IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BENGALURU

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA Nos.1259 to 1261/Bang/2013
(Assessment years: 2005-06 to 2007-08)

Deputy Commissioner of Income-tax,
Central Circle 1(1),
Bengaluru. … Appellant

Vs.

Shri K.M. Nagaraj,
Kodathi Village Gate,
Varthur Hobli,
Bengaluru-560043. … Respondent
BKGPK 0079Q

C.O.Nos.49 to 51/Bang/2014
ITA Nos.1259 to 1261/Bang/2013
(Assessment years: 2005-06 to 2007-08)
(By the assessee)

Revenue by : Shri G.Kamaladhar, Standing Counsel.
Assessee by : Ms. M.R.Vanaja, Advocate

Date of hearing : 05/04/2017
Date of pronouncement : 19/05/2017

O R D E R

Per BENCH :

These are appeals filed by the revenue directed against the common order of the CIT(A)-VI, Bengaluru, dated 14/06/2013 for the assessment years 2005-06 to 2007-08.

2. The revenue raised the common grounds of appeal:

Ground no. 1 : Whether the Ld. CIT(A) is correct in facts and in law in not appreciating that though the section mentioned at the top of the notice issued on 01.06.2010 was inadvertently mentioned as '153A', in the body of the notice, it has been clearly mentioned that the income of the assessee is to be assessed /reassessed u/s.153C of the Income Tax Act, 1961 ?

Ground no. 2: Whether the Ld. CIT(A) is correct in facts and in law in not appreciating that the provisions of sec.292B of the Income Tax Act is applicable in the instant case as the notice issued was undoubtedly to assess/reassess the income of the assessee u/s.153C of the Income Tax Act ?

Ground no. 3 : Whether the Ld. CIT(A) is correct in facts and in law in not considering the provisions of Section 292B which states "No return of income, assessment, notice, summons or other proceedings, 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."?

Ground no. 4 : Whether the Ld. CIT(A) is correct in facts and in law in not appreciating that the assessee had complied with the notices issued and has not raised the validity of the notice during scrutiny proceedings?

Ground no. 5 : Whether the Ld. CIT(A) is correct in facts and in law in not appreciating that the Scrutiny assessment was completed after giving due opportunity of hearing to the assessee which is as per the intention of the Legislation and therefore ought not to have annulled the assessment on procedural lapse ?

Ground no. 6 : The Ld.CIT(A) erred in annulling the scrutiny assessment on technical grounds and therefore it is humbly prayed to set aside the assessment to the file of the Assessing Officer for complying with the procedural issues.

3. Since common issue is involved in all these appeals, we dispose of the same by way of this common order.

4. Brief facts of the case are as under: The respondent-assessee is an individual deriving income from business. There was search and seizure operation under the provisions of section 132 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] on 26/08/2009 in the case of M/s.Corporate Leisure & Property Development (P) Ltd. The Assessing Officer

(AO) stated that during the course of search proceedings, several books of account and incriminating documents were found and seized. Based on this incriminating material, notice u/s 153A was issued to the respondent-assessee on 01/06/2010 calling upon the assessee to file return of income. In response to such notice, respondent-assessee filed return of income declaring income of Rs.99,863/- for assessment year 2005-06, Rs.20,32,716/- for assessment year 2006-07 and Rs.9,49,060/- for the assessment year 2007-08. Against said return of income assessments were completed by the AO at total income of Rs.2,20,000/-, Rs.90,000/- and Rs.4,60,000/- for the assessment years 2005-06 to 2007-08 respectively vide order dated 29/12/2011 passed u/s 143(3) r.w.s. 153A of the Act.

5. Being aggrieved by the above assessment orders appeals were filed before the CIT(A) who, vide impugned order, quashed the assessments as it was found that there was no search warrant in the name of the respondent-assessee and consequently assessment orders passed u/s 143(3) r.w.s. 153A were held to be invalid by the CIT(A). The relevant paras of the CIT(A)'s order are extracted below:

8. The issue raised is that search was carried out in the case of M/s CLPD and not in the case of the appellant and therefore, issue of notice of u/s 153A and assessment thereof is not in order. In this regard, a report was called for from the A.O. who in his reply dated 11.6.2013 has stated that :-

"From verification of the A.O. folder and Panchanama it is found that there is no separate warrant issued as per section 132 of the I T Act in the name of Sri K M Nagaraj. The warrant dated 25.08.2009 issued in the name of M/s Corporate Leisure & Property Development Pvt Ltd., to search the premises of Sri K M Nagaraj. Hence the provision of section 153A is not applicable in the case of Sri K M Nagaraj. Copy of the warrant issued and Panchanama is enclosed herewith."

9. In view of the above, as the appellant's case was not covered u/s 132, proceedings u/s 153A do not lie. This fact and finding would apply also to assessment years 2005-06 and 2007-08, as assessments have been completed u/s 153A r.w.s. 143(3) in consequence of the same search u/s 132 dated 26.08.2009 for A.Ys 2005-06 and 2007-08 also.

Therefore, this issue raised by the appellant carries weight that proceedings u/s 153A are unwarranted in the case of the appellant. The assessments u/s 153A r.w.s. 143(3) in pursuance of such proceedings cannot be upheld. As such, the assessments made in respect of all the 3 years u/s 153A r.w.s. 143(3) are hereby annulled. As regards merits of the case and other issues raised, no finding is being given. Also, this order does not prevent the Assessing Officer from taking any other action as provided under the law to make assessment on the basis of findings in respect of the appellant made during the course of search or otherwise.

6. Being aggrieved by the above order of the CIT(A), the revenue is in appeal before us contending that the CIT(A) had passed the impugned appellate order ignoring the plain provisions of section 292B of the Act. The learned Standing Counsel also submitted that the mere fact that wrong section was mentioned in the assessment order or notice does not invalidate the assessment order as the respondent-assessee had responded to notice issued u/s 153A and no prejudice is caused to the respondent-assessee as he has participated in the assessment proceedings. Reliance in this regard was placed on

the decision of the Hon'ble Punjab & Haryana High Court in the case of *Om Sons International vs. CIT* (2011)(15 taxmann.com 184)(Pun. & Har.) and the decision of the Hon'ble Andhra Pradesh High Court in the case of *Bharathi Cement Corporation P. Ltd. vs. CIT* (2013) 356 ITR 74 and also the decision of the Hon'ble jurisdictional High Court in the case of *CIT vs. Micro Labs Ltd*. (348 ITR 75).

On the other hand, learned counsel for the assessee vehemently contended that wrong mention of section viz. 153A goes to the very root of the matter and it is jurisdictional error which cannot be cured by the provisions of section 292B of the Act.

7. We heard rival submissions and perused the material on record. The only issue that arises in the present appeals is whether the CIT(A) was justified in cancelling the impugned assessment orders on the ground that wrong section was mentioned in the assessment orders. Notice for assuming jurisdiction for framing assessment order was issued under wrong section i.e. 153A instead of 153C. It is undisputed fact that there was no search warrant in the name of the respondent-assessee. There is no dispute that incriminating material relevant to respondent-assessee was found as a result of search and seizure operation in the case of M/s.Corporate Leisure & Property Development (P) Ltd. It is clear that AO can assume jurisdiction only u/s 153C as no search warrant was issued in the

name of the respondent-assessee. But the AO had mentioned section 153A in the notice issued calling upon the respondent-assessee to file return of income as well as in the orders of assessment. Whether this fact alone shall invalidate the assessment orders? This requires to be adjudicated in the light of the provisions of section 292B of the Act which provides that return of income or notice or summons shall not be invalidated on certain grounds. The provisions of section 292B are extracted below:

> *"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. "*

A perusal of above section makes very clear that notices or summons shall not be invalided by mere reason of any mistake 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. The Hon'ble jurisdictional High Court, in the case of *Micro*

Labs Ltd.(supra), had dealt with the scope of the provisions of section 292B and the relevant observations are as follows:

> "The purport of section 292B is that 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. The notice should be in conformity with and in accordance with the intent and purpose of the Act. The intent and purport as provided under Section 158BC is to serve a notice on the assessee by providing a time of not less than 15 days and not more than 45 days. This is the purport and intent of the section. No extra time can be granted subsequently. Time to be granted is a minimum of 15 and maximum of 45 days. The same has to be specified in the notice. Hence, grant of extra time is without authority of law. It cannot validate an invalid notice. Moreover, it is relevant to note that the notice issued is on a printed form wherein the details are required to be filled up. At the bottom of the notice, is a printed matter, which reads that the time to be granted shall not be less than 15 days. In spite of this, the time granted to the assessee is less than 15 days. Therefore, it is apparent that there has been a violation of law. Therefore, when the sum and substance of the notice issued to the assessee is not in conformity with the purpose of the Act, section 292B has no application. Hence, question No. 2 is answered in favour of the assessee and against the Revenue."

The *Sine qua non* for issuing notice u/s 153A of the Act is that there should be warrant of search in the name of the assessee to whom notice was issued. In the present case, undisputedly no search warrant was issued in the name of the respondent-assessee but the respondent-assessee had responded to the notice issued u/s 153A by filing return of income, participated in the proceedings till the matter resulted in framing of the assessment order. During the course of assessment proceedings, the respondent-assessee was given due opportunity of meeting the case made against him and in the

result there was no prejudice caused to the respondent-assessee. Furthermore, it is not the case of the respondent-assessee that his case even does not fall within the scope and ambit of the provisions of section 153C of the Act. The only mistake on the part of the AO is in mentioning section 153A instead of 153C. In the facts of the preset case, the provisions of section 292B clearly come into play. Under the provisions of section 292B, certain acts are not to be treated as invalid by reason of mistake or defect or omission either in the return of income, assessment, notice, summons or other proceedings. In other words, notice cannot be invalidated by reason of any mistake such as one occurred in the present case i.e. mentioning section 153A instead of 153C. If this mistake is not allowed to be cured, the very purpose and object of enacting the provisions of section 292B is defeated. This notice, in substance and effect, is in conformity with or according to the intent and purpose of the Act. The purpose of issuing notice is to call upon the assessee to file return of income disclosing income found in the incriminating material found as a result of search and seizure in the case of M/s.Corporate Leisure & Property Development (P) Ltd. This being the intent and purpose of the provisions contained in section 153A and 153C, stands satisfied if the notice is responded and the assessee has participated in the assessment proceedings. The fact that wrong section was mentioned in the notice does not invalid the proceedings

initiated pursuant thereto. In the present case, had the respondent-assessee not responded to notice and had raised such grounds of challenge, perhaps it would have been a different case altogether. But having respondent, participated in the proceedings, respondent-assessee cannot be allowed to turn around or raise objections for the first time before the CIT(A) seeking invalidation of the proceedings initiated by issuing notice u/s 153A instead of 153C. Hon'ble jurisdictional High Court in the case of *CIT vs. Sri Durga Enterprises* (44 taxmann.com 442) dealing with a case where notice u/s 148 was challenged on the ground that period within which specified, the Hon'ble jurisdictional High Court quoting the provisions of section 292B of the Act held as under:

> **"9.** In the present case, as observed earlier, the assessee not only responded to the notice under Section 148 of the Act within one month, but on the basis of the return filed earlier, participated in the proceedings till the matter reached the FAA and was disposed of. A glance at Section 292B of the Act, shows that under this provision, certain Acts are not to be treated as invalid, may be by reason of any mistake, defect or omissions, either in return of income, assessment, notice, summons or other proceedings. In other words, a notice cannot be invalidated by reason of any mistake, such as the one occurred in the present case, namely, the period of filing return of income was not specified as contemplated by Section 148 of the Act. If such a defect is not allowed to be cured, or treated as invalid so as to declare the notice invalid, despite the fact that assessee had taken that notice as valid and responded to it in letter and spirit and participated in the proceedings, the very purpose/objective of the provisions contained in Section 292B of the Act would stand frustrated/defeated. The intent of the Legislature is clear from the language employed in this provision which states that a defective notice, such as the one in the present case, cannot be declared invalid by reason of any mistake, defect or omission, if the notice in 'substance' and in 'effect' is in conformity with or according to the intent of

purpose of this Act. The intent or purpose of issuing the notice is to call upon the assessee to file return, if the Assessing Officer finds that income has escaped the assessment. This being the intent and purpose of the provisions contained in Section 148 of the Act, in our opinion, it stands satisfied if the notice is responded within reasonable time, which in the present case was 30 days, irrespective of the fact whether the period was specified or not in the notice for filing return of income. In the present case, if the assessee had not responded to this notice at all and had raised such ground of challenge, perhaps, he would not succeed (*sic*). But having responded and participated in the proceedings, he cannot be allowed to turn around and raise objection for the first time before the Tribunal seeking invalidation of the proceedings initiated by issuing notice under Section 148 of the Act. In the circumstance, we allow this appeal answering both the substantial questions of law in favour of the Revenue and against the assessee. In view of the peculiar facts and circumstances of the case, there shall be no order as to costs. **"**

The ratio laid down by the Hon'ble jurisdictional High Court in the case cited supra is squarely applicable to the facts of the present case. We hold that the CIT(A) had passed the impugned orders blatantly ignoring the provisions of section 292B . Thus the order of the CIT(A) is *per incuriam* as it is passed in ignorance of plain provisions of the Act. The CIT(A), therefore, ought not to have allowed the appeals on the ground the assessments were not valid in law. However, we remand the matter to the file of the CIT(A) to adjudicate the matter on merits of the addition.

7. In the result, appeals filed by the revenue are partly allowed for statistical purposes.

8. The assessee has filed cross objections praying that in the event revenue's appeals are allowed, the matter may be adjudicated on merits involved. In the revenue's appeals, we had already restored the matter to the file of the CIT(A) for adjudication of the matter on merits of the addition, therefore, the cross objections become infructuous and are dismissed as such.

Order pronounced in the open court on this 19th May, 2017

Sd/-	sd/-
(VIJAY PAL RAO)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Place : Bengaluru
D a t e d : 19/05/2017

srinivasulu, sps

Copy to :

1 Appellant
2 Respondent
3 CIT(A)-
4 CIT
5 DR, ITAT, Bangalore.
6 Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore