

**(2009) 10 P&H CK 0009**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Income Tax A. No. 392 of 2009**

Satnam Singh

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision :** 13-10-2009

**Acts Referred:**

Income Tax Act, 1961 — Section 144, 148, 260A

**Citation :** (2011) 333 ITR 342

**Hon'ble Judges :** Gurdev Singh, J;A.K. Goel, J

**Bench :** Division Bench

**Advocate :** S.K. Mukhi, for the Appellant; Vivek Sethi, for the Respondent

**Final Decision :** Allowed

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## Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the assessee u/s 260A of the income tax Act, 1961 (in short, "the Act"), against the order passed by income tax Appellate Tribunal, Amritsar Bench, dated December 30, 2008, in I. T. A. No. 436/ASR/2008, for the assessment year 2000-01, proposing to raise the following substantial questions of law:

Whether, on the facts and circumstances of the case, the Tribunal was justified in setting aside the matter on legal issue of service of notice u/s 148 of the income tax Act, 1961, to the file of the Assessing Officer for reissuing the same and deciding the matter afresh having held the service of the impugned notice as defective by relying upon the judgment of the hon''ble Supreme Court of India which finding of the income tax Appellate Tribunal is perverse, unjustified and illegal as the same leads to extension of time limit for the issuing of notice u/s 148 which having become time barred ?

(ii) Whether, on the facts and circumstances of the case, the Tribunal was justified in setting aside the order of the Commissioner of income tax (Appeals) on the legal issue of defective service of notice u/s 148 of the income tax Act, 1961 to the file of the Assessing Officer for fresh action and thereby directing

him to go through its order once again and thereby allowing him to play a second innings which is against the established principles of law in view of the judgment of this hon'ble court in the case of Commissioner of Income Tax Vs. Kanti Kumar Sharma, ?

(iii) Whether the order of the Tribunal is perverse and against the provisions of law ?

The Assessing Officer issued notice u/s 148 of the Act. Since service could not be effected in a normal course, the same was served by affixation at the last known address, i.e., residential address of the assessee. Thereafter, reassessment was made u/s 144 of the Act and investment of Rs. 7 lakhs in purchase of house by the assessee was treated to be investment from undisclosed sources. On appeal, the Commissioner of income tax (Appeals) accepted the explanation of the assessee, after holding that the reassessment to be valid. The Tribunal held that affixation was not in the presence of two persons and, thus, notice itself was bad. After recording this finding, the matter was remanded to the Assessing Officer for passing a fresh order, after giving opportunity to the assessee, after duly serving him in accordance with law.

2. Learned counsel for the appellant submits that if notice was improper, nothing survived. In any case, there was no occasion to remand the case when the Commissioner of income tax (Appeals) had upheld the plea of the assessee on the merits and the Tribunal did not set aside the said finding. Reliance has been placed upon the judgment of the hon'ble Supreme Court in Commissioner of Income Tax, Kerala Vs. Thayaballi Mulla Jeevaji Kapasi (Decd.) (by his Legal representatives), to submit that the absence of proper notice would vitiate all the proceedings.

3. We called upon the learned standing counsel for the Department Shri Vivek Sethi to respond to the above criticism of the impugned order. He submitted that the defect in service did not vitiate the proceedings. We need not go into this question at this stage. Even if the Tribunal was to hold that the defect in service of notice did not vitiate the proceedings, the Commissioner of income tax (Appeals) having set aside the reassessment on the merits, the Tribunal was required to adjudicate upon the issue on the merits one way or the other. There was no justification for remanding the matter.

4. Thus, the substantial question of law whether the order of remand, without adjudicating upon the issues before the Tribunal could be justified, arises for consideration and has to be decided in favour of the assessee. The impugned order cannot be sustained.

5. Accordingly, this appeal is allowed. The impugned order of the Tribunal is set aside and the matter is remanded for fresh decision in accordance with law. The parties will appear before the Tribunal for further proceedings on December 23, 2009.