IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.A. No.231 of 2006 & other connected cases being
ITA Nos.170 to 172 of 2006 (O&M)
Date of decision: 23.7.2010

The Commissioner of Income Tax.

-----Appellant.

Vs.

M/s Arya Cycle Works.

-----Respondent

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present:- Mr. Yogesh Putney, Sr. Standing Cousnel for
Mr. Sukant Gupta, Standing Counsel
for the Revenue.

Mr. Pankaj Jain, Advocate &
Mr. D.K. Goyal, Advocate
for the Assessee.

ADARSH KUMAR GOEL, J.

1. This order will dispose of four appeals being ITA Nos.170 to 172 and 231 of 2006, as all the appeals involve common question of validity of initiation of proceedings for reassessment under Sections 147/148 of the Income Tax Act, 1961 (for short, “the Act”).

2. In I.T.A. No.231 of 2006, the Assessee is a partnership firm. Proceedings were initiated vide notice dated 17.3.1997, for reassessment, which was served on advocate for the Assessee. As a result of reassessment proceedings, higher income was assessed, against which appeal of the Assessee was

partly allowed. On further appeal, the Tribunal set aside the proceedings for initiation of reassessment on the ground that there was defect in the notice in as much as assessment year was not mentioned and service of notice was not on proper person.

3. Following substantial question of law has been claimed on behalf of the Revenue:-

> "Whether on the facts and in the circumstances of the case the Hon'ble ITAT was right in law in cancelling the assessment by holding that the service of notice u/s 148 in which no assessment year has been mentioned, on Authorised Representative of the assessee is not legal and valid inspite of that fact that the assessee filed the return in response to the notice on the very same date and during reassessment proceedings or even before CIT(A), no objections were raised regarding validity of notice or its service?"

4. Contention raised on behalf of the Revenue is that Section 292B of the Act provides that deficiency in a notice and service could not vitiate the proceedings unless prejudice was caused to the Assessee.

5. We have heard learned counsel for the parties.

6. It is well settled that infirmities of procedure do not affect the merits of the determination unless there is jurisdictional error or prejudice is caused. This principle has been legislatively recognised by way of Section 292-B of the Act. This Court

considered this aspect of the matter in ***CIT v. Norton Motors*** [2005] 275 ITR 595 and held:-

> "A reading of the above reproduced provision makes it clear that a mistake, defect or omission in the return of income, assessment, notice, summons or other proceedings is not sufficient to invalidate an action taken by the competent authority, provided that such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the provisions of the Act. To put it differently, section 292B can be relied upon for resisting a challenge to the notice etc., only if there is a technical defect or omission in its. However, there is nothing in the plain language of that section from which it can be inferred that the same can be relied upon for curing a jurisdictional defect in the assessment notice, summons or other proceeding. In other words, if the notice, summons or other proceeding taken by an authority suffers from an inherent lacuna affecting his/its jurisdiction, the same cannot be cured by having resort to Section 292B.

7. Applying the above principles to the present case, it is undisputed that the Assessee filed the return in pursuance to the notice and was, thus, aware of the assessment year to which the notice related and also had the knowledge of the proceedings. In such circumstances, any defect in the notice or the defect of person on whom the notice was served did not cause any prejudice. Accordingly, we answer the substantial question of law

in favour of the revenue and allow this appeal and hold that the notice did not affect the reassessment.

8. Learned counsel for the Assessee points out that additions on merit have not been gone into by the Tribunal.

9. Accordingly, we set aside the impugned order and remand the matter for fresh decision on merits in accordance with law.

10. The parties may appear before the Tribunal for further proceedings on October 04, 2010.

11. A photocopy of this order be placed on the files of each connected case.

(ADARSH KUMAR GOEL)
JUDGE

July 23, 2010 **(AJAY KUMAR MITTAL)**
ashwani **JUDGE**