

**(1982) 04 MP CK 0006**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Civil Case No. 177 of 1980**

Umashankar Mishra

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

**Date of Decision : 17-04-1982**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 1(3)  
Income Tax Act, 1961 — Section 271(1), 282, 292B

**Citation :** (1982) 29 CTR 71 : (1982) 136 ITR 330 : (1982) 11 TAXMAN 75

**Hon'ble Judges :** K.N. Shukla, J;G.G. Sohani, J

**Bench :** Division Bench

**Advocate :** K.R. Mandovra, for the Appellant; R.C. Mukari, for the Respondent

## **Judgement**

Sohani, J.—By this reference u/s 256(1) of the I.T. Act, 1961 (hereinafter referred to as V the Act"), the Income Tax Appellate Tribunal, Indore Bench, Indore, has referred the following questions of law to this court for its opinion :

"(1) Whether, on the facts and in law, the Tribunal was right in holding that the show-cause notice issued u/s 271(1)(a), though unsigned, is a valid notice in the eye of law ?

(2) Whether the Tribunal was right in holding that the absence of signature on the notice simply constitutes a mistake or omission within the meaning of Section 292B of the Income Tax Act ?

(3) Whether, on the facts and in the circumstances of the case, the penalty levied u/s 271(1)(a) is valid in law ?"

2. The material facts giving rise to this reference, as set out in the statement of the case, are as follows :

3. The assessee is a partner of a firm carrying on business in the name and style of M/s. Umashankar Mishra. For the assessment year 1972-73, the return of income was filed by the assessee on February 10, 1976, and for the assessment

year 1973-74, the return of income was filed by the assessee on March 10, 1976. On account of delay in filing the return a notice was issued by the ITO to the assessee on March 26, 1976, to show cause why penalty be not imposed on the assessee u/s 271(1)(a) of the x Act. No cause was shown by the assessee. The ITO, by an order dated February 16, 1978, held that he was satisfied that the assessee had, without reasonable cause, failed to furnish a return within time and the provisions of Section 271(1)(a) of the Act were attracted. The ITO, accordingly, levied penalty on the assessee. Aggrieved by those orders, the assessee preferred appeals before the AAC. It was urged on behalf of the assessee before the AAC that the notice issued for showing cause why penalty should not be levied was not signed by the ITO. The AAC held that the notice served on the assessee bore the despatch number and the seal of the ITO. In these circumstances, the AAC held that the provisions of Section 292B of the Act were attracted and the notice could not be held to be invalid. On merits, the AAC found that there was no cause for interference with the order of the ITO levying penalty. The appeals preferred by the assessee were accordingly dismissed. On further appeals by the assessee, the Tribunal held that there was a clear unintentional mistake on the part of the ITO in not putting his signature on the notice issued to the assessee and that the provisions of Section 292B of the Act were attracted. On the question of quantum of penalty, the Tribunal, however, partly gave relief to the assessee and thus partly allowed the appeals. Aggrieved by the order of Tribunal, the assessee sought a reference and it is at the instance of the assessee that the aforesaid questions of law have been referred to this court for its opinion.

4. The first question for consideration is whether the Tribunal was right in holding that the notice issued to the assessee u/s 271(1)(a) of the Act was a valid notice. Now, the Tribunal has found that that notice was not signed by the ITO. Section 282 of the Act provides that a notice under the Act may be served on the person named therein as if it were a summons issued by a court under the Code of Civil Procedure, 1908. Sub-rule (3) of Rule 1 of Order 5, CPC, provides that every summons shall be signed by the judge or such officer, as he appoints. In view of this provision, it must be held that the notice to show cause why penalty should not be levied issued by the ITO should have been signed by the ITO and the omission to do so invalidated the notice. In *B. K. GOOYEE Vs. COMMISSIONER OF Income Tax, WEST BENGAL.*, the question for consideration was whether the absence of the signature of the ITO on the notice u/s 34 of the Indian I.T. Act, 1922, was a mere irregularity or a clerical mistake. Dealing with this question, Datta J. Observed as follows (p. 119):

"In the present case, there was more than a mere irregularity or a clerical mistake, for, in my view, a notice without the signature lacks an essential and/or an integral and/or an inseparable vital part or requirement of a notice u/s 34, a notice the terms of which are a condition precedent to the assumption of jurisdiction by the Income Tax Officer. "It is notice with a body but without a soul. Hence, it is an invalid notice and consequently, equivalent to no notice."

5. We respectfully agree with the aforesaid observations. The Tribunal distinguished the decision in B. K. GOOYEE Vs. COMMISSIONER OF Income Tax, WEST BENGAL., on the ground that the provisions of Section 292B of the Act were introduced after that decision. But, that provision, in our opinion, is intended to ensure that an inconsequential technicality does not defeat justice. But, the signing of a notice u/s 271(1)(a) of the Act is not merely an inconsequential technicality. It is a requirement of the provisions of Order 5, Rule 1(3) of the CPC, which are applicable by virtue of Section 282 of the Act. Under the circumstances, the provisions of Section 292B of the Act would not be attracted in the instant case and the Tribunal in our opinion, was not right in holding that the notice issued u/s 271(1)(a) of the Act was a valid notice in the eye of law.

6. In view of our answer to the first question, our answer to the second question is that the Tribunal was not right in holding that the absence of the signature on the notice simply constituted a mistake or omission within the meaning of Section 292B of the Act.

7. In view of the fact that no valid notice was served on the assessee before levying penalty, our answer to the third question is that, on the facts and in the circumstances of the case, the penalty levied u/s 271(1)(a) of the Act was not valid. Thus, our answers to all the three questions referred to this court are in the negative and in favour of the assessee.

8. Reference answered accordingly.

9. In the circumstances of the case, parties shall bear their own costs of this reference.