

**IN THE HIGH COURT FOR THE STATE OF TELANGANA:
HYDERABAD**

*** * ***

**Writ Petition Nos.18098, 14302, 14331, 19083, 20301, 20925,
20935, 21181, 21805, 21949 and 22543 of 2022**

Between:

Kalyan Chillara, S/o.Kotaiah Naidu.

Petitioner

VERSUS

Deputy Commissioner of Income Tax,
Central Circle – 1 (3), Hyderabad and others.

Respondents

COMMON ORDER PRONOUNCED ON: 14.06.2024

**THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

+ Writ Petition Nos.18098, 14302, 14331, 19083, 20301, 20925, 20935, 21181, 21805, 21949 and 22543 of 2022

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Respondents

! Counsel for Petitioner(s) : Mr.Dunddu Manmohan, learned counsel for the petitioners in W.P.Nos.18098, 14302, 14331, 20301 and 21181 of 2022;
Mr.Y. Ratnakar, learned Senior Counsel, in W.P.Nos.20925 & 20935 of 2022;
Mr.Shaik Jeelani Basha, learned counsel for the petitioner in W.P.No.21805 of 2022;
Mr.A.V.A. Siva Kartikeya, learned counsel for the petitioner in WP.No.19083 of 2022; and
Mr. Cuddapah Nanda Gopal, learned counsel for the petitioners in WP.No.21949 & 22543 of 2022.

^Counsel for the Respondent(s) : Mr.J.V. Prasad, learned Senior Standing Counsel for Income Tax, for the respondents.

<GIST:

> HEAD NOTE:

? Cases referred

1. (2022) 444 I.T.R. 1 (S.C.)
2. 1987 (166) I.T.R. 163
3. 2017 (392) I.T.R. 571 (D.B.)
4. [2022] 445 I.T.R. 651 (Mad)
5. 2011 (334) I.T.R. 25 (D.B.)
6. [2022] 449 I.T.R. 517 (Del.)
7. [2022] 446 I.T.R. 201 (Mad)
8. [2022] 444 I.T.R. 41 (All.)
9. (2022) 444 I.T.R. 329 (M.P.)

THE HONOURABLE SRI JUSTICE P. SAM KOSHY

AND

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

**Writ Petition Nos.18098, 14302, 14331, 19083, 20301, 20925,
20935, 21181, 21805, 21949 and 22543 of 2022**

COMMON ORDER : *(Per the Hon'ble Sri Justice P. Sam Koshy)*

The instant batch of writ petitions is filed by the petitioners under Article 226 of the Constitution of India challenging the issuance of notice under Section 148 of the Income Tax Act, 1961 by the respondent-Department. Though the challenge in all these writ petitions are on various grounds, both on maintainability as also on the merits, however one preliminary objection which runs through all these batch of writ petitions is the objection of, the notice being barred by limitation under the provisions of the Income Tax Act, 1961 (**for short, 'the Act'**).

2. In all these writ petitions, admittedly the last date for service of notice and initiating proceedings under Section 148 of the Act was coming to an end on 31.03.2021. In majority of the cases, the notice under challenge in the instant writ petitions is dated 31.03.2021, however the notices have been issued from the office of the respondent-Department either on 01.04.2021 or on subsequent dates.

This is the bone of contention as regards whether the notice which is issued itself on or after 01.04.2021 would be hit on the grounds of limitation. Since the issue is common in all these writ petitions, this Court is not referring to the actual dates in each of the notices.

3. Heard Mr.Dunddu Manmohan, learned counsel for petitioners in W.P.Nos.18098, 14302, 14331, 20301 and 21181 of 2022; Mr.Y. Ratnakar, learned Senior Counsel, appearing for petitioners in W.P.Nos.20925 and 20935 of 2022; Mr.Shaik Jeelani Basha, learned counsel for petitioner in W.P.No.21805 of 2022; Mr.A.V.A. Siva Kartikeya, learned counsel for the petitioner in W.P.No.19083 of 2022; Mr. Vivek Reddy, learned Senior Counsel appearing on behalf of Mr. Cuddapah Nanda Gopal, learned counsel for petitioners in W.P.Nos.21949 & 22543 of 2022; and Mr. J.V. Prasad, learned Senior Standing Counsel for Income Tax, for the respondents.

4. The real issue to be decided is *whether* it was legal, justified and proper on the part of respondents in mere preparation of the notice under Section 148 of the Act on 31.03.2021 and forwarding the same for dispatch is sufficient to meet the requirement under Sections 148 and 149 or not. In other words, without proper effective dispatch and service of notice as is required under Sections 148 and 149 of the Act on or before 31.03.2021, whether the impugned notices in these batch

of writ petitions would be sustainable or not. Alternatively, it is also the case where it needs to be decided as to whether though the notice is dated 31.03.2021, but the dispatch being made on 01.04.2021 or thereafter from the I.T.B.A. portal would be sufficient so far as meeting the period of limitation as is prescribed under Sections 148 and 149 of the Act.

5. It was predominantly contended by almost all the counsel for the petitioners that under the unamended provisions, a notice under Section 148 by the jurisdictional officer had to be issued and served on or before 31.03.2021. However, in case if the service of notice has been done beyond 31.03.2021, i.e., on or after 01.04.2021, in terms of the decision of the Hon'ble Apex Court in the case of **Union of India and others vs. Ashish Agarwal**¹, it should be the amended provision which would come into force and for this reason, the impugned notice in all these writ petitions would not be sustainable. Nonetheless, the primary contention was that since in all these batch of writ petitions, the notice under Section 148 being issued beyond 31.03.2021 by the respondent-Department itself, as would be evident from the documents available with the respondent-Department, whether these impugned notices are liable to be vitiated holding them to be hit by limitation.

¹ (2022) 444 I.T.R. 1 (S.C.)

6. Learned counsel for the petitioners highlighted the aspect that the documents / records maintained by the respondent-Department would clearly depict the actual date of dispatch and the date of service. In a few cases there is a discrepancy which is reflected so far as the date of dispatch and the date of service mentioned in the other pages of the portal. According to the learned counsel for the petitioners, it is the bounden duty of the respondents to mandatorily maintain a record of the date on which the dispatch was made and also the date of service of the notice in the portal so that the same is easily available with the respondents, as these notices are mostly sent by e-mail which easily reflects the time of dispatch and the date and time of delivery. The page in the portal would easily reflect the date and time at the originator's place and the date and time at the recipient's end. In case if the respondent is unable to produce records in this regard, the contention of the respondents of treating the notice dated 31.03.2021 as proper service of notice is not to be accepted as 'gospel truth'.

7. Though there are other grounds also raised and highlighted by the learned counsel for the petitioners, we confine ourselves in deciding this batch of writ petitions on the preliminary objection of limitation first. In case if the ground of limitation raised by the petitioners would sustain, there would not be any necessity for taking

up the other grounds and issues as the entire notices and the proceedings initiated under Section 148 would stand collapsed on the ground of limitation.

8. On the other hand, learned Senior Standing Counsel for Income Tax, appearing on behalf of the respondents, contended that for all practical purposes the notices under Section 148 of the Act, the date mentioned on it should be taken as the date of issuance of the notice. It was his further contention that earlier there was a system in the respondent-Department where after the notices were prepared and signed it was sent for the dispatch which was to be sent by post and therefore if any delay occurs it would be the date of dispatch which is important. However, now because of the technological developments notices are being sent electronically, the question of physical dispatch no longer survives and that immediately after the Assessing Officer signs the notice under Section 148 of the Act it is sent to the I.T.B.A. Section which is authorized to send the mails.

9. According to learned Senior Standing Counsel for the respondents, it so happens that since there are large number of notices in the pipeline with the I.T.B.A. Department and which they send it by mail, but because of the reason that there is too much pressure upon the said Department, the notices are normally delayed

more because of the network problem and not for any lapse or lacking on the part of the respondent-Department. Hence, principally and technically, it has to be presumed that dispatch has been made but for the technicalities that arise because of the system and not because of the fault or lacking on the part of the authorities.

10. In support of his contention, the learned Senior Standing Counsel for the respondents, heavily relied on the judgment of the Hon'ble Apex Court in the case of **R.K. Upadhyaya vs. Shanabhai P. Patel**², contending that Section 149 of the Act refers to “notice” whereas Section 148 refers to the “service of notice”, and as long as there is an effective issuance of notice before the period of limitation under Section 149, the service of notice loses importance and such a notice so issued within the period of limitation cannot be interdicted only on the ground of service being made effective beyond a period of limitation.

11. He further relied on the decision of the High Court of Gujarat in **Rajesh Sunderdas Vaswani vs. C.P. Meena – Deputy Commissioner of Income Tax & 5 others**³, wherein the Division Bench held that once when the notice is handed over to post-office, it goes irretrievably out of the hands of the Assessing Officer and merely because there is

² 1987 (166) I.T.R. 163

³ 2017 (392) I.T.R. 571 (D.B.)

delay at the behest of the postal authorities, the date of issuance would not get postponed.

12. Likewise, reliance was also placed by the learned Senior Standing Counsel for the respondents on a judgment rendered by the Madras High Court in the case of **Malavika Enterprises vs. Central Board of Direct Taxes and others**⁴, wherein the Madras High Court also took the stand that date of issuance of notice is what matters and not the date of service.

13. Further, the learned Senior Standing Counsel for the respondents placed reliance on the judgment of the High Court of Gujarat in the case of **Kanubhai M. Patel vs. Hiren Bhatt**⁵, contending that the moment the signature is appended on the notice under Section 148 by the Assessing Officer and forwards the file, it is officially put into circulation and that the concerned officer, i.e., the Assessing Officer loses control over such notice and therefore it has to be assumed that the date which is reflected on the notice is the date of issuance also.

14. Even relying upon the judgment which is being relied upon by the learned counsel for the petitioners also, i.e., the decision of the Delhi High Court in the case of **Suman Jeet Agarwal vs. Income-Tax**

⁴ [2022] 445 I.T.R. 651 (Mad)

⁵ 2011 (334) I.T.R. 25 (D.B.)

Officer and others⁶, the learned Senior Standing Counsel for the respondents contended that the moment the Assessing Officer puts his signature on the notice generated, the officer as such loses control over the said notice and it goes further down to the I.T.B.A. portal for dispatch which is equivalent to the role of a postal department, and therefore, the act of generation of notice if it is within limitation would also amount to issuance of notice within the time limit.

15. According to the learned Senior Standing Counsel for the respondent-Department, the I.T.B.A. portal is to be equated with that of the postal department. Once the notice generated by the Assessing Officer reaches the I.T.B.A. Section, the Assessing Officer loses control over the notice so generated. Thereafter it goes into the queue where the technicians issue the notices in seriatim which often takes some time. Therefore, the time when the Assessing Officer has put his signature to the notice it has to be treated as 'issued'.

16. Upon hearing the learned counsel for the petitioners and also the learned Senior Standing Counsel for the respondents, we went through certain records which were produced before us and some of which were part of the pleadings. Though there were some discrepancies reflected in the screen-shots taken from the portal pages, but on actual verification of the records which has come before

⁶ [2022] 449 I.T.R. 517 (Del.)

us and which clearly indicate that the notices have been issued in all these writ petitions (not served) itself on 01.04.2021 or on a later date. The question of service of these notices and the date of service of notices upon the petitioners is of no relevance or consequence in all these writ petitions, as the notices itself have been dispatched from the office of the I.T. Department on or before 01.04.2021 which itself is beyond the period of limitation.

17. It is relevant at this juncture to note that upon coming into force of the Finance Act, 2021, certain amendments were brought to the Income Tax Act, 1961 wherein Section 148 stood substituted with Section 148A by the Finance Act, 2021 w.e.f. 01.04.2021. In the landmark decision of the Hon'ble Apex Court in the case of **Ashish Agarwal** (supra) which has also been followed by practically every High Court in the country, held that for any notice of re-assessment on or after 01.04.2021 it would be the new amended law which would be governing the field, as the un-amended provisions were valid only till 31.03.2021.

18. We leave that issue for the time being there itself.

19. It is necessary at this juncture to refer to the decision of the Madras High Court in the case of **Smt. Parveen Amin Bhathara vs.**

Income-Tax Officer⁷, wherein the learned Division Bench at paragraph No.12, after dealing with certain judicial precedents on the issue, has held as under, viz.,

“12.

Thus, the expression 'to issue' in the context of issuance of notices, writs and process, has been attributed the meaning, to send out; to place in the hands of the proper officer for service. The expression "shall be issued" as used in section 149 would therefore have to be read in the aforesaid context. In the present case, the impugned notices have been signed on 31.03.2010, whereas the same were sent to the speed post centre for booking only on 07.04.2010. Considering the definition of the word issue, it is apparent that merely signing the notices on 31.03.2010, cannot be equated with issuance of notice as contemplated under Section 149 of the Act. The date of issue would be the date on which the same were handed over for service to the proper officer which in the facts of the present case would be the date on which the said notices were actually handed over to the post office for the purpose of booking for the purpose of effecting service on the petitioners. Till the point of time the envelopes are properly stamped with adequate value of postal stamps, it cannot be stated that the process of issue is complete. In the facts of the present case, the impugned notices having been sent for booking to the speed post centre only on 07.04.2010, the date of issue of the said notices <https://www.mhc.tn.gov.in/judis> would be 07.04.2010 and not 31.03.2010, as contended on behalf of the revenue. In the circumstances, impugned the notices under Section 148 in relation to assessment year 2003-04, having been issued on

⁷ [2022] 446 I.T.R. 201 (Mad)

07.04.2010, which is clearly beyond the period of six years from the end of the relevant assessment year, are clearly barred by limitation and as such, cannot be sustained."

Thus, it is apparent from the aforesaid decisions that the issuance of notice under section 149 is complete only when the same is issued in the manner as prescribed under section 282 r/w rule 127 of the Income Tax Rules prescribing the mode of service of notice under the Act. The signing of notice would not amount to issuance of notice as contemplated under section 149 of the Act. In other words, the requirement of issuance of notice under section 149 is not mere signing of the notice under section 148, but is sent to the proper person within the end of the relevant assessment year."

20. Similar stand has also been taken by a Division Bench of the Allahabad High Court in the case of **Daujee Abhushan Bhandar Pvt. Ltd. vs. Union of India and others**⁸. The Division Bench, while dealing with the provisions of the Information Technology Act, 2000 at paragraph Nos.18, 19 and 20, held as under, viz.,

"18. Since Section 149 of the Act 1961 requires notice to be issued by Income Tax Authority, therefore, in terms of sub Section (1) of Section 282 A it has to be signed by that authority and to be issued in paper form or communicated in electronic form by that authority in accordance with procedure prescribed.

19. The communication in electronic form has been prescribed in Rule 127 A of the Rules 1962 which provides a procedure for issuance of every notice or other document and the e-mail in

⁸ [2022] 444 I.T.R. 41 (All.)

electronic form/electronic mail which has to be issued from the designated e-mail address of such income tax authority.

20. Thus, after digitally signing the notice the income tax authority has to issue it to the assessee either in paper form or through electronic mail. Sub-Section (1) of Section 13 of the Act 2000 provides that dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator. The aforesaid sub Section (1) of Section 13 indicates the point of time of issuance of notice. Therefore, after a notice is digitally signed and when it is entered by the income tax authority in computer resource outside his control i.e. the control of the originator then that point of time would be the time of issuance of notice.”

21. Further, a Division Bench of the Madhya Pradesh High Court in the case of **Yuvraj vs. Income-Tax Officer and others**⁹ held at paragraph Nos.4 to 7 as under, viz.,

“4. The aforesaid newly inserted section 148-A now specifically provides for issuance of a notice if the Assessing Officer takes a decision to initiate re- assessment and therefore, a procedure has been laid down under section 148-A which is required to be adhered to by the Assessing Officer after 1/04/2021 i.e. the date on which the Finance Act, 2021 came into force.

5. The counsel for the parties were heard and during the course of hearing, the counsel for respondent/revenue Shri Sanjay Lal produced a letter dated 24/02/2022 bearing no. 1002 issued by Income Tax Officer - 3 (1) of Bhopal which was addressed to the counsel for the revenue and in the said letter it was stated that

⁹ (2022) 444 I.T.R. 329 (M.P.)

though in the notice which was issued to the petitioner herein, the date was mentioned as 31/03/2021 but, the system of the office of the respondents revealed that the Email to the petitioner was in fact sent on 16/04/2021. Thus, the counsel for respondent does not dispute that the notice which is impugned in the petition contained in Annexure P/1 in fact was issued on 16/04/2021 though the date on the same was mentioned as 31/03/2021 but was issued later on 6/04/2021.

6. In view of the aforesaid letter so produced before us dated 24/02/2022 and in view of the admission by the counsel for respondents, we have no hesitation to hold that the impugned notice is bad in the eye of law, contained in Annexure P/1 dated 31/03/2021 (received by the petitioner on 16/04/2021 through Email) inasmuch as after 1/04/2021, it is mandatory requirement that prior to re-assessment proceedings notice under section 148-A of Income Tax Act, 1961 should be issued to assessee. Since now in view of the admission by the respondents the other reliefs as sought for by the petitioner in the relief clause have become redundant inasmuch as now there is no dispute about the date of issuance of the impugned notice.

7. Accordingly, the impugned notice dated 31/03/2021 (served through Email to the petitioner on 16/04/2021) stands quashed. However, it is left open for the respondents to take recourse to the procedure laid down in newly enacted section 148-A of the Income Tax Act, 1961 if it is required under the law.”

22. Recently, a Division Bench of the Delhi High Court also endorsing the view taken by the Allahabad High Court as well as the Madhya Pradesh High Court (supra), in the case of **Suman Jeet**

Agarwal (supra), has elaborately dealt with the said issue and held as under, viz.,

“16.1. The expression "issued" has been judicially interpreted by the courts as framing of the order and taking necessary action to despatch the same. Therefore, mere generation of notice on the Income Tax Business Application portal does not satisfy the test of "issue" without proving that the same has been despatched within the time barring period. (Delhi Development Authority v. H. C. Khurana (1993) 3 SCC 196).

16.2. Even though the service of notice is not relevant, however, for determining if a notice has been validly issued, the notice should be sent forth and go beyond the control of the authority issuing the same, to conclude that it has been issued. (Kanubhai M. Patel (HUF) v. Hiren Bhatt or his successors to office [2011] 334 ITR 25 (Guj)).

16.3. The provisions of section 149 of the Act of 1961, does not contain the expression "Assessing Officer". Therefore, no distinction can be made between the "Assessing Officer" and "Income Tax Business Application portal" under section 149 of the Act of 1961. The time taken by the Income Tax Business Application software for triggering of e-mail is attributable to the Assessing Officer and since admittedly the impugned notices were despatched on April 1, 2021, or thereafter, the same are time barred.

16.4. The E-verification Scheme, 2021 issued by Central Board of Direct Taxes vide Notification bearing No. 137 of 2021, dated December 13, 2021 ([2022] 440 ITR (St.) 9) in paras 6, 9 and 11, states that affixation of digital signature certificate in e-proceedings

is a mandatory requirement. In the absence of digital signature certificate, the impugned notices would be null and void.

16.5. The circular bearing No. 19 of 2019, dated August 14, 2019 ([2019] 416 ITR (St.) 140), issued by Central Board of Direct Taxes mentions that the allotment of a document identification number to the notice is a mandatory requirement prescribed by the aforesaid circular only to maintain the audit trail of the documents issued by the Department and to provide transparency in the process. The allotment of document identification number to the notice does not amount to issuance as sought to be contended by the Department in these proceedings.

16.6. Since the impugned notices have been issued in an electronic form, the provisions of section 2(1)(t), section 3, section 13, section 66A of the Act of 2000 would be relevant as the same govern electronic communication. In the present case, as per section 13 of the Act of 2000, the Income Tax Business Application system should be considered as the "originator". Therefore, the despatch of electronic record would occur only when the same enters a computer resource outside the control of the Income Tax Business Application and only after such despatch would the notice be deemed to have been issued.

16.7. The e-filing portal as viewed by the assessee clearly highlights the fact that there is a system in place for duly displaying the date on which the notice is "issued" by the jurisdictional Assessing Officer. However, for the impugned notices under consideration, the date of issuance is conspicuously not mentioned on any of the assessee's accounts on the e-filing portal. Illustratively the screen shot for PAN AAFCA 9047H is extracted below :

Notice/Communication Reference ID : 100036566022		
Notice u/s.	Income Tax Business Application/AST/F/17/202122 /1034161151(1) Document reference ID	Description : (Income Tax Business Application) Issue letter Submit Response
	Notice/Letter PDF	
Issued on : 13-Jul-2021		
	Seek/View Adjournment	
Notice/Communication Reference ID : 100033602029		
148 Notice u/s.	Income Tax Business Application/AST/S/148/2020-21 /1032044808(1) Document reference ID	Description : (Income Tax Business Application) Notice u/s. 148 View response of Income-tax Act, 1961.
	Notice/Letter PDF	
Issued on :		
	Seek/View Adjournment	

16.8. A conjoint reading of the relevant provisions of the Act of 1961 and Act of 2000, leads to the inescapable conclusion that for the notice to be validly "issued" it has to be digitally signed and should be out of the control of the originator for satisfying the test of "shall be issued" under section 149 of the Act of 1961.

16.9. The mere generation of notice on the Income Tax Business Application screen and signing the same is not sufficient for satisfying the test of "issued" and it is only when the notice has been despatched in terms of section 13 of the Act of 2000, would the same be declared to be issued. In this regard reliance has been placed on the judgment of the Supreme Court in Union of India v. G. S. Chatha Rice Mills (2021) 2 SCC 209, wherein the Supreme Court has held that a notification would be in effect from the time and date on which it was uploaded on the e-gazette and not the date mentioned in the notification."

... ..

17.1. The details of the date and time of despatch of the impugned notices by the Income Tax Business Application servers are available with the respondent. In the case of *Santosh Krishna HUF v. Union of India [2022] 449 ITR 457 (All)*, bearing Writ Tax No. 211 of 2022 and *Mohan Lal Santwani v. Union of India [2022] 449 ITR 476 (All)* bearing Writ Tax No. 569 of 2022, the Department provided the Allahabad High Court with the details of : (1) generation of notice ; (2) digital signing by the jurisdictional Assessing Officer, and (3) triggering of e-mail to the assessee. Further, the Allahabad High Court in *Mohan Lal Santwani (supra)* has directed that the date and time of triggering e-mail should be reflected in the e-filing portal accessed by the assessee. Therefore, in the present cases, the aforesaid information, even though available is being withheld by the respondents.

17.2. In the writ petitions, wherein the e-mail was triggered by the Income Tax Business Application servers before March 31, 2021, the respondents have readily furnished the said information in their counter affidavits as is evidenced by the counter filed in W. P. (C) No. 3038 of 2022, titled as *Sant Sandesh Media and Communication P. Ltd. v. ITO*. However, in the petitions where the e-mail was triggered on April 1, 2021, or thereafter, the said information has been withheld and an untenable submission has been made by the respondents, that the notice is deemed to have been issued on mere generation of the notice on the Income Tax Business Application screen.

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18.1. As per section 148 of the Act of 1961, valid issuance of notice is a jurisdictional requirement not just a mere procedural requirement. There is a heavy onus on the Department to provide the date on which the impugned notices have been posted or the date and time

on which the e- mail was sent from the e-mail ID of the jurisdictional Assessing Officer. (CIT v. Chetan Gupta [2016] 382 ITR 613 (Delhi)).

18.2. All impugned notices sent by e-mail have been issued from the designated e-mail address of the jurisdictional Assessing Officers, therefore, to allege that the triggering of e-mail by the Income Tax Business Application is separate from the jurisdictional Assessing Officer is factually incorrect. The process of triggering e-mail by the Income Tax Business Application software system is for and on behalf of the jurisdictional Assessing Officer and therefore, attributable to the jurisdictional Assessing Officer.

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9.1. The screenshot annexed as annexure P-5 in W. P. (C) No. 4567 of 2022 shows that each notice in addition to a document identification number, also contains a communication reference ID ("CRI"). The communication reference ID is generated by the Income Tax Business Application portal to record the date of the issuance of the notice. Although the communication reference ID for the impugned notices issued under section 148 of the Act of 1961, is displayed on the e-filing portal, the date of issuance is conspicuously absent.

Notice/Communication Reference ID : 100040446529		
142(2) Notice u/s.	Income Tax Business Application/AST/F/142(1)/2021-22/1037155946 (1) Document reference ID	Description : (Income Tax Business Application) notice u/s. 142 View response of Income-tax Act 1961.
	Notice/Letter PDF	
Issued on : 23-Nov-2021		
Response due date : 8-Dec-2021	Seek/View Adjournment	

Notice/ Communication Reference ID : 100033640093		
148 Notice u/s.	Income Tax Business Application/AST/S/148/2020- 21/1032078906(1) Document reference ID	Description : (Income Tax Business Application) notice u/s. 148 Submit response of Income-tax Act 1961.
	Issued on :	
	Seek/View Adjournment	

19.2. Per contra, another screenshot annexed as annexure P-3 in the same writ petition, shows that in the case of other notices issued subsequently in 2021, to the same assessee, the date of issuance is duly mentioned along with the communication reference ID on the e-filing portal. Relevant portion of the screen shot is extracted hereinbelow :

19.3. The date of issuance has been selectively withheld only with respect to the impugned notices, as providing the information would make it evident that the date of issuance even as per the Income Tax Business Application software system is April 1, 2021, or thereafter, as the software is also programmed to record the date of issuance as the date of despatch.

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20.2. While referring to correspondence in the digitized world, the word "issued" has been replaced with the word "communicated" in section 282A of the Act of 1961. Therefore, when a notice is in paper form, it has to leave the office of the concerned Authority for despatch to constitute a valid issuance. However, in digital form, the communication is instant and therefore, merely putting the notice into transmission cannot be deemed to be communication. To constitute a valid communication the notice has to be effectively sent out by the concerned authority to the assessee.

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21.4. To demonstrate the aforesaid, annexure R-2 annexed with the Department's counter affidavit in W. P. (C) No. 856 of 2022 can be perused, which is the screenshot of the Income Tax Business Application screen of the assessee as visible to the jurisdictional Assessing Officer only. In this annexure, the Department itself has extracted the relevant portion of the screenshot, which has complete details of the time at which the e-mail was sent, time at which the e-mail was delivered, etc. evidencing that the date and time when the e-mail containing the impugned notice as an attachment was sent by the Income Tax Business Application servers, is duly available with the Department. The relevant extract of the screenshot is reproduced hereinbelow :

Register Details										
Despatch No.	Date of issue	PAN/TAN	Addressee name	Subject	Comm. Ref. No.	View documents	Mode of despatch	Date of despatch	Date of service	Status
	31-3-2021	AH1PG 3000F	Anand Goel	Notice u/s. 148	Income Tax Business Application/AST/S/148/2020 - 21/103211/6278(1)	Attachments	E-mail			E-mail delivered

Sent E-mail (?)	E-mail delivery status	E-mail sent on	E-mail delivered on	Shared with e-Proceeding on
E-mail details	Delivered	01/04/2021 05 : 9 : 41 AM	01/04/2021 05 : 29 : 45 AM	03/04/2021 04 : 01 : 39 AM

... ..

23.1. The impugned notice issued by the respondent was not served on the petitioner/assessee's registered e-mail ID and was sent to an unrelated e-mail ID. The petitioner learnt about the impugned notice

which was neither signed physically nor any digital signature certificate was appended, incidentally through its e-filing portal. Therefore, there has been no compliance of the provisions of section 149 of the Act of 1961, while issuing the impugned notice.

... ..

23. Further, the Division Bench, while dealing with the notices and reasons held as under, viz.,

25. Question No. (I) : Whether the jurisdictional Assessing Officer's act of generating notice in the Income Tax Business Application portal on March 31, 2021, without despatching the notice meets the test of the expression "shall be issued" in section 149 of the Act of 1961, and saves the notices from being time barred ?

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26.6. Further, section 11 of the Act of 2000 is also of relevance :

"11. Attribution of electronic records.—An electronic record shall be attributed to the originator,—

(a) if it was sent by the originator himself ;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record ; or

(c) by an information system programmed by or on behalf of the originator to operate automatically. . ."

26.7. In the present case, the "originator", as per section 2(za) of the Act of 2000, is indubitably the Department. The same is confirmed by the contents of the compliance affidavit. As stated in the compliance

affidavit, the jurisdictional Assessing Officer is the Income-tax authority designated by the Department to generate and sign the section 148 notice on behalf of the Department. The Income Tax Business Application portal is an information system programmed by TCS for the Department to operate automatically. The Income Tax Business Application portal is the computer resource designated by the Department for (a) drafting the e-mail to which the notice is attached ; and (b) for despatching the said e-mail with notice to the assessee through e-mail ; as well as (c) for sharing the said notice on assessee's "My Account" on the e-filing portal. Hence, the jurisdictional Assessing Officer and Income Tax Business Application perform two inseparable and complementing functions for the Department, which together constitute generation of notice + drafting of the e-mail by the Income Tax Business Application e-mail software and its despatch through dedicated Income Tax Business Application servers. Thus, whilst the Department is the attributed originator of the impugned notices within the meaning of section 11(c) of the Act of 2000, Income Tax Business Application portal is the "computer resource" under the control of the Department.

26.8. In the light of the aforesaid findings of this court, the submissions made by Zoheb Hossain, learned senior standing counsel for the Department, that the jurisdictional Assessing Officer and the Income Tax Business Application are distinct and that the jurisdictional Assessing Officer is the originator and hence not liable for delay in despatch, are untenable in law and facts.

26.9. Now, in order to determine when does "despatch", i. e., the transmission of electronic record or the notices in the present case, from the Department occur, we may first note the precedence set by several High Courts in the context of Income Tax Business Application

portal. Under section 13 of the Act of 2000, various High Courts have concluded that the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator, i. e., when the Income Tax Business Application's e-mail system is triggered and the e-mail leaves the Income Tax Business Application servers. (*Daujee Abhushan Bhandar (supra)*, *Yuvraj (supra)*, *Advance Infradevelopers (P) Ltd. (supra)*).

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26.13. Typically, an e-mail service based on SMTP Model utilizes a chain of servers to transmit e-mail from the sender to the recipient. Once an e-mail is drafted and the sender presses the "send" button, the e-mail service, i. e., the user agent ("UA") of the sender transmits it to the message transfer agents ("MTAs"), i. e., servers of the sender's e-mail service. Through a sequence of such message transfer agents, i. e., servers, the e-mail reaches the destination message transfer agents, i. e., server of the recipient's e-mail service. In case the recipient is using an intermediary server, it reaches the intermediary message transfer agents, i. e., server of the intermediary. It thereafter, finally reaches the recipient. In the case on hand, the Department's e-mail service is the Income Tax Business Application e-mail software system and the assessee's e-mail service is G-mail, Outlook, etc. The Income Tax Business Application e-mail software uses dedicated servers for transmitting e-mails and therefore the e-mail is despatched when the same leaves the Income Tax Business Application servers for the recipient assessee's designated e-mail service servers. A simplified illustration of the SMTP model showing this process, as confirmed by the counsel for the petitioners and respondents, is reproduced hereinunder :

26.14. For the purpose of this illustration, the double arrows indicate transmission between computer resources that are of the Income Tax Business Application e-mail software system and therefore, within the control of the Department ; and the single arrows indicate transmission between computer resources that are within the control of or used by the assessee.

26.15. This illustration, as verified by the respondents, attests to the fact that the message transfer agents, i. e., server of the Income Tax Business Application is a computer resource belonging to the Department. As established earlier, the Department is the originator as per section 11(c) of the Act of 2000, hence, the despatch occurs when it leaves the last message transfer agents, server of the Income Tax Business Application and enters a computer resource that the Department does not have control over, i. e., the message transfer agents server of the e-mail service that the assessee is using.

.... ..

31. For the reasons and principles that we have laid down, we dispose of these writ petitions with the following directions :

31.1. Category "A" : The notices falling under category "A", which were digitally signed on or after April 1, 2021, are held to bear the date on which the said notices were digitally signed and not March 31, 2021. The said petitions are disposed of with the direction that the said notices are to be considered as show-cause notices under section 148A(b) of the Act as per the directions of the apex court in the Ashish Agarwal, (supra) judgment.

31.2. Category "B" : The notices falling under category "B" which were sent through the registered e-mail ID of the respective

jurisdictional Assessing Officers, though not digitally signed are held to be valid. The said petitions are disposed of with the direction to the jurisdictional Assessing Officers to verify and determine the date and time of its despatch as recorded in the Income Tax Business Application portal in accordance with the law laid down in this judgment as the date of issuance. If the date and time of despatch recorded is on or after April 1, 2021, the notices are to be considered as show-cause notices under section 148A(b) as per the directions of the apex court in the Ashish Agarwal (supra) judgment.

31.3. Category "C" : The petitions challenging notices falling under category "C" which were digitally signed on March 31, 2021, are disposed of with the direction to the jurisdictional Assessing Officers to verify and determine the date and time of despatch as recorded in the Income Tax

Business Application portal in accordance with the law laid down in this judgment as the date of issuance. If the date and time of despatch recorded is on or after April 1, 2021, the notices are to be considered as show-cause notices under section 148A(b) as per the directions of the apex court in the Ashish Agarwal (supra) judgment.

31.4. Category "D" : The petitions challenging notices falling under category "D" which were only uploaded in the e-filing portal of the assesseees without any real time alert, are disposed of with the direction to the jurisdictional Assessing Officers to determine the date and time when the assesseees viewed the notices in the e-filing portal, as recorded in the Income Tax Business Application portal and conclude such date as the date of issuance in accordance with the law laid down in this judgment. If such date of issuance is determined to be on or after April 1, 2021, the notices will be construed as issued

under section 148A(b) of the Act of 1961 as per the Ashish Agarwal (supra) judgment.

31.5. Category "E" : The petitions challenging notices falling under category "E" which were manually despatched, are disposed of with the direction to the jurisdictional Assessing Officers to determine in accordance with the law laid down in this judgment, the date and time when the notices were delivered to the post office for despatch and consider the same as date of issuance. If the date and time of despatch recorded is on or after April 1, 2021, the notices are to be construed as show-cause notices under section 148A(b) as per the directions of the apex court in the Ashish Agarwal (supra) judgment."

24. With the aforesaid judicial precedents and the fact that the Delhi High Court has extensively dealt with these contentions (which have also been the contention of the learned Senior Standing Counsel for the Income Tax, for the respondents, in the present batch of writ petitions), and rendered the judgment in favour of the assessee, and which has not been further challenged by the respondent-Department till now. Therefore, we also are fully in agreement and endorse the views laid down by the Division Bench of the Delhi High Court in the case of **Suman Jeet Agarwal** (supra) and hold that the impugned notices in all these batch of writ petitions are barred by limitation under Sections 148 and 149 of the Act, since the said notices have left the I.T.B.A. portal on or after 01.04.2021.

25. The objection raised by the learned counsel for the petitioners that the impugned notices under challenge are barred by limitation is sustained. Therefore, the impugned notices in all these writ petitions are as a consequence set aside / quashed on the ground of it being barred by limitation.

26. Accordingly, the Writ Petitions are allowed. No costs.

27. Consequently, miscellaneous applications pending if any in these Writ Petitions, shall stand closed.

P. SAM KOSHY, J

N. TUKARAMJI, J

Date: 14.06.2024

L.R. copy to be marked : YES

B/o.

Ndr