

2022 PLRonline 0390 (Del.)

DELHI HIGH COURT

Justice Manmohan , Justice Manmeet Pritam Singh Arora

Suman Jeet Agarwal v. ITO

W.P.(C) 10/2022 and others

Reserved on: 15th July, 2022, Date of Decision: 27th September, 2022

Income Tax Act, 1961, Section 148 - Validity of the Notices issued under Section 148 of the Income Tax Act, 1961, as it stood prior to its amendment on 01st April, 2021, by the Finance Act, 2021.

Notice - Issuance of - 'issue' - Expression 'issue' in its common parlance and its legal interpretation means that the issuer of the notice must after drawing up the notice and signing the notice, make an overt act to ensure due despatch of the notice to the addressee. It is only upon due despatch, that the notice can be said to have been 'issued'. [Para 25.12]

Income Tax Act, 1961, Section 149 - Whether the JAO's act of generating Notice in the ITBA portal on 31st March, 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? - The Court has answered this in the negative in favour of the assessee- Thus, mere generation of Notice on the ITBA Screen cannot in fact or in law constitute issue of notice, whether the notice is issued in paper form or electronic form. In case of paper form, the notice must be despatched by post on or before 31st March 2021 and for communication in electronic form the e-mail should have been despatched on or before 31st March 2021 - Answer question in negative against the Department and hold that the impugned Notices dated 31st March, 2021, which were despatched on 1st April, 2021, or thereafter, would not meet the test of 'issued' under Section 149 of the Act of 1961 and would be time barred, unless saved by the judgment of the Supreme Court in *Ashish Aggarwal (Supra)*. [Para 25.13, 25.23]

Information Technology Act, 2000, S. 13 - Income Tax Act, 1961, Section 149 - Whether "despatch" as per Section 13 of the Act of 2000 is sine qua non for issuance of Notice through electronic mail for the purpose of Section 149 of the Act of 1961? - Despatch as per Section 13 of the Act of 2000, is a sine qua non and happens when the electronic mail message leaves the ITBA's servers - The time taken by the ITBA's e-mail software system in triggering the e-mail and transmitting the said e-mails from the ITBA servers is attributable to the Department and therefore for the e-mails despatched on 1st April 2021 or thereafter, the Notices are held not to have been issued on 31st March 2021 - Take judicial notice of the fact that the Department from May, 2022, for Notices issued on or after 1st April 2021, has considered the date and time of despatch of the notices as recorded by the ITBA portal as the date of issuance and disregarded the date of generation of notice i.e. 31.03.2021 - For notices despatched on or after 1st April 2021, the Department, following the Supreme Court's order in *Ashish Aggarwal (Supra)* considered the notices as issued under Section 148A of the Act of 1961 - This shows that the Department itself

acknowledges and admits that the date of generation is distinct from date of issuance and the Department considers the despatch by ITBA Portal as the date of issue for the purpose of Section 149 of the Act of 1961.

[Para 26.21, 26.22, 26.23]

Held that the time taken by the ITBA's e-mail software system in triggering the e-mail and transmitting the said e-mails from the ITBA servers was attributable to the Department and therefore for the e-mails despatched on 1st April 2021 or thereafter, the Notices were held not to have been issued on 31st March 2021.

Income Tax Act, 1961, Section 148 - Whether the Section 148 Notices sent as an attachment through e-mails, from the designated e-mail addresses of the JAOs, which do not bear the respective JAO's digital signature are valid under Section 282A the Act of 1961 read with Rule 127A of the IT Rules?-The Court has answered this question in the affirmative, in favour of the Department - affixation of DSC in notices issued under Section 148 of the Act of 1961 has not been made mandatory. As long as the requirements of Section 282A of the Act of 1961 and Rule 127A of the IT Rules, are followed the notices would be considered to be authenticated. [Para 27, 27.15]

Income Tax Act, 1961, Section 148 - Whether upload of the Section 148 Notice on the "My Account" of the assessee on the E-filing portal is valid transmission under the Act of 1961? - The Court has answered this in the negative, against the Department. [Para 28]

Held,

It should be noted that, when the legislature decided to include this mode of transmission i.e. placing it on the E-filing portal/registered account of the assessee, as valid service in the Act of 1961, it duly included the safeguard of a real time alert. For reference, Section 144 B(6)(ii)(a) of the Act of 1961 statutorily recognizes this mode of transmission between the Income Tax authority and the assessee. [Para 28.6]

Income Tax Act, 1961, S. 144(B)(6)(ii)(a) S. 148- In order for this mode of transmission i.e. uploading of the Notices in the E-filing portal of the assessee, to be considered valid service, the Department should have issued a realtime alert as provisioned in the aforementioned Section 144(B)(6)(ii)(a) of the Act of 1961. Since, the prescribed mode of service is not followed it is akin to no due despatch of Notices, therefore it cannot be said that the Notices were validly issued. However, since the assessee in the present case did become aware of the Notices later and the assessment proceedings in their cases are still pending, we are not inclined to quash these Notices. It has come on record that the ITBA records the time and date when the E-filing portal is accessed by the assessee, so the first date on which the Notices were accessed by the assessee is duly available. This date will be considered by the JAOs as the date of issuance of Notices by the JAOs. [Para 28.7, 28.8]

Income Tax Rules, 1962, Rule 127, Sub rule 2(b) (i) to (iv). - Regarding Notices sent to unrelated e-mail addresses - Notices dated 31st March, 2021 were issued by the ITBA e-mail Software system to unrelated e-mail addresses which has no concern with the petitioner-assessee - In those facts, the Department cannot be permitted to contend that there was due despatch of Notice. For constituting 'due despatch', notice should be issued to the e-mail addresses duly recognized in Rule 127, Sub rule 2(b) (i) to (iv). [Para 29]

Held,

Additionally, it is a settled position of law that the notice under Section 148 of the Act of 1961 must be served in accordance with the procedure established by law, to the correct addressee, otherwise the reassessment proceedings would be invalid in law. [Commissioner of Income -Tax (Central) - I v. Chetan Gupta (Supra)] The issuance of e-mail attaching electronic notice to an unrelated e-mail address does not constitute as due despatch and therefore, the Notices cannot be said to have been issued on 31st March, 2021. However, in each of these matters, since an authenticated copy of the notice was placed on the registered account of the assessee on the E-filing portal, as that is how the petitioners learnt about the notices, these notices will be held that the Section 148 Notices sent as an attachment through e-mails, from the designated e-mail addresses of the JAOs, which do not bear the respective JAO's digital signature are valid u/s 282A the Act of 1961 read with Rule 127A of the IT Rules to have been issued on the date on which the Notices were first viewed by the assesseees on their E-filing portal.[Para 30]

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