

Section 292B: Return of income, etc., not to be invalid on certain grounds



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Introduction

Section 292B is considered as a protection to the Income tax authorities for most of short comings in proceedings due to technical aspects. “Substance over form theory” is the underlining philosophy of section 292-B of the Act. If in substance and in effect return, notice or assessment is in conformity with or according to intent and purpose of the Income-tax Act, the mistake, defect or omission is to be ignored. The rationale behind this section is that the return of income, assessment notice, penalty notice, summons or other proceedings should not be “held to be invalid due to technical mistakes”, which otherwise do not have much impact touching its legality provided such return, assessment/penalty notice, summons or other proceedings, etc., are otherwise in conformity with the purpose of the Act.

Sec 292 B as per Income Tax Act

Section 292-B was introduced with effect from October 1, 1975 and states that “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 the 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 the Act”. Thus, in the event of any mistake, defect or omission in the notice or other proceedings, if the same is in conformity with or according to the intent and purpose of the Act, the notice cannot be termed as invalid. To put it in other words, the notice should be in conformity with and in accordance with the intent and purpose of the Act. As per CBDT Circular dated 30th September 1975, Section 292B is introduced has been made to provide against purely technical objections without substance coming in the way of the validity of assessment proceedings, etc.

Object and purpose behind Section 292-B

The purpose behind the introduction of 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 irregularities 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 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.

Notice/summons is 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 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. In the case of Chief Forest Conservator, Government of Andhra Pradesh v. Collector (2003), the Supreme Court examined the question of misdescription or misnomers of parties and the effect thereof and it was held as under, “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”.

Again in the case of Mumbai International Airport Private Limited Vs. Golden Chariot Airport and another reported in (2010) our Hon'ble Supreme Court held that 'action of law is not a game of chess'. Merely because the Revenue has made a move and there is an error in the move, there is nothing to show that no opportunity should be given to the Revenue to correct the error by issuing a corrigendum or addendum and then proceeding with the matter. After all it is not an irreversible move as in a game of chess.

Situations under which Section 292 B cannot made applicable

Following are some of the circumstances under which the provisions of section 292B are inapplicable.

(I) Income tax notice issued in the name of dead person is illegal

It is a settled legal principle that a notice issued in the name of the dead person is unenforceable in law. The notice is issued to a dead person could be termed as nullity. It is something like a safeguard passing a decree against a dead person which cannot be executed through the legal representatives of the judgment-debtor. Revenue Authorities cannot plead ignorance also there is no provision in the income tax act which imposes a legal duty on the legal representative to intimate death to the Income Tax authorities or cancel PAN. The same has been approved in the decisions of the various High courts and Supreme Court.

In the case of Rasid Lala v. Income Tax Officer, Ward. Gujarat High Court observed as under, “the notice under Section 148 of the Act was issued to the assessee long after he had passed away. The heir of the deceased informed the Assessing Officer that the assessee has passed away and, therefore, the notice under Section 148 of the Act is invalid, despite which the heir was told to file the return of income in compliance of the said notice. The court held that the notice issued in the name of a dead person was not valid and that despite being informed about the death of the original assessee, the assessing officer, instead of taking corrective measures and issuing fresh notice to the heirs of the deceased, continued with the reassessment proceedings against the dead person. The court further held that Section 159 of the Act would not be applicable to the facts

of that case, and that, even if Section 159 is attracted, the notice was required to be issued in the name of the heirs of the deceased assessee within the limitation period.

The Madras High Court in the case of *Alamelu Veerappan v. Income Tax Officer, Noncorporate Ward-2(2), Chennai*, (2018) 257 Taxman 72 (Madras), wherein the court held thus:

“Merely because the Department was not intimated about the death of the assessee, that cannot, by its own, extend the period of limitation prescribed under the Statute. Nothing has been placed before this Court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased assessee to immediately intimate the death of the assessee or take steps to cancel the PAN registration. The Revenue seeks to bring their case under Section 292B of the Act to state that the defect is a curable defect and on that ground, the impugned notice cannot be declared as invalid. The language employed in Section 292B of the Act is categorical and clear. The notice has to be, in substance and effect, in conformity with or according to the intent and purpose of the Act. Undoubtedly, the issue relating to limitation is not a curable defect for the Revenue to invoke Section 292B of the Act.”

However notice issued to a dead person if responded by the legal representatives will be treated as valid notice as response to the notice would implies his participation in the assessment proceedings. In the case of *Smt. Kaushalyabai*, the Madhya Pradesh High Court took the view that the issue, whether a notice on a dead person should be treated to be a procedural irregularity under Section 292B of the Act or whether it would be a nullity remained academic as the widow, i.e. Kaushalyabai had already participated in the proceedings. In the facts of that case, it was noticed that the widow of the assessee, namely Kaushalyabai, had participated in the proceedings. The defect, if any, stood automatically cured. After the notice was received by Kaushalyabai, though in the name of her late husband, returns were filed under protest. This makes a world of difference. Once returns are filed, it definitely amounts to active participation and submitting to the jurisdiction of the Assessing Officer for the purpose of re-opening of the assessment.

Also in the case of Commissioner of Income Tax v. Sumanthbai C. Munshaw, (1981) it was held that, wherein though the notice was issued to the deceased person, the proceeding was continued against the legal representative who participated in the proceeding and also filed return of income without raising any objection as to the validity of the assessment proceedings.

The legal representative had, therefore, submitted to the jurisdiction of the Assessing Officer. The court held that if the legal representative is present before the taxing authority in some capacity or voluntarily appears in the proceeding without service of notice or upon service of notice not addressed to him but to the deceased assessee and does not object to the continuance of the proceeding against the dead person and is heard by the Income Tax Officer in regard to the tax liability of the deceased and invites an assessment on merits, such a legal representative must be taken to have exercised the option of abandoning the technical plea that the proceeding has not been continued against him, although in substance and reality, it has been so continued.

(II) Where penalty notice under Section 271(1)(a) is not signed

The Hon'ble High Court of Calcutta in the case of B.K. Gooyee and the Hon'ble Madhya Pradesh High Court further held that: "The provisions of Section 292B of the Act intended to ensure that an inconsequential technicality does not defeat justice. But, the signing of a notice under Section 271(1)(a) of the Act is not merely an inconsequential technicality. It is a requirement of the provisions of Order 5, Rule 1(3) of the CPC, which are applicable by virtue of Section 282 of the Act. Under the circumstances, the provisions of Section 292B of the Act would not be attracted in the instant case and the Tribunal in our opinion, was not right in holding that the notice issued under Section 271(1)(a) of the Act was a valid notice in the eye of law."

(III) Notice against amalgamated company

The provisions of Section 292B of the Act are not applicable and that framing of assessment against a non existing entity is not a procedural irregularity, but a jurisdictional defect, which is not curable under Section 292 B. The Hon'ble Supreme Court, on 25th July 2019, in the matter of Pr. Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Limited, pronounced that issuance of an assessment order against an amalgamating company, which has ceased to exist, is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B of the Income Tax Act, 1961. In the case of Spice Entertainment vs CIT, the Delhi High Court dealt with the question as to whether an assessment in the name of a company which has been amalgamated and has been dissolved, is null and void or, whether the framing of an assessment in the name of such company is merely a procedural defect which can be cured. The High Court held that upon a notice under Section 143 (2) being addressed, the amalgamated company had brought the fact of the amalgamation to the notice of the assessing officer. Despite

this, the assessing officer did not substitute the name of the amalgamated company and proceeded to make an assessment in the name of a non-existent company which renders it void. This, in the view of the High Court, it was not merely a procedural defect.

(IV) Unsigned return

The Madhya Pradesh High Court in Khialdas and Sons' case [1997] wherein the return was not at all signed, held that return of income shall be non est. The relevant observations are extracted as under :

"The idea behind Section 292 B is that if any minor defect is there which does not mitigate against the intent and purpose of the Act, then such minor defect can be cured but, according to Section 140, which is mandatory, every return has to be signed and verified. Section 140 says that a return under Section 139 shall be signed and verified. The word "shall" has been used which shows that it is mandatory that every return should be signed and verified and if it is not signed and verified, then it is in breach of the provisions of Section 140 of the Act. Therefore, this cannot be a defect which can be cured and any returns which have been filed without signature and verification of the assessee, will not be treated as a valid return".

Conclusion

Many times it has been observed that Assessing authorities took very casual and careless approach while issuing assessment notices and records reasons of assessment in a mechanical manner without application of mind which lead to harassments to honest tax payers and miscarriage of justice in the hands of Tax authorities. The tax authorities are entrusted with the task of calculating and realising tax should familiarise themselves with the relevant provisions in accordance with the facts of the case in totality and become well versed with the law on the same. Also assessee on receiving any kind of notice, communication and orders from tax authorities, should analyse the same on various aspects such as jurisdiction, time barred, addressee of the notice, properly dated and signed and content etc. as sometimes these technical aspects can be very important safeguards in defending the case before the authorities. In a nutshell, the contention of the law maker is very clear that Section 292B of the Income Tax Act takes care of anomalous situation that would arise in case where mistake creeps in due to defect or omission either in the return of income, assessment, notice, summons or other proceedings and not where the proceedings are void ab initio.