

Error/ mistake in addressing the notice in the name of erstwhile entity not a jurisdictional error but a procedural irregularity and is curable under section 292B

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In brief

In a recent decision,¹ the Delhi High Court (HC) held that the service of notice for initiating re-assessment proceedings on a dissolved company was a technical lapse that could not invalidate re-assessment proceedings, and accordingly, was a curable defect under section 292B of the Income-tax Act, 1961 (the Act).

In detail

Facts

- The taxpayer filed its return of income (ROI) for the financial year (FY) 2009-10, which was processed under section 143(1) of the Act and was not subjected to assessment.
- The taxpayer subsequently converted itself into a Limited Liability Partnership (LLP) from a private limited company.
- The tax officer (TO) had reasons to believe that the income of the taxpayer had escaped assessment, and accordingly, issued a notice initiating re-assessment proceedings under section 148 of the Act in the name and permanent account number (PAN) of the

erstwhile private limited company.

- The TO further noted that there was substantial and affirmative material and evidence on record to show that the issue of notice in the name of the erstwhile private limited company was merely a mistake.
- The TO, rejecting the taxpayer's objections against the initiation of re-assessment proceedings, proceeded to frame the re-assessment order in the hands of the taxpayer.
- Aggrieved at the TO's rejection order, the taxpayer preferred a writ petition before the HC.

Issues before the High Court

- Whether the error or

mistake in issuing re-assessment notice under section 148 of the Act in the name and PAN of the erstwhile private limited company was fatal or protected and shielded under section 292B of the Act?

- Whether "reasons to believe" reflects honest and reasonable opinion formed by the TO and was not mere "reasons to suspect"?

Taxpayer's contentions

- The notice for re-assessment proceedings was addressed and issued in the name and PAN of the erstwhile private limited company, which had ceased to exist and was dissolved and therefore the notice issued to a dead juristic

¹ W.P. (C) 10870 of 2017

person was invalid and void in the eyes of the law.

- Relying on a High Court decision,² it was contended that section 292B of the Act was not applicable as
 - a) issue of notice for reassessment in the name of the taxpayer to be assessed was a jurisdictional pre-condition and
 - b) the TO, after due application of mind, had deliberately issued the notice in the name and PAN of the erstwhile private limited company. Accordingly, it was not an error, mistake or omission on the part of the TO.
- There was lack of live nexus and “reasons to believe” was mere reasons to suspect, which did not establish that income had escaped assessment.

Revenue’s contentions

- Error or mistake in addressing the notice in the name of erstwhile private limited company was not a jurisdictional error but an irregularity and procedural lapse. Thus, the provisions of section 292B of the Act was applicable.
- No prejudice was caused to the taxpayer as re-assessment proceedings were pending and would be decided on merits.
- The “reasons to believe” were

elaborate and detailed, which reflected the honest and objective belief that income had escaped assessment.

High Court’s decision

- The HC noted that the conversion of erstwhile private limited company into a LLP was noticed and mentioned in the tax evasion report, the “reasons to believe” recorded by the TO, the approval taken from the Principal Commissioner and order under section 127 of the Act. Further, the PAN of the LLP was also mentioned in some of these documents.
- The HC had placed reliance on its coordinate bench ruling³ and underlined that the intent and purpose of section 292B of the Act was to ensure that procedural irregularities do not vitiate assessments. The validity of a notice had to be examined from the standpoint as to whether any prejudice was caused to the taxpayer. If no confusion was caused, then the assessment proceedings and their consequent orders could not be vitiated on the said ground of mistake, defect or omission in the summons/ notice.
- The HC noted that in the present case, despite correctly noting the background, the notice for re-assessment was issued in the incorrect name and PAN, which was a human

error and mistake.

- Accordingly, it was held that section 292B of the Act was applicable and it should not nullify the proceedings, which was otherwise valid and no prejudice had been caused to the taxpayer.
- The HC also observed that the reasons to believe recorded by the TO, on the basis of tax evasion report received from the Investigation Wing of the Income-tax Department, clearly established a live link and connect that income had escaped assessment.
- Accordingly, the HC, distinguishing between the “reasons to believe” and “reasons to suspect,” held that the opinion formed by the TO was honest and reasonable in respect of income escaping assessment.

The takeaways

The HC’s decision has outlined that the intent and purpose of section 292B of the Act is to ensure that human errors and mistakes cannot and should not invalidate assessment proceedings that are otherwise valid and where no prejudice has been caused to the taxpayer.

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

² Spice Infotainment Limited v. CIT [2012] 247 CTR 500 (Delhi)

³ CIT v. Jagat Novel Exhibitors (P.) Limited [2013] 356 ITR 559 (Delhi)

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