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**(2009) 07 P&H CK 0072**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Commissioner of Income Tax

APPELLANT

Vs

Cebon India Ltd.

RESPONDENT

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**Date of Decision:** July 7, 2009

**Acts Referred:**

- Income Tax Act, 1961 - Section 143, 144, 260A, 292BB

**Citation:** (2010) 229 CTR 188 : (2012) 347 ITR 583 : (2009) 184 TAXMAN 290

**Hon'ble Judges:** Daya Chaudhary, J; A.K. Goel, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Adarsh Kumar Goel, J.

The revenue has preferred this appeal u/s 260A of the Income Tax Act, 1961 ("the Act") against the order dated 27-6-2008 passed by the Income Tax Appellate Tribunal, Delhi Bench "I", New Delhi in ITA No. 4531/DEL/2005 for the assessment year 1996-97, proposing to raise following substantial questions of law:

(1) Whether on the facts and in the circumstances of the case, the Ld. ITAT is right in law in holding that there was no valid service of notice u/s 143(2) before the due date even though the Assessing Officer had issued the notice u/s 143(2) on 11/13-11-1997 vide dispatch No. 2640 and subsequently, the assessee participated in the proceedings?

(2) Without prejudice to above, whether the Tribunal is right in not treating the defect if any in service of notice u/s 143(2) as an irregularity curable u/s 292BB of the Income Tax Act, 1961 ?

2. The assessee filed return for the assessment year in question on 30-11 -1996, which was processed u/s 143(1)(a) on 30-5-1997. Thereafter, assessment was framed

u/s 144 of the Act, which was affirmed in appeal. The Tribunal, however, remanded the matter to CIT(A). The CIT(A), in the second round, allowed the appeal on the ground that there was no evidence to show that notice u/s 143(2) of the Act had been served on the assessee before 30-11-1997, i.e., within one year of the filing of the return. It was accordingly held by the CIT(A) that the assessment was void.

3. The finding of the CIT(A) has been affirmed by the Tribunal.

4. Learned Counsel for the revenue submits that a notice has been duly dispatched to the assessee on 13-11-1997 and the irregularity or defect in issuing notice was curable u/s 292BB of the Act.

5. We find that concurrent finding has been recorded by the CIT(A) as well as the Tribunal on the question of date of service of notice. Notice was not served within the stipulated time. Mere giving of dispatch number will not render the said finding to be perverse. In absence of notice being served, the Assessing Officer had no jurisdiction to make assessment. Absence of notice cannot be held to be curable u/s 292BB of the Act.

6. In view of above, no substantial question of law arises.

7. The appeal is dismissed.