



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ INCOME TAX APPEAL NOS. 7/2006, 2/2006, 3/2006, 4,2006, 5/2006, 8/2006, 10/2006, 11/2006, 17/2006 & 22/2006

% Reserved on: 28th November, 2011
Date of Decision: 8th February, 2012

COMMISSIONER OF INCOME TAX ...Appellant
Through Mr. Kamal Sawhney, Sr.
Standing Counsel and Mr. Amit
Srivastava, Advocate.

VERSUS

M/S JAGAT NOVEL EXHIBITORS PRIVATE LIMITED
.....Respondent
Through Mr. Kaanan Kapur,
Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA, J.:

The aforesaid appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) relate to the assessment years 1989-90 and 1992-93 to 1995-96. The respondent-assessee is common; Jagat Novel Exhibitors Private Limited.

2. In ITA Nos. 4/2006, 7/2006, 11/2006, 17/2006 and 22/2006, the following substantial question of law was formulated at the time of admission:-



“Whether the ITAT was, in the facts and circumstances of the case, correct in holding that the notice issued to the assessee under Section 148 of the Income Tax Act as also the reassessment framed in pursuance thereto was invalid?”

3. In ITA Nos. 2/2006, 3/2006, 5/2006, 8/2006 and 10/2006, the following two substantial questions of law were formulated at the time of admission:-

“(1) Whether the ITAT was, in the facts and circumstances of the case, correct in holding that the notice issued to the assessee under Section 148 of the Income Tax Act as also the reassessment framed in pursuance thereto was invalid?”

(2) In case answer to question No. 1 above is in the affirmative, whether the income originally returned by the assessee could not be brought to tax?”

4. For the sake of convenience, ITA No. 7/2006, which relates to the assessment year 1992-93, is treated as the lead case. However, the relevant facts relating to each assessment year are noticed below.

5. For the assessment year 1989-90, the respondent filed their return of income on 29th December, 1989 declaring income of Rs.2,29,706/-. For the assessment years 1992-93 to 1995-96, no return of income under Section 139(1) was filed by the respondent. For the Assessment Years 1992-93 to 1995-96,



returns of income were filed on 10th December, 1999 declaring

the following incomes:

Assessment Year	Disclosed Income
1992- 93	Rs. 3,42,322/-
1993- 94	Rs. 7,75,282/-
1994- 95	Rs. 11,88,712/-
1995- 96	Rs. 4,69,949/-

6. These returns were filed beyond the due date of filing as stipulated in the Act. The respondent had and did not pay taxes due and payable on the income declared in these returns.

7. The respondent also filed declarations under Voluntary Disclosure of Income Scheme, 1997 (VDIS, 1997, for short) for the assessment years 1989-90 and 1992-93 to 1995-96 as per details given below:-

Assessment Year	Income disclosed under VDIS
1989- 90	Rs. 3,11,839/-
1992- 93	Rs. 3,42,322/-
1993- 94	Rs. 7,64,586/-
1994- 95	Rs. 11,17,131/-
1995- 96	Rs. 4,28,719/-



8. These declarations, filed before the Commissioner Income Tax, were not accompanied with proof of payment of tax; - a mandatory pre-condition under the VDIS, 1997. Declarations were, therefore, declared void.

9. In view of the declarations under the VDIS, 1997 and to regularize the returns of income, filed for the first time for the Assessment Years 1992-93 to 1995-96 on 31st December, 1999 but beyond the prescribed time, the Assessing Officer issued notices under Section 147/148 of the Act. These notices were dated 3rd March, 2000 and were sent by registered post.

10. No returns of income were filed pursuant to the said notices.

11. Subsequently, notices under Section 142(1) dated 7th February, 2001 and 12th March, 2001 were issued. On 21st February, 2002, Vijay Narain Seth, Director of the respondent company appeared before the Assessing Officer and submitted that the notices under Section 147/148 were not served. The Assessing Officer rejected the said contention stating that the notices were sent at the local address and the claim of the respondent to the contrary was incorrect. Another notice under Section 142(1) and 143(2) of the Act, with the questionnaire, was issued on 7th March, 2002. The respondent vide letter dated



22nd March, 2002 reiterated his stand that the notices under Section 148 of the Act were not served and stated that the returns filed on 10th December, 1999 and the original return for the assessment year 1989-90 filed on 29th December, 1989 should be treated as returns filed pursuant to the notice under Section 148.

12. It appears that the respondent did not furnish all details as required by the questionnaire. The Assessing Officer passed assessment orders dated 22nd March 2002, assessing the income of the respondent as under:-

Assessment Year 1989- 90

Income declared in the original return	Rs.229706/-
Add: Income declared under VDIS, 1997	Rs.311839/-
Taxable Income	Rs.541545/-
R/of	Rs.541550/-

Assessment Year 1992- 93

Income declared in the original return	Rs.342322/-
Add: Income declared under VDIS, 1997	Rs.342322/-
Taxable Income	Rs.672369/-
R/of	Rs.672370/-

Assessment Year 1993- 94

Income declared in the original return	Rs.775282/-
Add: Income declared under VDIS, 1997	Rs.764586/-
Taxable Income	Rs.1539868/-
R/of	Rs.1539870/-

Assessment Year 1994- 95

Income declared in the original return	Rs.1188712/-
Add: Income declared under VDIS, 1997	Rs.1117131/-
Taxable Income	Rs.2305843/-



R/of

Rs.2305840.

Assessment Year 1995- 96

Income declared in the original return	Rs.469949/-
Add: Income declared under VDIS, 1997	Rs.428719/-
Taxable Income	Rs.898668/-
R/of	Rs.898670/-

13. The respondent filed appeals. Appeal filed for the assessment year 1992-93 was treated as a lead case by the CIT(Appeals) as the said appeal was disposed of, earlier in point of time. Two principal contentions were raised by the respondent. Firstly, no notice under Section 148 of the Act was served on the respondent and, therefore, the entire proceedings under Section 147/148 of the Act were void. Secondly, the notice under Section 147/148 of the Act was not issued to the respondent company in the name of the principal officer but was issued to Jagat Novel Exhibitors and without the words "Private Limited" as a suffix. Therefore, the notice was vague as it could not be ascertained whether it was issued to an individual, a firm, an HUF, etc. The notice, therefore, was void ab initio and accordingly the assessment order was a nullity.

14. The CIT(Appeals) called for a remand report and a show cause notice was issued to explain why the appeal should not be rejected for non-payment of admitted taxes/advance tax



under Section 249(4)(a) of the Act. The CIT(Appeal) allowed the

appeal, inter alia, recording as under:-

“5. I have considered the points made by the AO, the comments of the present AO on the written submissions of the appellant and the submissions of the appellant’s counsel. The AO’s case was that the notice u/s 148 was issued on 03.03.2002 to assessee the additional income declared under the VDIS. The appellant’s case was that-

(a) There was no valid notice u/s 148 of the Act, as admitted by the AO in his comments dt. 5th February 2003 in para 4 (3) at page 8 of his report sent on the written submissions of the appellant that only the word ‘Private Ltd.’ has not been mentioned in the notice u/s 148.

(b) There was no ‘additional income’ as explained as per the detailed submissions and the reconciliation of the two figures adopted by the AO enclosed as computation to the written submissions.

(c) There was no case of rejection of appeal in view of the provisions of S.249 (4) (a) of the Income Tax, 1961 as there was no tax due as no assessment had been made in time. Moreover, the question involved is of validity of notice u/s 148 and not the case on merits or based on return.

On a consideration of the facts of the case I find that in this case no valid notice u/s 148 of the Act has been issued to the appellant. It is well settled that the issue of a valid notice to the assessee u/s 148 of the Income Tax Act, 1961 within the period specified u/s 149 of the Act, is a condition precedent for the validity of any re-



assessment to be made against any re-assessment to be made against an assessee u/s 147. Where the notice issued to an assessee is vague. It would not be possible to rely upon it to sustain an assessment made u/s 147. A vague notice is an invalid notice and in such a case the vagueness cannot be removed by reference to other documents on the record or by issuing a copy of the same notice to the Director as pointed out by the AO. In view of the foregoing, I find no justification to sustain the additions made by the AO subsequent to issuing of invalid notice.

6. The appeal is allowed.”

15. It is noticeable from the reasoning given by the CIT(Appeals) that she has not specifically dealt with contention Nos. (b) and (c) and had only examined contention No. (a) mentioned in the aforesaid order and held that the notice was vague and, therefore, void or invalid.

16. The aforesaid appellate order was followed in other assessment years.

17. After the orders passed by the CIT(Appeals), consequential orders were passed by the Assessing Officer in the income tax computation form. In the computation form, he gave appeal effect and computed the income of the respondent for the years in question as under:-

Assessm ent Year	Income declared in	Additions made by the	Total taxable income, as	Deletions made by the
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	the Original Return	AO	per the AO	AO [as per t orders of CIT(A)]
1989- 90	Rs.2,29,706/-	Rs. 3,11,839/-	Rs.5,41,545/-	Rs. 3,11,839/-
1992- 93	Rs.3,42,322/-	Rs. 3,42,322/-	Rs.6,72,369/-	Rs.3,42,322/-
1993- 94	Rs.7,75,282/-	Rs.7,64,586/-	Rs.15,39,868/	Rs. 7,64,586/-
1994- 95	Rs.11,88712/	Rs.11,17,131/	Rs.23,05,843/	Rs.11,17,131/
1995- 96	Rs.4,69,949/-	Rs.4,28,719/-	Rs.8,98,668/-	Rs.4,28,719/-

18. The respondent filed applications under Section 154 of the Act stating that the CIT(Appeals) had allowed the appeal and the computation made in the form was incorrect. The Assessing Officer rejected the said applications under Section 154 holding that the CIT(Appeals) had only deleted the additions made pursuant to the declarations made under VDIS, 1997 and had not deleted the income declared in the returns filed on 10th December, 1999 for the assessment years 1992-93 to 1995-96.

19. Against the order under Section 154/250 passed by the Assessing Officer rejecting the rectification applications, the respondent filed first appeals before the CIT(Appeals). The same CIT(Appeals), who had earlier passed the orders against the main assessment under Section 147 of the Act, heard the appeals and dismissed the same. She held that the earlier order



passed by her, was properly implemented by the Assessing Officer and the required addition had been deleted, in consonance with the directions issued.

20. Accordingly, there were two sets of appeals filed before the tribunal. The first set of appeals were filed by the Revenue against the order of the CIT(Appeals) declaring that the notices under the Sections 147/148 were void as the words "Pvt. Ltd." were missing. The second set of appeals were filed by the respondent against the order of the Assessing Officer under Section 154/250 of the Act, which were affirmed by the CIT(Appeals).

21. These ten appeals were disposed of by a common order of the tribunal dated 15th April, 2005. In the impugned order, while dealing with the appeals of the Revenue, the tribunal has rejected the contention that the appeals before the CIT(A) were not maintainable and were liable to be dismissed for non payment of taxes under Section 249(4), on the ground that the respondent had not filed valid returns of the income and, therefore, clause (a) of Section 249(4) was not applicable. With regard to non-payment of advance tax and the effect thereof under of clause (b) to Section 249(4), the tribunal has held that once the CIT(A) had admitted and adjudicated the appeals, it



could be assumed that she had exercised her discretion, power and had come to the conclusion that there were good and sufficient reasons for the respondent assessee not to pay the advance tax.

22. Section 249(4) of the Act reads as under:-

“249. Form of appeal and limitation.—

XXXX

(4) No appeal under this Chapter shall be admitted unless at the time of filing of the appeal,—

(a) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or

(b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him:

Provided that in a case falling under clause (b) and on an application made by the appellant in this behalf, [* * *] Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause.

23. We have quoted the order passed by the CIT(A) mentioned above. It is palpable that the CIT(A) has not examined whether or not to grant exemption from payment of the advance tax under Section 249(4)(b) of the Act and the proviso. The proviso requires the CIT(A) to decide and record in writing whether there were good and sufficient reasons to



exempt an assessee from complying with Section 249(4)(k),
This is mandatory. This requirement has not been complied with.

24. However, we would not like to decide and dispose of the appeals on the present reasoning, in view of the questions of law that have been admitted above, which are on a different aspect. We have referred to the said Section as to clarify the legal position. It is clarified that this is not the ground why we are answering the question of law mentioned above in ITA Nos. 7/2006, 4/2006, 11/2006, 17/2006 and 22/2006 in favour of the Revenue and against the assessee.

25. The tribunal in the impugned order has held that in the present case the notices under Section 148 of the Act were invalid because the words "Pvt. Ltd." were not mentioned/were missing. The exact reasoning given by the tribunal reads as under:-

"15. From the facts as found by the CIT (A) which were not contravorted before us it is clear that the notice u/s 148 was not valid. The question whether there was valid service of notice u/s 148 has not been decided by the CIT (A), though the assessee reiterated even before us that there was no service of notice u/s 148. Admittedly the word "Pvt. Ltd." was not mentioned in the notice u/s 148. The Id. DR however, produced before us a copy of notice issued u/s 148 for AY 1989-90 and submitted that the said notice contained the word "Pvt.Ltd.". The ground of appeal of the



Revenue however, proceeds under the assumption that in all notices the word “Pvt. Ltd.”. was omitted. Be that as it may. We are of the view that the basis on which the CIT (A) held the assessments to be invalid are just and proper.”

26. The tribunal has rejected that Section 292-B would not come to the aid of the Revenue as the requirement to serve the notice was a jurisdictional pre-condition and reference was made to ***P.N. Sasikumar versus CIT***, [1988] 170 ITR 80 (Kerala) and ***P.V. Doshi versus CIT***, [1978] 113 ITR 22 (Gujarat).

27. Section 292-B of the Act reads as under:-

“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.

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 i
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 the summons/notice.

30. In ***Venad Properties Private Ltd. Vs. Commissioner of Income Tax***, ITA No. 1525 of 2010 decided on 11th November 2011, we had the occasion to deal with Section 282 of the Act. In the said case, we have held that procedural rules of service are required to be interpreted in a practical and pragmatic manner and not in a formalistic and technical manner. Prejudice caused is relevant and apposite, but contrivance and stratagem, once established, should not be accepted. Procedural rules and requirements are a means to deliver justice and not technical contrives to stall/obstruct proceedings, even when no prejudice is caused due to non observance of the technical formalities. Reference was made to ***Mahadev Govind Gharge v. LAO***, (2011) 6 SCC 321 and several judgments cited therein. Reliance was placed on ***Sardar Amarjit Singh Kalra v. Pramod Gupta*** [2003] 3 SCC 212, ***State of Punjab v. Shamlal Murari*** [1976] 1 SCC 719 to observe that procedural rules and requirements are not meant to hamper the cause of justice or sanctify miscarriage of justice. Technicalities cannot wreck justice. This bench in ***Venad Properties Pvt. Ltd. versus CIT***, ITA No. 1525 of 2010 dated 11th November 2011, held as under:-



“19. There has been a gradual but a perceptible and distinct acceptance that in matters of due service of notice/summon, a practical and pragmatic approach, rather than mere compliance and non-compliance of a formality(ies) is determinative and relevant. Amendment to Order XIII, Rule 9 of the code of Civil Procedure, 1908 pursuant to the 27th report of Law Commission in 1976 is a clear pointer and reflects an acceptable approach. Prejudice caused is relevant and apposite, but contrivance and stratagem once established should not be accepted.”

31. We may now deal with the judgments relied upon by the respondent. ***Commissioner of Income Tax, Andhra Pradesh versus K. Adinarayana Murty***, [1967] 65 ITR 607 (SC) was pronounced before the introduction of Section 292-B of the Act. In the said case, notice for assessment under notice Section 34 of the Act was issued to the assessee in status of an individual, as in a previous order it was held by the Assessing Officer that the assessee was not a Hindu Undivided Family but an individual. However, the said finding was upset by the first appellate authority which had held that the status of the assessee was of a Hindu Undivided Family and not that of an individual. After the said order came to the notice of the Assessing Officer, he issued a fresh notice under Section 34 in the status of Hindu Undivided Family but this was beyond the period of eight years from the close of the previous year. The



tribunal decided the matter in favour of the Revenue holding th...
the second notice in the name of the Hindu Undivided Family was legally valid and held that the period of eight years had to be counted from the end of the assessment year and not from the end of the previous year. The High Court, on reference by the ITAT at the instance of the assessee, reversed the finding holding, inter alia, that the first notice, issued in the name of the individual, was not invalid in law and consequently the second notice was illegal and the assessment made in pursuance thereto was also illegal. The appeal was allowed by the Supreme Court and it was held that the Assessing Officer could not have validly acted on a return filed by the assessee in the status as an individual. The notice under Section 34 should have been issued to the Hindu Undivided Family and, therefore, the second notice was valid. The decision in the said case hardly supports the contention of the respondent. Under the scheme of the Income Tax Act, 1922 (as under the present Act), an individual and Hindu Undivided Family were treated as separate units of assessment and consequently a notice issued in a status of an individual cannot be treated as a notice in status of a Hindu Undivided Family. This is not the position in the present case. The factual background is different.



32. *In Kurbanhussein Ibrahimji Mithiborwala versus Commissioner of Income Tax*, [1971] 82 ITR 821 (SC) notice under Section 34 of the Income Tax Act, 1922 was issued to the assessee for the assessment year 1948-49. Along with this notice under Section 34, another notice issued was under Section 22(2) and Assessment Year 1949-50 was mentioned therein. It was held that the primary or the main notice was under Section 34 of the 1922 Act and the same was issued for the assessment year 1948-49 and not for assessment year 1949-50. The Supreme Court also noticed that this discrepancy in the assessment years was pointed out by the assessee to the Income Tax Officer, who was asked to clarify the position but he chose not to reply and proceed to make the assessment. The Supreme Court observed that the reopening was for assessment year was 1948-49 and not for the assessment year 1949-50 and, therefore, the assessment order for assessment year 1949-50 was invalid. The facts of the present case are entirely different. There is no dispute that the assessment years are correctly mentioned and there was no confusion or doubt about the assessment years. There is no finding that there was confusion in the mind of the respondent as the word 'Pvt. Ltd.' were missing.



33. The decision of the Gujarat High Court, which was made on the subject matter of challenge before the Supreme Court is reported in [1968] 68 ITR 407 (Guj.). It was held that there was a defect or mistake in the notice, and the same cannot be waived by the assessee. Even if the assessee had submitted the return for the assessment year 1949-50, this would not help the Revenue. Service of notice was a jurisdictional pre-condition, which cannot be waived. As noticed above, the Income Tax Act, 1961 has been amended to incorporate a new provision i.e. Section 292-B, with effect from 1st October 1975, and this provision must be given due credence. All issues arising after the insertion of Section 292B, must be adjudicated by applying the provision. Secondly, in the said case, the assessment year itself was wrongly mentioned. The Supreme Court in the appeal noticed that the assessee had raised an objection before of the Assessing Officer during the assessment proceedings but there was no reply or clarification by the Assessing Officer.

34. ***In P.V. Doshi versus Commissioner of Income Tax, Gujarat***, [1978] 113 ITR 22 (Guj.) it was held that the pre-conditions for initiation of reassessment are jurisdictional requirements and these are conditions precedent which must be satisfied before the Assessing Officer invokes and exercises the



jurisdiction under Section 147/148 of the Act. The jurisdictional pre-conditions cannot be conferred by consent as jurisdiction is not conferred by waiver, acquiescence or estoppel. The three jurisdictional pre-conditions mentioned by the High Court are (i) the Assessing Officer should have reason to believe, (ii) should record the reasons in writing and (iii) should obtain sanction when required. In the present case, the tribunal has not held that the three pre-conditions are missing or not satisfied. The question is whether or not the notice under Section 148 was invalid because the words "Pvt. Ltd." were not mentioned but the alphabets PL were mentioned in four out of the five cases.

35. In ***Rama Devi Agarwalla and Others versus Commissioner of Income Tax, West Bengal-III***, [1979] 117 ITR 256 (Cal.), notice was issued to an individual whereby the Assessing Officer intimated his intention to appoint her as the principal officer of an association of five persons to tax the sale proceeds of an immovable property held by the five individuals. Notice under Section 148 of the Act was addressed to an individual and others and subsequently the assessment was made in the status of Association of Persons, though this fact was not mentioned in the notice. The High Court observed that



from the notice it could not be ascertained who was the assessee. It could not be gathered whether the notice was issued to the individual as a Principal Officer or as a member of the association. It was not clear whether the association was sought to be assessed or an individual was sought to be assessed; and in case the association was sought to be assessed, which activity/income was to be taxed. In these circumstances, it was held that the notice was invalid. Reference was made by the High Court to **G. Murugesan and Brothers versus CIT**, [1973] 88 ITR 432 (SC) wherein it was held that for constituting/assessing an association of persons, the members must join together and the mere fact that there were joint shares or dividends were received by one or more persons would not create an association of persons.

36. Similarly, in the case of **P.N. Sasikumar and Others versus Commissioner of Income Tax** (supra), the notice was issued in the name of an individual without indicating whether he was being served in his capacity as a principal officer or as a member of an association or a body of individuals. The assessee filed a return in individual status but the Assessing Officer completed assessment in the status of Association of Persons. In these circumstances, it was held that the



assessments were invalid. Reliance placed on Section 292 was rejected on the ground that this was not merely a technical objection or mere irregularity which could be cured or obliterated by relying upon the said Section.

37. In ***Gokul Chand versus ITO***, [1995] 211 ITR 738 (All.) it was noticed that the assessee was having dual capacity as a Karta of an HUF and as an individual. The notice did not specify the capacity in which the assessee was sought to be assessed. The assessment years in question were 1971-72 and 1975- 76. The High Court noticed the factual aspects of the case that there was partition of the HUF but the said aspect itself was in dispute and debatable. The said dispute/debate caused prejudice and the High Court was of the opinion that the failure to mention the status in the notice for reassessment was not a mere procedural or a technical defect but a substantive defect.

38. In ***Bhagwan Devi Saraogi and Others versus Income Tax Officer, 'E' Ward and Others***, [1979] 118 ITR 906 (Cal.) the notice for reopening did not mention that the income was being assessed in the status of association of persons and, therefore, was treated as null and void.

39. In ***Jayanthi Talkies Distributors versus Commissioner of Income Tax***, [1979] 120 ITR 576 (Mad.), notice was served



on a person who was not specifically empowered or authorized to receive notice and personal service was not affected. In the said case, best judgment assessment order was passed under Section 144 of the Act. The aforesaid decision does not help the respondent.

40. Referring to Sections 147 to 149 of the Act and drawing on dissimilarities with similar provisions in the Income Tax Act, 1922, the Supreme Court in ***R. K. Upadhyaya versus Shanabhai P. Patel*** (1987) 166 ITR 163 (SC), has noticed the modifications/changes made in the 1961 Act. Difference between “issue of notice” and “service of notice” was highlighted. It was observed that issue of notice within the prescribed limitation period is a mandatory requirement, whereas service of notice is not a condition precedent to conferment of jurisdiction, but a procedural requirement, which must be met after issue of notice, but before making of the order of assessment. It was accordingly observed as under:-

“The scheme of the 1961 Act so far as notice for reassessment is concerned is quite different. What used to be contained in section 34 of the 1922 Act has been spread out into three sections, being sections 147, 148 and 149, in the 1961 Act. A clear distinction has been made out between "issue of notice" and "service of notice" under the 1,961 Act. Section 149 prescribes the period of limitation.



It categorically prescribes that no notice under section 148 shall be issued after the prescribed limitation has lapsed. Section 148(1) provides for service of notice as a condition precedent to making the order of assessment. Once a notice is issued within the period of limitation, jurisdiction becomes vested in the Income-tax Officer to proceed to reassess. The mandate of section 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied when a notice is actually issued. In this case, admittedly, the notice was issued within the prescribed period of limitation as March 31, 1970, was the last day of that period. Service under the new Act is not a condition precedent to conferment of jurisdiction on the Income-tax Officer to deal with the matter but it is a condition precedent to the making of the order of assessment.”

41. The aforesaid observations are significant. In the present case, the tribunal has not held that the jurisdictional pre-conditions were missing or not satisfied. Reasons to believe have been recorded. Notice has also been issued within the limitation period. The question whether the notice was addressed to the correct person has been examined and dealt with by us above. Service of notice is not the jurisdictional pre-condition but a matter pertaining to making of the order of assessment. Before an assessment order is passed, the notice must be served. As noticed above, on 21st February, 2002,



Vijay Narain Seth, Director of the respondent company, appeared before the Assessing Officer. The respondent had also filed some details before the Assessing Officer who passed the assessment order.

42. In ***Commissioner of Income Tax Vs. 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. ”

Learned counsel for the Revenue further cited *Brahmaiah (Velivalli) v. Emperor*, AIR 1930 Mad 867 ; [1930] 59 MLJ 674, where the Madras High Court held that a judgment of a



Bench of Magistrates has to be signed as required by law and the requirements of public policy necessitate the writing of the full name of the Magistrate that signs the judgment and the mere putting of the initials is not sufficient compliance with the mandatory provisions of section 265 of the Criminal Procedure Code (V of 1889). At the same time, the said High Court also held that illustration to section 537 of the old Act, viz., "the Magistrate being required by law to sign a document signs it by initials only." This illustration has been omitted in the amended Act. According to the court, the omission indicates that the Legislature no longer views the initialling of the order instead of signing it as a defect affecting the validity of the proceeding."

43. In ***Hind Samachar Limited Vs. 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 Vs. Norton Motors [2005] 275 ITR 595***.

44. Bombay High Court in ***Prime Securities Ltd. Vs. 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 Vs. 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 Vs. 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 non-joinder 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.”

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, though the misnomer or misdescription is not fatal. Thus failure to mention the words “Principal Officer” on the notices is not fatal.

48. Similarly, we do not think in the facts of the present case and it has not been held by the tribunal or the CIT (Appeals) that there was misnomer or misdescription because the words ‘Private Limited’ were missing in 4 out of 5 notices though the name “Jagat Novel Exhibitors” were clear. It has not resulted in misnomer or misdescription of parties which is fatal and makes the entire proceedings null and void.

49. In view of the aforesaid findings recorded above, the question framed in ITA Nos. 4/2006, 7/2006, 11/2006, 17/2006 and 22/2006, and the first question in ITA Nos. 2/2006, 3/2006, 5/2006, 8/2006 and 10/2006 are answered in negative and in favour of the Revenue and against the respondent. In view of the above findings, we need not answer question No. 2 framed in ITA Nos. 2/2006, 3/2006, 5/2006, 8/2006 and 10/2006. The appeals are accordingly disposed of. There will be no order as to costs.

50. To curtail any delay and as the appeals filed by the respondent before the CIT(A) have to be heard on merits, it is directed that the parties will appear before the concerned CIT(A)



on 26th March, 2012, when the date of hearing of the appeal
will be fixed.

**(SANJIV KHANNA)
JUDGE**

**(R.V. EASWAR)
JUDGE**

**FEBRUARY 8, 2012
VKR**