

# The Commissioner Of Income Tax vs M/S Panchvati Motors (P) Ltd

**ID:** F2J-C-2658 **Court:** Punjab-Haryana High Court

**Case:** ITA No. 292 of 2008 -1 **Date:** 2011-05-03

Complete searchable public court-text reproduction. This clean reference PDF is generated by Finin2min; the linked public source remains controlling.

[Cites 12, Cited by 13]

Punjab-Haryana High Court The Commissioner Of Income Tax vs M/S Panchvati Motors (P) Ltd on 3 May, 2011 Author: Ajay Kumar Mittal Bench: Adarsh Kumar Goel, Ajay Kumar Mittal ITA No. 292 of 2008 -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 292 of 2008

Date of Decision: 3.5.2011

The Commissioner of Income Tax, Bathinda

....Appellant.

Versus

M/s Panchvati Motors (P) Ltd.

...Respondent.

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Ms. Savita Saxena, Standing Counsel, for the appellant.

Mr. K.L. Goyal, Senior Advocate with Mr. Sandeep Goyal, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of ITA Nos. 292, 460, 461 and 462 of 2008 as, according to the learned counsel for the parties, the common questions of law are involved therein. For brevity, the facts are being taken from ITA No. 292 of 2008.

2. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 6.7.2007 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 292 of 2008 -2- ITA Nos. 638 and 634/ASR/2004, for the assessment year 1998-99, claiming the following substantial questions of law:-

"(i) Whether in the facts and circumstances of the case the Hon'ble ITAT was right in law to hold that the service of notice u/s 148 was invalid and, therefore, it was not correct in quashing the assessment orders on the said grounds?

(ii) Whether assessment order can be termed invalid merely by the reason of any mistake or omission in service of notice when Section 292B of I.T. Act, 1961 states that if the proceeding is in substance and effect in conformity with or according to the intent and purpose of I.T. Act, 1961, the assessment proceedings cannot be termed invalid merely by reason of any mistake, defect or omission in the notice?"

3. Briefly stated, the facts necessary for adjudication as narrated in the appeal are that the assessee filed return on 26.11.1998 declaring nil income after adjusting brought forward losses of Rs.8671/-. The said return was processed under Section 143(1)(a) on 30.8.1999 granting refund of Rs.3,50,280/- including interest under Section 244A of the Act at Rs.50,881/-. Thereafter, notice under Section 148 of the Act was issued to the assessee on 12.3.2003. In response thereto, the assessee filed its return on 23.2.2004 declaring nil income and the assessment was completed vide order dated 17.3.2004 at a total income of Rs.95,90,410/- by making additions under the following ITA No. 292 of 2008 -3- heads:- Sr. No. Heads Amount

1. Sale of Vehicles Rs.22,76,962/-

2. Sale of Spare Parts Rs.7,57,642/-

3. Evasion of sales-tax on Rs.22,47,560/-

bogus RD sales.

4. Servicing of vehicles Rs.43,08,570/-

4. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [in short "the CIT(A)"]. The CIT (A) vide order dated 13.9.2004 upheld the addition made on account of undisclosed income in the sale of vehicles whereas the additions made under heads "sales of spare parts" and "evasion of sales-tax on bogus RD sales" were reduced to Rs.85,950/- by reducing the GP rate from 15% to 2.7% and excluded the figure of 8.8% being sales tax in the GP rate (23.8%) applied by the Assessing Officer. Further, the CIT(A) deleted the addition of Rs.43,08,570/- made on account of undisclosed income in servicing of vehicles. Being not satisfied, the assessee as well as the revenue filed appeals before the Tribunal. The Tribunal vide order dated 6.7.2007 dismissed the appeal filed by the revenue and allowed the appeal filed by the assessee. The Tribunal recorded that the service of notice under Section 148 of the Act was not valid and, consequently, the assessment order was annulled. Hence, the present appeal by the revenue.

5. We have heard learned counsel for the parties.

6. Learned counsel for the revenue submitted that the notice issued under Section 148 of the Act was validly issued on 12.3.2003 ITA No. 292 of 2008 -4- and was duly served through affixation on 23.3.2003. The said service was in accordance with the provisions of Section 282 of the Act. It was further submitted that the notice under Section 142(1) of the Act was issued to the assessee and in response thereto an appearance was put by the assessee on 10.2.2004. The reassessment order was passed on 17.3.2004 after affording final hearing on 12.3.2004. Though initially aid was sought from the provision of Section 292B of the Act but in view of insertion of Section 292BB of the Act, learned counsel for the revenue pleaded in the alternative, that the provision of Section 292B of the Act protected the revenue against such technical pleas being raised by the assessee regarding non-service of valid notice under Section 148 of the Act. It was vehemently urged that Finance Act, 2008 had inserted Section 292BB w.e.f. 1.4.2008 which dealt with the notices which were deemed to be valid and the assessee was precluded from taking objection in any of the proceedings or enquiry under this Act that notice was not served upon him or not served in time or was served in improper manner. The assessee having failed to raise any such objection before the assessing officer was not entitled to raise such objection in the appellate proceedings. According to him, the amended provision being procedural applied to all pending proceedings. Learned counsel produced a certified copy of the return which was filed by the assessee and drew the attention to column No.12 thereof, where the assessee itself had written that the return was filed in response to the notice issued under Section 148 of the Act. Learned counsel for the revenue placed reliance on a Division Bench judgment of this Court in Hind Samachar Limited v. Union of India and others [2011] 330 ITR ITA No. 292 of 2008 -5- 266 (P&H) to submit that the technical defects would not make the assessment order invalid merely by reason of any mistake, defect or omission, if such return in substance and effect is in conformity with or according to the intent and purpose of the Act.

7. On the other hand, learned counsel for the assessee supported the order passed by the Tribunal. He submitted that the defect in the service of notice was jurisdictional defect which was not curable in terms of Section 292B of the Act. He placed reliance on the following judgments:- I. (1973) 88 ITR 374 (Cal)

II. (2002) 253 ITR 334 (Gau)

III. (1963) 47 ITR 775 (Ker)

IV. (1999) 238 ITR 694 (Cal)

V. (1977) 110 ITR 27 (ALL)

VI. (1983) 139 ITR 73 (P&H)

VII. (1959) 35 ITR 388 (SC)

VIII. (1967) 66 ITR 147 (SC)

IX. (1983) 144 ITR 954 (All)

8. Rebutting the arguments of the revenue relating to Section 292BB of the Act, learned counsel for the assessee submitted that Section 292BB was prospectively effective from 1.4.2008 and had no applicability to the facts of the present case.

9. We have given our thoughtful consideration to the respective submissions of learned counsel for the parties and do not find any merit in the submission of learned counsel for the assessee.

10. Section 292BB of the Act was inserted by Finance Act, ITA No. 292 of 2008 -6- 2008, w.e.f. 1.4.2008. It reads thus : -

"292BB Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was --

(a) not served upon him; or

(b) not served upon him in time; or

(c) served upon him in any improper manner.

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

11. A presumption has been raised under the said provision relating to service of notice upon the assessee in respect of assessment or reassessment proceedings. According to this provision, where an assessee appears in any proceedings or cooperates in any enquiry relating to assessment or reassessment proceedings, it shall be presumed that the assessee has been validly served and it shall not be open to the assessee to object that the notice was not served upon him or was not served in time or was served upon him in an improper ITA No. 292 of 2008 -7- manner. However, an exception to the aforesaid presumption has been made in a case where such objection has been raised before completion of assessment or reassessment. The provision has been made effective from 01.04.2008 and therefore, shall apply to all pending proceedings. The Central Board of Direct Taxes issued circular No. 1 of 2009 dated 27th March, 2009 (2009) 310 ITR (St.) 42 giving explanatory notes on the provisions relating to direct taxes contained in Finance Act, 2008. Clause 42.7 (at page 86 of the report) is relevant which relates to applicability of this provision and reads thus:

"42.7 Applicability - This amendment has been made applicable with effect from 1st April, 2008. This means that the provision of new-section 292BB shall apply in all proceedings which are pending on 1st April, 2008."

12. Further, scope of Section 292B of the Act was considered by this Court in Income Tax Reference No. 15 of 2000 (The Commissioner of Income Tax Amritsar vs. Rajbir Singh Karta of Ch. Kesho Dass (HUF), Pathankot), decided on 06.12.2010, wherein it was observed as under: -

"The Section was inserted whereby no return of income, assessment, notice, summons or other proceeding shall be rendered invalid merely on account of any mistake, defect or omission where the return, assessment, notice, summons or other proceeding in substance and effect are in conformity with or according to the intention and ITA No. 292 of 2008 -8- purpose of the Act. By incorporating this provision, it has been made clear that purely technical objections carrying no substance shall not come in the way of validity of assessment proceedings etc. In other words, minor

defects or irregularities in the circumstances aforesaid, would not negate the validity of the proceedings initiated by the assessing officer and the assessee would not be able to raise technical or venial defects in this regard."

13. It is not disputed that in the return which was filed by the assessee, it was mentioned that the same was filed in response to notice under Section 148 of the Act. No objection regarding valid service of notice under Section 148 of the Act was raised before the assessing officer. Once that is so, the argument of the assessee that there was no valid service of notice under Section 148 of the Act fails. The Tribunal was, thus, in error in concluding otherwise and holding the proceedings to be invalid.

14. Suffice it to notice, that the plethora of judgments on which learned counsel for the assessee had placed reliance, does not advance the case of the assessee as either in those cases, Section 292BB or Section 292B of the Act was not under consideration or it was on individual fact situation involved therein that the cases had been decided.

15. In view of the above, the substantial questions of law are answered in favour of the revenue and against the assessee. The appeals are allowed and the matter is remanded to the Tribunal to ITA No. 292 of 2008 -9- decide the same afresh on merits in accordance with law.

16. The parties through their counsel are directed to appear before the Tribunal on 18.7.2011.

(AJAY KUMAR MITTAL) JUDGE

May 3, 2011 (ADARSH KUMAR GOEL) gbs ACTING CHIEF JUSTICE ITA No. 292 of 2008 -10-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH ITA No. 460 of 2008 Date of Decision: 3.5.2011 The Commissioner of Income Tax, Bathinda ....Appellant. Versus M/s Panchvati Motors (P) Ltd. ...Respondent. CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, ACTING CHIEF JUSTICE HON'BLE MR. JUSTICE AJAY KUMAR MITTAL. PRESENT: Ms. Savita Saxena, Standing Counsel, for the appellant. Mr. K.L. Goyal, Senior Advocate with Mr. Sandeep Goyal, Advocate for the respondent. AJAY KUMAR MITTAL, J. The appeal is allowed. For reasons, see the detailed order of even date recorded in ITA No. 292 of 2008 (The Commissioner of Income Tax, Bathinda v. M/s Panchvati Motors (P) Ltd).

(AJAY KUMAR MITTAL) JUDGE

May 3, 2011 (ADARSH KUMAR GOEL) gbs ACTING CHIEF JUSTICE ITA No. 292 of 2008 -11- ITA No. 292 of 2008 -12-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH ITA No. 461 of 2008 Date of Decision: 3.5.2011 The Commissioner of Income Tax, Bathinda ....Appellant. Versus M/s Panchvati Motors (P) Ltd. ...Respondent. CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, ACTING CHIEF JUSTICE HON'BLE MR. JUSTICE AJAY KUMAR MITTAL. PRESENT: Ms. Savita Saxena, Standing Counsel, for the appellant. Mr. K.L. Goyal, Senior Advocate with Mr. Sandeep Goyal, Advocate for the respondent. AJAY KUMAR MITTAL, J. The appeal is allowed. For reasons, see the detailed order of even date recorded in ITA No. 292 of 2008 (The Commissioner of Income Tax, Bathinda v. M/s Panchvati Motors (P) Ltd).

(AJAY KUMAR MITTAL) JUDGE

May 3, 2011 (ADARSH KUMAR GOEL) gbs ACTING CHIEF JUSTICE ITA No. 292 of 2008 -13- ITA No. 292 of 2008 -14-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH ITA No. 462 of 2008 Date of Decision: 3.5.2011 The Commissioner of Income Tax, Bathinda ....Appellant. Versus M/s Panchvati Motors (P) Ltd. ...Respondent. CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, ACTING CHIEF JUSTICE HON'BLE MR. JUSTICE AJAY KUMAR MITTAL. PRESENT: Ms. Savita Saxena, Standing Counsel, for the appellant. Mr. K.L. Goyal, Senior Advocate with Mr. Sandeep Goyal, Advocate for the respondent. AJAY KUMAR MITTAL, J. The appeal is allowed. For reasons, see the detailed order of even date recorded in ITA No. 292 of 2008 (The Commissioner of Income Tax, Bathinda v. M/s Panchvati Motors (P) Ltd).

(AJAY KUMAR MITTAL) JUDGE

May 3, 2011 (ADARSH KUMAR GOEL) gbs ACTING CHIEF JUSTICE ITA No. 292 of 2008 -15-