

Stating wrong section in reassessment notice won't nullify proceedings if assessee was actively participating in it

Summary – The Bengaluru ITAT in a recent case of K.M. Nagaraj, (the Assessee) held that where assessee was given due opportunity of meeting case made against him and he had actively participated in assessment proceedings, in such circumstances in view of provisions of section 292B, mere mentioning of wrong section, i.e., section 153A, instead of section 153C, would not invalidate assessment proceedings

Facts

- The assessee was an individual deriving income from business. There was search and seizure operation under the provisions of section 132 in the case of 'C' Ltd. During the course of search proceedings, several books of account and incriminating documents were found and seized. Based on said incriminating material, notice under section 153A was issued to the assessee calling upon him to file return of income.
- In response to such notice, the assessee filed return of income declaring certain taxable income. The Assessing Officer completed the assessment making various additions to assessee's income.
- The Commissioner (Appeals) quashed the assessments as it was found that there was no search warrant in the name of the respondent-assessee and, consequently, assessment order passed under section 143(3), read with section 153A was held to be invalid.
- On revenue's appeal:

Held

- The only issue that arises in the present appeal is whether the Commissioner (Appeals) 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 section 153C. It is undisputed fact that there was no search warrant in the name of the assessee. There is no dispute that incriminating material relevant to assessee was found as a result of search and seizure operation in the case of 'C' Ltd. It is clear that the Assessing Officer can assume jurisdiction only under section 153C as no search warrant was issued in the name of the assessee. But the Assessing Officer had mentioned section 153A in the notice issued calling upon the 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 which provides that return of income or notice or summons shall not be invalidated on certain grounds.

- A perusal of above section makes very clear that notices or summons shall not be invalidated by mere 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 *sine qua non* for issuing notice under section 153A 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 assessee but the assessee had responded to the notice issued under section 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 assessee was given due opportunity of meeting the case made against him and in the result there was no prejudice caused to the assessee.
- Furthermore, it is not the case of the assessee that his case even does not fall within the scope and ambit of the provisions of section 153C. The only mistake on the part of the Assessing Officer 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 'C' 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 invalidate the proceedings initiated pursuant thereto.
- In the present case, had the assessee not responded to notice and had raised such grounds of challenge, perhaps it would have been a different case altogether. But assessee having participated in the proceedings assessee cannot be allowed to turn around or raise objections for the first time before the Commissioner (Appeals) seeking invalidation of the proceedings initiated by issuing notice under section 153A instead of 153C.
- The Commissioner (Appeals) had passed the impugned orders blatantly ignoring the provisions of section 292B. Thus, the order of the Commissioner (Appeals) is *per incuriam* as it is passed in ignorance of plain provisions of the Act. The Commissioner (Appeals), therefore, ought not to have allowed the appeal on the ground the assessments were not valid in law. However, the matter is remanded to the file of the Commissioner (Appeals) to adjudicate the matter on merits of the addition.

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