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

\+ **INCOME TAX APPEAL NO. 805/2005**

Reserved on : 1st February, 2018
Date of decision : 31st May, 2018

THE COMMISSIONER OF INCOME TAX-III ..... Petitioner
Through Ms. Lakshmi Gurung & Mr. Asheesh Jain, Sr. Standing Counsel.

versus

M/S SUDEV INDUSTRIES LIMITED ..... Respondent
Through Dr. Rakesh Gupta, Mr. Somil Agarwal, Ms. Monika Ghai & Mr. Rohit Kumar Gupta, Advocates.

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

SANJIV KHANNA, J.:

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short), relates to Assessment Year 1995-96 and arises from order dated 30th March, 2005 passed by the Income Tax Appellate Tribunal (Tribunal, for short) in the case of M/s Sudev Industries Limited (hereinafter referred to as, the respondent-assessee).

2. The appeal was admitted for hearing vide order dated 4th August, 2006 on the following substantial question of law:-

> "Whether the Income Tax Appellate Tribunal is justified in law in holding that service of notice at the factory premises of the Assessee on the security guard was not proper service under the provisions of Section 282(2) of the Income Tax Act, 1961?"

3. For the Assessment Year (AY) 1995-96, the respondent-assessee had filed Return of Income declaring „nil" income with the Income Tax Department, Bulandshahar on 15th May, 1997. This return being belated and beyond statutory time was treated as *non est* Consequently, after recording "reasons to believe" in writing Additional Commissioner of Income Tax, Circle Bulandshahar had issued notice dated 11th September, 1998 under Section 148 read with Section 147 of the Act, calling upon the respondent assessee to file its return for AY 1995-96. This notice was sent registered post vide receipt No 4896 dated 15th September, 1998 and as per the Revenue also served on the respondent-assessee through Inspector of Income Tax Department on 18th December, 1998 at A-7/74/1 & 2, UPSIDC Indl. Area, Sikandarabad, Bulanshahr, Uttar Pradesh. The respondent-assessee did not file return in response to the said notice, albeit their director Mr. Rajeev Aggarwal had appeared before the Deputy Commissioner of Income Tax, Bulandshahar and on his request reasons recorded for issue of notice and a copy of the notice under Section 148 were furnished.

4. On 27th February, 2001, while the proceedings under Section 147/148 of the Act were pending, jurisdiction was transferred from Deputy Commissioner of Income Tax, Circle Bulandshahar to Income Tax Officer, Company Ward 3(2), New Delhi.

5. Thereupon, the Assessing Officer, Company Ward 3(2), New Delhi had issued notice under Section 142(1) dated 28th February, 2001, which was served on the respondent-assessee requiring them to furnish details and particulars, including copy of bank accounts, monthly sale/purchase - value-wise and quantity-wise, opening and closing stock - item-wise, quality-wise and value-wise, details of squared up accounts with confirmation, and produce complete books of accounts. The proceedings continued with the respondent-assessee appearing through the chartered accountant, and sometimes with Mr. Rajeev Aggarwal, director in attendance. During the course of the assessment proceedings, objection questioning jurisdiction of the Assistant Commissioner of Income Tax Circle Bulandshahar, who had issued notice under Section 147/148 of the Act was raised. This contention was rejected, primarily for th ee reasons namely, (i) the respondent-assessee for the AYs 1994-95 and 1995-96 had voluntarily filed returns before the Assessing Officer at Bulandshahr;(ii) during the course of the assessment proceeding for AY 1994-95 on a query being raised by the Assessing Officer, the respondent-assessee vide letter dated 7.4.1995 had stated that a resolution had been passed for shifting of the registered office from Delhi to Sikandarabad. The plea was accepted and return for AY 1994-95 was processed by ITO, Ward 1, Bulundshahar and (iii) respondent-assessee had filed an application dated 12.5.1997 for certificate under Section 230A(1) with ITO ward-1, Bulandshahar, which was furnished on 28.5.1997.

6. On 22nd March, 2001, assessment order under section 144 of the Act to the best of judgment of the Assessing Officer was passed. Profit and loss account was not submitted and filed. Only a chart, indicating purchases and

sales after 1st October, 1994 when the trading operations had started, and closing stock on 31st March, 1995 was filed. The respondent-assessee had as per the chart purchased goods worth Rs.3,06,98,078/-, sold goods worth Rs.3,02,61,167/- and had shown closing stock of Rs. 8,74,125/- resulting in gross profit of Rs.4,37,214/-. After referring to discrepancies on current liabilities and unsecured loans, capitalizing preoperative interest, failure to furnish confirmations from subscribers to share capital that had increased from Rs.36,57,000/- to Rs. 317,60,500/- and also invoking Section 68 of the Act, the total income of the respondent assessee was assessed at Rs.2,77,83,260/-.

7. Commissioner of Income Tax (Appeals) in his order dated 22nd March, 2002 upheld the action of the Assessing Officer at Bulandshahar in issuing notice under Section 147/148 of the Act for reasons recorded in detail including filing of returns of income for AY 1994-95 and 1995-96 before ITO, Bulandshahar, letter of the respondent-assessee justifying and explaining why return for AY1994-95 was filed at Bulandshahar, issue of certificate under Section 230A on application of the respondent-assessee by the said assessing officer and filing of belated return for AY 1995-96 before ITO, Bulandshahar. Commissioner of Income Tax (Appeals), notwithstanding best judgment assessment, had also examined merits and quantum of income earned by calling upon the respondent-assessee to furnish details relating to transactions of purchases and sales above Rs.1 lac, which were furnished. He noticed that the purchases or sales were not paid for during the year, though the respondent-assessee had purportedly made purchases and sales of Rs.3.06 crores and Rs.3.02 crores, respectively and

had claimed net loss of Rs.24,920/-. Adverse findings were recorded on several aspects, including failure to justify investment in purchases. However, addition of more than Rs.2.28 crores made by the Assessing Officer under Section 68 of the Act was deleted observing that addition should be made in the hands of the persons who had actually advanced money and had introduced their undisclosed income towards share capital of the respondent-assessee. The respondent-assessee had contended that they were a public limited company and share applications had been invited from public at large. Few additions made by the Assessing Officer were deleted and others were confirmed.

8. The respondent-assessee filed further appeal which has been allowed by the impugned order of the Tribunal dated 30th March, 2005, on the ground that notice under Section 148 of the Act dated 11th September, 1998 issued by the Assistant Commissioner of Income Tax, Bulandshahar, and addressed to M/s Sudev Industries Limited, A-74/142, UPSIDC Industrial Area, Sikandarabad District Bulandshahar, Uttar Pradesh, was not served as per Section 282 of the Act. Service of notice affected on 8th February, 2001 through Inspector at the above address was not on any director or any person authorised by the respondent-assessee to receive the notice but on Ajay Pratap Singh, Security Guard. Inspector while effecting service had recorded that the factory was not working and only security guards were present. Service on the security guard, who was not authorised to receive notice, it was held, was invalid and therefore the re-assessment proceedings were entirely void and bad in law. Referring to the decision of Gauhati High Court in ***Commissioner of Income Tax versus Mintu Kalita,*** [2002] 253

ITR 334(Gau.), it was held that service of notice was not a procedural requirement, but a condition precedent for initiation of proceedings. Reliance was also placed on the decision of the Supreme Court in ***R.K. Upadhyaya versus Shanabhai P. Patel,*** [1987] 166 ITR 163(SC). Madras High Court in ***Venkat Naicken Trust and Another versus Income Tax Officer and Another***, [2000] 242 ITR 141 (Mad.) has held that when an assessee pleads that he had not been served with notice, it was for the department to place relevant material to substantiate and prove that the assessee was served. Reliance was placed on the affidavit by Mr. Rajeev Aggarwal that neither he, any of the directors nor an authorised person had received notice dated 11th September, 1998 issued under Section 148 of the Act. Consequently, when the notice under Section 147/148 of the Act was not duly served, the Assessing Officer in Delhi could not have passed a valid and legally sustainable assessment order.

9. We begin by referring to Section 282 as it was before substitution by Finance (No.2) Act,2009. Section 282 of the Act, was as under:-

> "Service of notice generally.
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> **282**. (1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908 (5 of 1908).
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> (2) Any such notice or requisition may be addressed—
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> (a) in the case of a firm or a Hindu undivided family, to any member of the firm or to the manager or any adult member of the family ;

(b) in the case of a local authority or company, to the principal officer thereof ;

(c) in the case of any other association or body of individuals, to the principal officer or any member thereof ;

(d) in the case of any other person (not being an individual), to the person who manages or controls his affairs."

Section 282 of the Act dealt with procedure for service of notice and without hesitation we would hold that this provision was enacted to ensure compliance of principles of natural justice and for ease of service, and not for hairsplitting and fault finding. Sub-section (1) to Section 282 had stated that a notice or requisition could be served on the person therein named either by post or as if it were summons issued by a court under the Code of Civil Procedure, 1908. Clauses (a) to (d) of Sub-section (2) to the said Section refer to whom such notice or requisition may be addressed to in different cases such as in case of a firm or Hindu undivided family, a local authority or company, any other association or body of individuals or any other person. In case of a company notice may be addressed to the principal officer. Use of the word "may" in sub-section (2) reflects that this provision is permissive and not mandatory. Therefore, it would not be correct to hold as held by the Tribunal that the notice under Section 148 of the Act not being addressed to the principal officer but to the company itself was invalid and completely illegal so as to not confer jurisdiction on the assessing officer.

10. In ***Agricultural Company Rampur versus Commissioner of Income Tax***, (1974) 93 ITR 353 (Delhi), notice was issued to the dissolved firm and

accepted by an accounts officer. Question arose whether the said notice was served on the firm itself as it had not been issued to a specific partner or addressed to partners. Referring to ***Commissioner of Income Tax (Central), Bombay versus Devidayal and Sons***, (1968) 68 ITR 425 (Bom), it was observed that notice if not addressed to a partner would not render it invalid if it was served and accepted and return was submitted in pursuance thereof. In ***Agricultural Company Rampur*** (supra), though no notice was served on the firm, yet it was treated as a valid service as notice was accepted by the accountant, who was working for the assessee firm as well as for the two partner companies. Reference was made to an earlier decision of Gujarat High Court in ***Commissioner of Income Tax, Gujarat I, Ahmedabad versus Bhanji Kanji's Shop***, (1968) 68 ITR 416, wherein notice for re-assessment served on a temporary employee of a dissolved firm was held to be as valid service, observing that the conditions mentioned in Section 63 (2) of the Income Tax Act, 1922 similar to Section 282 of the Act, i.e. Income Tax Act, 1961, were not exhaustive and it was permissible to serve notice by way of modes not mentioned in the said section. All that mattered was whether notice was received on behalf of the assessee and was complied with. When no question about validity of service was raised before the Assessing officer or the first appellate authority but before the Tribunal for the first time, the contention loses force. Belated objection regarding service of notice before the Tribunal was adversely commented upon by the Delhi High Court.

11. Appropriate for our case would be observations of the Bombay High Court in ***Devidayal and Sons*** (supra) that provisions of Section 63 (2) of the

Income Tax Act, 1922 requiring that the notice in case of a firm may be addressed to any partner of the firm merely prescribes permissive mode of service and was not intended to be either mandatory or exhaustive. Consequently, the fact that notice to the firm was not addressed to a partner would not render it invalid when in fact it was served on the partner and accepted by him and a return was filed.

12. When a notice or summons are sent by registered post, the constructions which apply are different from those which apply to service through a process server or an Inspector, as was held in ***Commissioner of Income Tax, West Bengal versus Malchand Surana,*** (1955) 28 ITR 684 (Cal.).

13. Service through registered letters is one of the commonest types/mode of service. Where registered letter duly pre-paid and properly addressed is issued, Courts invoke presumption under Section 27 of the General Clauses Act and Illustration (f) of Section 114 of the Evidence Act. Refusal to accept notice is treated as proper service. Referring to the said provisions, in ***Malchand Surana*** (supra), Calcutta High Court had observed that mere fact that the physical delivery of the notice was made to a person, other than the addressee, who had no authority to receive the letter on the addressee's behalf, would not be sufficient to prove lack or failure of proper service. Presumption would still be there and would remain unrebutted notwithstanding that the actual service had been affected on a different person. In such a case, there could be room for rebuttal of the presumption by further facts being proved by the addressee, who denies service but this would depend upon facts of each case. Legality and sufficiency of service

would depend on facts. Particular facts in the knowledge of the assessee must be proved and established by the assessee. Thus, mere fact that notice was served on the brother of the assessee was not sufficient to rebut the presumption under Section 27 of the General Clauses Act. Primary question would be whether the assessee had come to know about service at all, or whether the assessee having come to know that some notice had been served, had not made any further enquiry and had not been informed and whether the presumption raised by the Sections had been rebutted according to facts found proved in affirmative or negative [See ***Commissioner of Income Tax Punjab, Haryana, Jammu Kashmir, Himachal Pradesh and Chandigarh Patiala versus Lalita Kapur,*** (1970) 78 ITR 126 (P&H)]. There have been decisions wherein service effected by registered post letter addressed to the assessee has been held to be valid, though the acknowledgement or service was affected on the employee or minor son or even when there was refusal. The test as laid down in ***Malchand Surana*** (supra) and ***Agricultural Company Rampur*** (supra) applies. In ***Commissioner of Income Tax versus Vins Overseas India Ltd.,*** (2008) 305 ITR 320 (Del), referring to the presumption under Section 27 of the General Clauses Act, it was held that notice sent by registered post should be presumed to be served unless rebutted by the assessee. Further, when objection with regard to service of notice was not taken before the Assessing Officer but before the appellate authority, the rebuttal should not be easily accepted. Such objection should be raised at the initial stage before the Assessing Officer and not after much delay. In the said case, affidavit denying service of notice filed before the Tribunal was rejected on the ground that the assessee should not be permitted to file the affidavit as per

the assessee‟s choice. Similar view on the question of presumption under Section 27 of the General Clauses Act would hold good in the absence of the proof to the contrary, were made in ***Commissioner of Income Tax, Delhi (Central)-III versus Yamu Industries Ltd.***, ILR (2007) II Delhi 1400 and ***Commissioner of Income Tax versus Madhsy Films Pvt. Ltd.***, (2008) 301 ITR 69.

14. We may now refer to Section 292B of the Act, which reads as under:-

> **"292B.** 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 proce ding 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 292B of the Act deals with effect mistake, defect or omission in service of notice, summons etc. and states that notice, order, proceedings, etc. will not be invalid on account of any mistake, defect or omission if in substance and effect it is in conformity with and in accordance with the intent and purpose of the Act. The aforesaid section is a broad and wide provision which lays emphasis on substance rather than form and that technicalities should not result in invalidating the proceedings, notice, orders, etc.

15. It is correct that legal dictums draw distinction between inherent invalidity which relates to jurisdiction as when the jurisdictional pre-conditions are not satisfied or when limitation period for passing an order

has expired, and irregularities and mistakes in proceedings while in exercise or during jurisdiction. We need not dilate and expound on the said differentiation in detail in the present case, for service of notice under Section 148 of the Act, it was held in ***R.K. Upadhyaya*** (supra) is an aspect relating to procedure and a pre-condition for passing of an order of assessment and not jurisdictional pre-condition which would make the assessment order invalid when the assessee has been duly served and had participated in the proceedings. In ***R.K. Upadhyaya*** (supra), the Supreme Court had examined the question of difference between "issue of notice" and "service of notice" and pointed out dissimilarities between the provisions in the form of Sections 147 to 149 of the Act i.e. Income Tax Act, 1961, and the differently worded provisions of the Income Tax Act, 1922 in the following manner:-

> "2.....Section 34 conferred jurisdiction on the Income Tax Officer to reopen an assessment subject to service of notice within the prescribed period. Therefore, service of notice within limitation was the foundations of jurisdiction. The same view has been taken by this Court in J.P. *Janni, ITO* v. *Induprasad D. Bhatt* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 72 ITR 595] as also in *CIT* v. *Robert J. Sas* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 48 ITR 177] . The High Court in our opinion went wrong in relying upon the ratio of *Banarsi Debi* v. *ITO* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 53 ITR 100] in disposing of the case in hand. 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 1961 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 in the Income Tax Officer to deal with the matter but it is a condition precedent to making of the order of assessment. The High Court in our opinion lost sight of the distinction and under a wrong basis felt bound by the judgment in *Banarsi Debi* v. *ITO* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 53 ITR 100] . As the Income Tax Officer had issued notice within limitations, the appeal is allowed and the order of the High Court is vacated. The Income Tax Officer shall now proceed to complete the assessment after complying with the requirements of law. Since there has been no appearance on behalf of the respondents, we make no orders for costs."

(emphasis supplied)

16. Section 292B was introduced by Taxation Laws (Amendment) Act, 1975 with effect from 1st October, 1975. The object and purpose of introducing the said section as explained in ***Commissioner of Income Tax***

versus M/s Jagat Novel Exhibitors Private Limited, [2013] 356 ITR 562 (Del) is as under:-

> "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.....
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> 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."

17. In ***M/s Jagat Novel Exhibitors Private Limited*** (supra), the Court had also examined the question of difference between "issue of notice" and "service of notice" as elucidated in ***R.K. Upadhyaya*** (supra), which had pointed out the dissimilarities between Sections 147 to 149 of the Act, i.e., Income Tax Act, 1961 and similar provisions in the Income Tax Act, 1922 in the following manner:-

> "41. The aforesaid observations are significant. In the present case, the tribunal has not held that the jurisdictional preconditions 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 precondition 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."

18. Thereafter, in ***M/s Jagat Novel Exhibitors Private Limited*** (supra), reference was made to some other judgments, which are to the following effect:-

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

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."

19. It is often stated that rules of procedure are handmaid of justice for the objective of prescribing procedure is to advance the cause of justice and not to obstruct and give technical objections primacy and position to strike down orders, when no prejudice or harm is otherwise caused and suffered. In ***Uday Shankar Triyar versus Ram Kalewar Prasad Singh and Another,*** (2006) 1 SCC 75, it was observed:-

> "*17*. Non-compliance with any procedural requirement relating to a pleading memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are
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> (*i*) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;
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> (*ii*) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;
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> (*iii*) where the non-compliance or violation is proved to be deliberate or mischievous;
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> (*iv*) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;

(*v*) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant."

20. Earlier in ***Rani Kusum versus Kanchan Devi and Others***, (2005) 6 SCC 705, after referring to the ratio in ***Kailash versus Nanhku and Others***, (2005) 4 SCC 480, it was observed:-

"**10.** All the rules of procedure are he handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

11. The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

12. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in the judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. (See *Sushil Kumar Sen* v. *State of Bihar*[(1975) 1 SCC 774] .)

> **13.** No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. (See *Blyth* v. *Blyth* [(1966) 1 All ER 524 : 1966 AC 643 : (1966) 2 WLR 634 (HL)] .) A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. (See *Shreenath* v. *Rajesh*[(1998) 4 SCC 543 : AIR 1998 SC 1827] .)
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> **14.** Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

21. We would, at this stage, refer to some facts, which were not disputed and were recorded in the assessment order. Said facts were found to be correct and were not overturned by the Tribunal. Notice under Section 147/148 had been sent by registered post vide receipt No.4896 dated 15th September, 1998 in addition to service by the Inspector of the Income Tax Department. Secondly, upon service of the said notice, Mr. Rajeev Aggarwal, director of the respondent-assessee had appeared before the Deputy Commissioner of Income Tax, Circle Bulandshahar and on request was given a copy of the notice issued under Section 148 of the Act and of the reasons recorded for issue of notice. The third aspect is that the respondent-assessee during the assessment proceedings before the Assessing

Officer at Bulandshahar and then at Delhi, did not contest or object that notice under Section 147/148 of the Act was not duly served as it was not served on the authorized officer or director or the notice was not addressed to the principal officer. In case, and if, the respondent-assessee had taken the said plea, the Assessing Officer had the option to furnish and serve the notice on the director or the authorised representative. There was no occasion for the respondent-assessee to object as Mr. Rajeev Aggarwal was duly furnished a copy of the notice. A company being a juristic and a legal person, service cannot be in person on the Company, and has to be affected by sending the notice to the registered office or at the place of business. In the context of the present case, we would only observe that the object and purpose of service of notice was to inform and make the company aware that proceedings under Section 147/148 of the Act had been initiated. Initiation of proceedings under Section 147/148 of the Act was upon recording of reasons to believe and upon necessary approvals. Initiation to this extent was valid and not disputed and challenged.

22. It was submitted before us that the respondent-assessee had taken the plea and contested validity of service of notice on the security guard before the first appellate authority, i.e., Commissioner of Income Tax (Appeals). It was accepted and admitted that no such contention was raised before the Assessing Officer. In support, the respondent-assessee had relied on paragraph 2 of the order dated 22nd March, 2002 passed by the Commissioner of Income Tax (Appeals), which reads as under:-

> "2. The first ground of appeal is that as the notice alleged to be issued to the assessee u/s 148 could not in law be said to be served on the assessee, the

assessment made, there under on the basis of such notice is bad in law. That the proceedings u/s 148 of the I.T. Act is illegal and uncalled for in view of following facts:

a) The ITO, Bulandshahar did not have any jurisdiction over the case to issue the notice.

b) The ITO did not have any reason to believe that the income chargeable to tax has escaped assessment due to omission or failure on the part of the assessee."

23. We have examined and considered order passed by the Commissioner of Income Tax (Appeals) with reference to the aforesaid grounds. Discussion and conclusions/findings recorded by the first appellate authority, un-ambiguously do not reflect and show that ground of invalidity of service in terms of Section 282 of the Act was raised. There is no discussion on the issue; whether the service by registered post or by the Inspector on the security guard would be valid. Legal effect and consequences were not considered. This would un-mistakenly support the submission of the appellant-Revenue that this ground was not taken at the initial stage and when the first appeal was preferred and decided. Moreover, what is important and relevant is whether this contention was raised before the Assessing Officer. Respondent-assessee accepts that this contention was not raised before the Assessing Officer.

24. We would now deal with the decisions relied upon by the counsel for the respondent-assessee, which he submits support their case. In ***Commissioner of Income Tax versus Rajesh Kumar Sharma,*** [2009] 311 ITR 235 (Del) reference was made to Section 282 of the Act and provisions of Order V of the Code of Civil Procedure and more importantly Rules 12 to

15 thereof. In the said case, as per the postal receipt notice was addressed to "Sh. R.K. Prop. M/s Karol Bagh, New Delhi, Pin 110065" and it was held that this was not the address of the assessee. The Court had also observed that it would have been a different matter if the Revenue had been able to show that the envelope was addressed to the correct person, but the receipt issued by the postal department was incomplete. Contention of the Revenue that the envelope was not returned and, therefore, it should be presumed to have been duly served was rejected because of the categorical stand of the assessee that he had not received the notice. Claim of the Revenue that the notice through process server was served on one Lalmani, who was an employeee of the assessee, was also rejected on the ground that the assessee had stated that he did not have any employee named Lalmani and it was not the case of the Revenue that the said Lalmani was authorised to receive notice. Pertinently, the assessee had written a letter after he was served with notice under Section 142(1) and 143(2) that he was unaware of any notice issued under Section 147/148 of the Act. The facts of the case are clearly distinguishable. Noticeably, Delhi High Court in ***Commissioner of Income Tax- V, New Delhi versus Regency Express Builders Private Limited,*** [2007] 291 ITR 55 (Del) had dealt with a situation where notice under Section 143(2) of the Act had been sent to the address given by the assessee and was served on one Gunanand. The assessee had thereafter appeared through a chartered accountant. Question arose whether there was valid service, as notice under Section 143(2) was required to be issued within the stipulated period. The appeal was allowed and the contention of the assessee was rejected, observing that the chartered accountant had appeared

before the Assessing Officer, which would show that notice under Section 143(2) had been duly served.

25. In ***Venkat Naicken Trust and Another*** (supra), it was held that the burden was on the Department to substantiate the plea that the assessee was properly served. The said judgment would not be of relevance in the present appeal in view of the fact that notices were sent by registered post as well as through Inspector. Service was affected at the factory office of the respondent-assessee. The case of the respondent-assessee is that notice was served on the security guard and not on the d rector or authorised person. Director of the respondent-assessee had thereafter appeared before the Assessing Officer and was furnished a copy of the notice. In ***C.N. Nataraj and Others versus Vth Income Tax Officer, Bangalore*** [1965] 56 ITR 250 (Mys), the assessment year involved was 1958-59 and the High Court observed that the notices were issued in the name of minors, who could neither sue nor could be sued and had to be represented by guardians or next friend. In these circumstances, it was held that notices issued were wholly invalid.

26. In the facts of the present case we would prefer to follow the decision of the Delhi High Court in ***M/s Jagat Novel Exhibitors Private Limited*** (supra).

27. ***M/s Gopiram Bhagwandas, Dhanbad versus The Commissioner of Income Tax, Bihar and Orissa, Patna,*** [1956] 30 ITR 8 (Pat) is an old decision arising under the 1922 Act. The question adjudicated was whether for the purpose of determining the starting point of limitation date of service of the Tribunal‟s order on the assessee himself or his lawyer would be relevant. Issue and question in the present case is different.

28. ***Commissioner of Income Tax versus Hyderabad Deccan Liquor Syndicate,*** [1974] 95 ITR 130 (AP) was again a decision under the Income Tax Act, 1922. The dispute therein had several facets, including whether the assessing officer had elected to assess the individual members of the Association of Persons (AOP), instead of the AOP. Reference in this context was made to the provisions of the Income Tax Act, 1922, which as noticed in ***R.K. Upadhyaya*** (supra) were different.

29. ***B. Johar Forest Works versus Commissioner of Income Tax,*** [1977] 107 ITR 409 (J&K) related to imposition of penalty due to non-compliance of notices under Section 22 of the Income Tax Act, 1922.

30. ***Dina Nath versus Commissioner of Income Tax***, [1993] 204 ITR 667 (J&K) was an extraordinary case, in which service of notice under Section 143(2) was affected and the assessment order was passed on the same day, making an addition of nearly Rs.36,000/- to the assessee's income. In this case, the service had not been effected on the assessee. Revenue‟s contention that the notice was served on a partner of a firm in which the assessee was a partner was rejected for several reasons. This order takes into account cumulative facts, which established prejudice.

31. In ***Additional Commissioner of Income-tax, Lucknow versus Prem Kumar Rastogi,*** [1980] 124 ITR 381 (All), the issue raised related to starting point for computation of period of limitation for appeal, and in that context it was held that the service on third person who was not an authorized agent would not matter.

32. In ***Commissioner of Income-tax, Kanpur versus Kanpur Plastipack Ltd.***, [2017] 390 ITR 381 (All), notice was served on the power of attorney holder, who was authorized to represent the assessee to conduct the case, but was not authorized to receive notice. Apparently, the assessee had not complied and entered appearance.

33. Decision of the Delhi High Court in ***Commissioner of Income-tax versus Lunar Diamonds Ltd.,*** [2006] 281 ITR 1 (Del.) was on the issue whether notice under Section 143(2) of the Act was served within the prescribed limitation period. The decision relates to difference between „served" and „issued".

34. In ***Mintu Kalita*** (supra), it was observed that service of notice under Section 147/148 of the Act was not a mere procedural requirement, but a condition precedent for initiation of proceedings. In the present case, the question is whether the service affected should be treated as null and void. Ratio in ***Mintu Kalita*** (supra) has to be read in light of the pronouncement and ratio in ***R.K. Upadhyaya*** (supra).

35. In view of the aforesaid discussion, we find sufficient justification and reason to allow the present appeal and answer the substantial question of law in favour of the appellant-Revenue and against the respondent-assessee. It is held that the assessment proceedings under Section 147/148 of the Act are not invalid or void for want of proper service of notice. However, an order

of remand is required to be passed as the Tribunal has not adjudicated and decided the appeal filed by the respondent-assessee on merits.

36. To cut short delay, it is directed that the Revenue and the authorised representative of the respondent-assessee would appear before the Tribunal on 10th July, 2018 when a date of hearing would be fixed. In the facts of the case, the appellant-Revenue, it is held, is entitled to costs.

(SANJIV KHANNA)
JUDGE

(CHANDER SHEKHAR)
JUDGE

MAY 31st , 2018
VKR