IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 18 of 2008 (O&M)

Date of Decision: 11.04.2016

Commissioner of Income Tax-II, Amritsar

.......Appellant

Versus

Sh. Gautam Aggarwal

......Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Denesh Goyal, Advocate
for the appellant.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Alok Mittal, Advocate
for the respondent.

<u>RAJESH BINDAL,J.</u>

This appeal has been filed under Section 260 A of the Income Tax Act, 1961 (for short 'the Act'), against the order dated 11.5.2007 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, in ITA No. 220(ASR/2006), for the assessment year 1998-99, raising the following substantial questions of law:

> (i) Whether on the facts and circumstances of the case, the Tribunal has erred in law in setting aside the notice issued under section 148 of the Income Tax Act merely on the ground that since the 'reasons' mentioned a wrong name though addressed in the correct name and address and correctly containing facts and particulars concerning the assessee to whom the notice was intended to be issued and by not considering the same to be a mistake and defect

within the scope of section 292B of the Income Tax Act, 1961?

(ii) Whether on the facts and circumstances of the case, the Tribunal has erred in concluding that the reasons recorded did not pertain to the assessee, whose assessment was sought to be reopened though the reasons recorded by the AO on 29.9.2003 were mentioning the correct name and correct particulars and it was only the subsequent para which contained the typographical mistake regarding the name of the assessee?

(iii) Whether on the facts and circumstances of the case, the finding returned by the Tribunal is perverse as the Tribunal has proceeded on the assumption that the reasons recorded for reopening the assessment did not pertain to the assessee though factually the reasons recorded for the reopening the assessment were not only containing the correct name and particulars but also the reasons had been given to the assessee on 17.3.2005 prior to the completion of the assessment?

(iv) Whether on the facts and circumstances of the case, the ITAT has erred in concluding that the defect/mistake in the reasons was not curable under section 292B on the Income Tax Act?

Learned counsel for the appellant-revenue submitted that in view of circular No.21/2015 dated 10.12.2015 read with circular No.279/Misc/M-142/2007-ITJ (Part) dated 8.3.2016, issued by Central Board of Direct Taxes, he does not wish to press the present appeal, as the tax effect involved is less than ₹ 20 lacs. However, he prays that liberty be granted to the revenue to file an application for revival of the appeal in case something survives therein.

Dismissed as not pressed with liberty as prayed for. It is however, clarified that withdrawal of the appeal by the revenue shall not be taken as affirmation of order of the Tribunal on merits. The legal issue as claimed by the revenue is left open to be adjudicated in an appropriate case.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

11.04.2016
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