attempt by the Assessing Officer to justify and explain why notice was issued in the name of M/s Skylight Hospital Pvt. Ltd. would not obliterate and erase the aforesaid factual position. This error and mistake has led to this litigation. We have to examine whether this error and mistake is fatal or protected and shielded under Section 292B of the Act. The respondent relies on the statutory provision because of the error and mistake. Aid and reliance on a statutory provision, if applicable, cannot be denied for the reasoning and justification given in the order dated 19.11.2017.

13. Section 292B of the Act, enacted by Tax Laws (Amendment) Act, 1975, reads:-

> ***"292-B. Return of income, etc., not to be invalid on certain grounds***.— *No return of income, assessment, notice, summons or other proceeding, 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."*

The said provision had come up for consideration before a Division Bench of this Court in ***Commissioner of Income Tax Vs. M/s Jagat Novel Exhibitors Pvt. Ltd.,*** (2013) 356 ITR 559 (Del). After extensive examination of the case law, one of us (Sanjiv Khanna J.) had held:-

> "*28. The aforesaid provision has been enacted to curtail and negate technical pleas due to any defect, mistake or omission in a notice/summons/return. The provision was enacted by Tax Laws (Amendment) Act, 1975 with effect from 1st October, 1975. It has a salutary purpose and ensures that technical objections, without substance and when there is effective compliance or compliance with intent and purpose, do not come in the way or affect the validity of the assessment proceedings. In the present case, as noticed above, the respondent took the plea before the Assessing Officer that they were never served with the notices under Section 148 of the Act. However, it is prudent to note that according to the Assessment Order dated 22nd March 2002, a letter dated 1st March 2002 was submitted by the company wherein it was stated that the returns filed on 10th December 1999, may be treated as filed in response to notice under Section 148 of the Act. Further, a letter dated 18th March 2002 was submitted and some details, called for in the questionnaire, which was sent along with another notice dated 7th March 2002 under Section 142(1) and 143(2) of*

the Act, were submitted. The respondent had only challenged the service of notice and not their validity before the Assessing Officer. Before the appellate authority, however, the respondent took the plea that the notices under Section 148 were defective as the words "Private Limited" were missing. The photocopies of the original notices have been placed on record and show that after the words 'Jagat Novel Exhibitors' some alphabets, which according to the appellant read as 'PL', have been mentioned in the notices for assessment years 1992-93 to 1995-96. As far as notice under Section 148 for the assessment year 1989-90 is concerned, the words "Pvt. Ltd." are clearly stated. The address mentioned on all notices is 1489, Chandni Chowk, Delhi. This is the correct address of the respondent. The tribunal has not accepted the plea of the respondent assessee that the notice under Section 148 of the Act was not duly served as the said notices were sent under registered post at the aforesaid address. It is not the case of the respondent that there was any other firm/concern at the same address by the name of Jagat Novel Exhibitors. In the present case, we do not think that failure to mention the words 'Principal Officer' and the specific words 'Pvt. Ltd.' or the use of the abbreviation 'P.L' has caused or could have caused any confusion or has resulted in vagueness which justifies the quashing of the entire assessment proceedings and the consequent assessment orders.

29. Object and purpose behind Section 292-B is to ensure that technical pleas on the ground of mistake, defect or omission should not invalidate the assessment proceedings, when no confusion or prejudice is caused due to non-observance of technical formalities. The object and purpose of this Section is to ensure that procedural irregularity(ies) do not vitiate assessments. Notice/summons may be defective or there may be omissions but this would not make the notice/summon a nullity. Validity of a summon/notice has to be examined from the stand point whether in substance or in effect it is in conformity and in accordance with the intent and purpose of the Act. This is the purport of Section 292B. Notice/summons are issued for compliance and informing the person concerned, i.e the assessee. Defective notice/summon if it serves the intent and purpose of the Act, i.e to inform the assessee and when there is no

> *confusion in his mind about initiation of proceedings under Section 147/148 of the Act, the defective notice is protected under Section 292B. In such circumstances, the defective notice/summon is in substance and in accordance with the intent and purpose of the Act. The primary requirement is to go into and examine the question of whether any prejudice or confusion was caused to the assessee. If no prejudice/confusion was caused, then the assessment proceedings and their consequent orders cannot and should not be vitiated on the said ground of mistake, defect or omission in the summons/notice."*

14. This judgment had also made reference to decision dated 11th November, 2011 in ITA No.1525/2010, ***Venad Properties Pvt. Ltd. Vs. Commissioner of Income Tax***, in which Section 282 of the Act relating to service of notices was considered and examined. This section on description/inscription on notice and method/mode of service was held to be procedural in nature and should be interpreted in a practical and pragmatic manner. Procedural rules and requirements were meant to deliver justice and not to hamper cause of justice and lead to miscarriage of justice.

15. The following paragraphs from ***M/s Jagat Novel Exhibitors Pvt. Ltd.*** (supra) on objective behind issue of notice, in consequential defect and purpose behind 292-B of the Act are also relevant :-

> *"42. In Commissioner of Income Tax v. Anand and Company (1994) 207 ITR 418 (Cal.), it has been observed as under:-*

"In our view, the Tribunal has taken an unduly technical view of the whole matter. The judiciary in this country has never gone on technical triviality. Even in the litigation of private parties, the courts have shown a wide measure of forgiveness in similar acts of omission or failure as pointed out by learned counsel for the Revenue. (See Gouri Kumari Devi's case [1959] 37 ITR 220). At page 223 of the Reports, the Patna High Court has observed as follows:

"With regard to the analogous provisions of Order 6, rule 14, there is authority for the view that the omission or failure on the part of the plaintiff to sign the plaint is a mere irregularity which can subsequently be rectified and the omission is not a vital defect. That is the view expressed by the Judicial Committee in Mohini Mohun Das v. Bungsi Buddan Saha Das [1889] ILR 17 (Cal) 580 and by the Madras High Court in Lodd Govindoss Krishnadas Varu v. P. M. A. R. M. Muthiah Chetty, AIR 1925 Mad 660."

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43. In Hind Samachar Limited v. Union of India (2011) 330 ITR 266 (P&H) reference was made to Section 292B and Section 139(9) of the Act. In the said case, return of income, filed by the company was signed by someone other than the authorized person. It was observed that the question was of removal of defect, which could be rectified. Reference was made to another decision of the Punjab and Haryana High Court in CIT v. Norton Motors [2005] 275 ITR 595.

44. Bombay High Court in Prime Securities Ltd. v. Varinder Mehta, Assistant Commissioner of Income-tax (2009) 317 ITR 27 (Bom) has observed that Section 292B of the Act makes it clear that a return of income shall not be treated as invalid merely by reason of any mistake, defect or omission ,if the return of income is in substance and effect in conformity with or according to the intent and purpose of the Act. The return of income, if not signed by the authorized signatory, as contemplated under Section 140 of the Act, would be a mistake, defect or omission stated in Section 292B of the Act.

45. We may note, observations of the Supreme Court in Balchand v. ITO (1969) 72 ITR 197 (SC) wherein it was

held that in construing a statutory notice, extraneous evidence may be looked into to find out whether the technical defects or lacuna had any effect on the validity of the notice. The facts had revealed that though there were defects in drafting the preamble of the notice, it did not affect its validity as the notice itself clearly informed the assessee that he had to file a return of income for the relevant year.

46. In Chief Forest Conservator, Government of Andhra Pradesh v. Collector (2003) 3 SCC 472, the Supreme Court examined the question of misdescription or misnomers of parties and the effect thereof and it was held as under:-

"12. It needs to be noted here that a legal entity — a natural person or an artificial person — can sue or be sued in his/its own name in a court of law or a tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/proceedings permit correction of the cause-title so that the party before the court is correctly described; however, a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order 1 CPC mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to nonjoinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order 1 CPC provides remedy when a suit is filed in the name of the wrong plaintiff and empowers the court to strike out any

> *party improperly joined or to implead a necessary party at any stage of the proceedings."*
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> *47. One of the questions, which arises for consideration, in such cases is whether there was prejudice. The test to be applied is whether the party receiving the notice would be in doubt whether the said notice is meant for him or not. If the recipient of notice was not in doubt that it was meant for him, the misnomer or misdescription is not fatal. Thus failure to mention the words "Principal Officer" on the notices is not fatal."*

16. In ***M/s Jagat Novel Exhibitors Pvt. Ltd.*** (supra), reference was made to ***Mahadev Govind Gharge v. Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka,*** (2011) 6 SCC 321**,** ***Sardar Amarjit Singh Kalra v. Pramod Gupta,*** (2003) 3 SCC 212 and ***State of Punjab v. Shamlal Murari,*** (1976) 1 SCC 719**.** Several decisions including ***Commissioner of Income Tax, Andhra Pradesh v. K. Adinarayana Murty,*** (1967) 65 ITR 607 (SC) and ***Commissioner of Income Tax, Gujarat II v. Kurban Hussain Ibrahimji Mithiborwala,*** (1971) 82 ITR 821 (SC) referred to by the assessee to support his contention that Section 292B of the Act should not be invoked as the notices issued were defective and had not correctly described the assessee, were dealt with and distinguished.

17. In the context of the present writ petition, the aforesaid ratio is a complete answer to the contention raised on validity of the notice under

Section 147/148 of the Act as it was addressed to the erstwhile company and not to the limited liability partnership. There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated 11.04.2017. They had objected to the notice being issued in the name of the Company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s Sky Light Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused.

18. Petitioner relies on ***Spice Infotainment Ltd. vs. Commissioner of Service Tax,*** (2012) 247 CTR 500**.** Spice Corp. Ltd.**,** the company that had filed the return, had amalgamated with another company. After notice under Section 147/148 of the Act was issued and received in the name of Spice Corp. Ltd., the Assessing Officer was informed about amalgamation but the Assessment Order was passed in the name of the amalgamated company and not in the name of amalgamating company. In the said situation, the amalgamating company had filed an appeal and issue of validity of Assessment Order was raised and examined. It was held that the

assessment order was invalid. This was not a case wherein notice under Section 147/148 of the Act was declared to be void and invalid but a case in which assessment order was passed in the name of and against a juristic person which had ceased to exist and stood dissolved as per provisions of the Companies Act. Order was in the name of non-existing person and hence void and illegal.

19. ***Spice Infotainment Ltd.(supra)*** refers to decision of Allahabad High Court in ***Sri Nath Suresh Chand Ram Naresh v. CIT,*** (2006) 280 ITR 396 (All). We have examined the decision in ***Sri Nath Suresh Chand Ram Naresh*** (***supra***) and would observe that facts were peculiar. There was oral partition of the Hindu undivided family, M/s Munna Lal Moti Lal, on death of the '*Karta',* Moti Lal. Capital was divided amongst three brothers, who were the coparceners. Controversy was regarding legality of oral partition that was not recognized by the Revenue. Re-assessment notices were issued, in the name of M/s Sri Nath Suresh Chand Ram Naresh, *Karta* Shri Nath. 'Nil' return was filed along with letter stating that no business was conducted in the name of the assessee and notices were wrongly issued. Revenue had asserted that this notice was meant to assess M/s Munna Lal Moti Lal though the notice was to another assessee, who was also existing in law. Recording this factual matrix, the notice under Section 148 and assessments made were held to be invalid.

20. ***Commissioner of Income Tax v. Dimension Apparels Private Limited,*** (2015) 370 ITR 288 (Del) and ***Commissioner of Income Tax v. Intel Technology India (P.) Ltd.,*** (2016) 380 ITR 272 (Kar) follow the ratio and decision in the case of ***Spice Infotainment Ltd. (supra***), as assessment orders had been passed in the name of the non-existing assessee. These cases are therefore distinguishable.

21. Our attention was drawn to ***Parashuram Pottery Works Co. Ltd. v. ITO, Circle I, Ward A, Rajkot,*** *(*1977) 106 ITR 1 (SC) which records that the Assessing Officer entrusted with the task of calculating and realising tax should familiarise themselves with the relevant provisions and become well versed with the law on the subject. This is a salutary advise. Indeed there have been lapses and faults resulting in the present litigation. Notice under Section 147/148 of the Act was issued at the end of the limitation period. Noticeably, Assessment Order for the assessment year 2013-2014 was passed on 31.03.2016, one year earlier. Second lapse is also apparent. Despite correctly noting the background, notice under Section 147/148 of the Act was not addressed in the correct name and even the PAN Number mentioned was incorrect. Nevertheless, human errors and mistakes cannot and should not nullify proceedings which are otherwise valid and no prejudice had been caused. This is the effect and mandate of Section 292B of the Act.

22. In view of the aforesaid discussion, we do not find any merit in the present writ petition. We clarify that we have not expressed any opinion on merits of the case. We also deem it proper and appropriate to record that the petitioner had raised contention on merits, which we have no doubt would be examined in depth and detail by the Assessing Officer. We would expect that the Assessing Officer would deal with all issues independently and fairly, without being influenced by this order and challenge made by the petitioner to notice under Section 147/148 of the Act. There would be no order as to costs.

23. To cut short delay, the petitioner would appear before the Assessing Officer on 19.02.2018 when the date of hearing will be fixed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 02, 2018
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