

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1984/DEL/2022 [A.Y. 2014-15]

Jaguar and Company Pvt Ltd
C - 20, SMA, Co-op Industrial Estate
G.T. Karnal Road, Delhi

Vs.

The Dy. C.I.T
Circle - 19
Delhi

PAN - AAACJ 2324 F

(Applicant)

(Respondent)

Assessee By : Dr. Rakesh Gupta, Adv
Shri Deepesh Garg, Adv

Department By : Shri Bhopal Singh, Sr. DR

Date of Hearing : 07.06.2023

Date of Pronouncement : 09.06.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 27, New Delhi dated 27.06.2022 pertaining to Assessment
Year 2014-15.

2. The solitary grievance of the assessee in Form No. 36 reads as under:

“1. That the Id. CIT(A) has erred in law and on facts in not deleting the disallowance of Rs. 25 lakhs made by the Assessing Officer u/s 37(1) and it is prayed that the deduction of Rs. 25 lakhs claimed by the assessee as payment of professional fees as per its books of accounts be allowed.”

3. Vide letter dated 13.02.2023, the assessee prayed for the admission of the following additional grounds of appeal:

“1. That having regard to the facts and circumstances of the case, assumption of jurisdiction in reopening the impugned assessment and passing the impugned order u/s 147, is bad in law and against the facts and circumstances of the case and more so when statutory conditions as stipulated u/s 147 to 151 have not been complied with.

2. That in any case and in any view of the matter, assumption of jurisdiction in reopening the assessment u/s 147, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, the impugned assessment order ought to have been quashed on the ground that four weeks time was not allowed between the date of disposal of the objection and date of re-assessment order in view of the several judicial decisions.”

4. Since the additional grounds taken by the assessee go to the root of the matter, we decided to proceed with the same.

5. Representatives of both the sides were heard at length. Case records carefully perused and relevant documentary evidences duly considered in light of Rule 18(6) of the ITAT Rules.

6. The peculiar facts of the case are that the impugned assessment order is dated 10.03.2022. Notice u/s 148 of the Income-tax Act, 1961 [the Act, for short] was issued on 05.02.2021. On 05.04.2021, the assessee requested for supplying the reasons for reopening of the assessment. On 15.06.2021, the assessee reiterated its request for the supply of reasons recorded for reopening of the assessment. On 17.02.2022, the Assessing Officer supplied the copy of reasons.

7. On 18.02.2022, the assessee raised objections to the reasons for reopening of the assessment. On 02.03.2022, objections were disposed and as mentioned elsewhere, assessment was framed on 10.03.2022, i.e., a week later.

8. This action of the Assessing Officer is against the ratio laid down by the Hon'ble Bombay High Court in the case of Asian Paints 296 ITR 90 wherein the Hon'ble High Court has categorically held as under:

“ if the Assessing Officer does not accept the objections so filed by the assessee, he shall not proceed further in the matter for a period of four weeks from the date of service of the order rejecting objections on the assessee. The above procedure is to be followed strictly for reopening of assessment.”

9. This judgment was followed by the co-ordinate bench in the case of Hirachand Kanuga in ITA No. 4261 and 4262/MUM/2012. The relevant findings read as under:

14. Proceeding further, a perusal of the assessment order show that the AO has supplied the reasons recorded on 15.11.2010. The assessee filed his objection on 25.11.2010. The objections filed by the assessee were rejected on 14.12.2010 and the assessment order was made on 24.12.2010. Thus the AO did not wait for four weeks from the date of the rejection of the objections and thereby violated the principles enunciated by the Hon'ble Jurisdictional High Court in the case of Asian Paint Ltd. (supra) wherein the Hon'ble High Court has observed as under:

"Reassessment-Notice u/s. 148- Objections by assessee-If the AO does not accept the objections filed by the assessee against reopening of assessment, he is not to proceed

further in the matter for a period of four weeks from the date of service of order rejecting the objections on the assessee -Above procedure is to be followed strictly in all such cases of reopening of assessment."

15. *The Hon'ble Jurisdictional High Court in the case of Aroni Commercials Ltd. (supra) has made the following observations:*

"It is axiomatic that the law declared by the High Court is binding on all authorities functioning within the jurisdiction of the Court. It is not open to the AO to feign ignorance of the law declared by the Court and pass orders in defiance of it. The Bombay High Court in Asian Paints Vs DCIT (2008) 296 ITR 90 (Bom) has clearly laid down that when an assessment is sought to be reopened u/s. 148 of the Act and the objections of the assessee have been overruled by the AO, then in such a case the AO will not proceed further in the matter for a period of four weeks from the date of receipt of the order rejecting the objections of the assessee."

16. *The AO has undoubtedly flaunted the procedure laid down by the Hon'ble Jurisdictional High Court thereby making the issuance of notice u/s. 148 of the Act bad in law.*

16.1. *Having said all that considering the facts of the case from any angles in the light of our detailed discussion hereinabove, in our considered opinion, the reassessment proceedings based on the notice issued u/s. 148 is bad in law. We, therefore, set aside the findings of the Ld. CIT(A) and quash the reassessment order made u/s. 143(3) r.w. Sec. 147 of the Act."*

10. The co-ordinate bench again in the case of Smt. Kamlesh Goel ITA No. 5730/DEL/2017 had an occasion to consider a similar grievance. The relevant findings read as under:

"4. The bone of contention is as to whether the Assessing Officer has rightly framed the impugned order within 16 days of disposing of the objections of the assessee.

5. The answer is given by the coordinate bench in the case of Metaplast Engineering P. Ltd in ITA No. 5780/DEL/2014 wherein the co-ordinate bench has considered the judgment of the Hon'ble Bombay High Court in the case of Bharat Jayantilal Patel 378 ITR 596. The relevant finding reads as under:

"Further, in view of the decision of the Hon'ble Bombay High Court in the case of Bharat Jayant Patel (supra) , learned AO should have allowed four weeks' time to the assessee to seek their legal remedies after rejection of the objections of the assessee. In view of the fact that the AO has disposed of the objections of the assessee on 22.11.11 and passed the assessment order on 19.12.2011, it is clear that no such time was granted to the assessee. "

6. The relevant observations of the Hon'ble High Court of Bombay in Bharat Jayantilal Patel [supra] reads as under:

"21. For the first contention of Mr.Pardiwalla to be considered, it is material to note that on 11th September, 2014 the petitioner addressed a detailed communication setting out his objections to the recorded reasons. These objections which are elaborate run into about 9 pages.

Thereafter, the petitioner pointed out on 8th December, 2014 that he was required to attend the office of the Deputy Commissioner of Income Tax on 9th December, 2014. He pointed out as to how the reasons were supplied and how they have been dealt with and objected to by him. The petitioner specifically requested the assessing officer not to proceed with the scheduled hearing till the objections raised to the reasons have been disposed of by a speaking order.

22. On 5th March, 2015 a communication was addressed to the petitioner which purported to reject his objections. The objections have not been referred to in detail but what has been stated is that the case has not been reopened merely on the basis of a change of opinion. The fact that came to light during the assessment proceedings for assessment year 2011-12 are the basis for reopening the case pertaining to the assessment year 2007-08. Since the petitioner is stated to have filed a new return of income, he was called upon to attend the office with the information required on 13th March, 2015. The petitioner addressed a letter on 12th March, 2015 and pointed out that the communication dated 5th March, 2015 was received on 12th March, 2015, but no speaking order has been passed rejecting the objections and which is required by the law laid down in the case of GKN Driveshaft (India) Ltd. V/s. Income Tax Officer reported in (2003) 259 ITR 19 and Asian Paints Ltd. V/s. Deputy Commissioner of Income Tax & Anr. reported in (2009) 308 ITR 195 (Bom). The petitioner specifically invited the attention of the assessing officer to the directions in the case of Asian Paints (supra) and to the effect that if the assessing officer does not accept the objections to the reopening of the assessment or the reasons recorded, he shall not proceed further in the matter within a period of four weeks from the date of receipt or service of the said

order on the assessee. Since the order dated 5th March, 2015 is stated to be rejecting the objections, then, the assessee prayed that for a period of four weeks from that order, no steps should be taken.

23. However, as has been rightly contended by Mr. Pardiwalla, ignoring this mandate in the decisions of this Court and the Hon'ble Supreme Court which has been further reiterated in M/s.Aroni Commercial Ltd. (supra), the impugned assessment order has been passed, that is dated 27th March, 2015. That is clearly within the period of four weeks from 5th March, 2015. The first contention of Mr.Pardiwalla, therefore, deserves acceptance as nothing contrary to the same has been placed before us."


7. Respectfully following the same, we hold that the assessment order dated 30.12.2016 framed u/s 147 r.w.s 143(3) of the Act is bad in law and deserves to be quashed."

11. Respectfully following the decision of the Hon'ble Bombay High Court [supra] and the Co-ordinate Benches [supra], we have no hesitation in quashing the assessment order dated 10.03.2022 framed u/s 147 r.w.s 143(3) of the Act.

12. However, we would not rest our decision at this stage, but would like to proceed in deciding the appeal on merits of the case.

13. The reasons for reopening of the assessment read as under:

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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE DEPUTY
COMMISSIONER OF INCOME TAX
DCIT CENTRAL CIRCLE-19, DELHI

| | | | |
|---|-----------------------------|----------------------|--|
| To, | | | |
| JAQUAR AND COMPANY PRIVATE LIMITED C-20, SMA CO-OP. INDUSTRIAL ESTATE, G T KARNAL ROAD Jahangir Puri A Block NORTH WEST DELHI 110033, Delhi India | | | |
| PAN: AAACJ2324F | Assessment Year: 2014-15 | Dated: 17/02/2022 | DIN & Letter No : ITBA/AST/F/17/2021-22/1039867021(1) |

Sir/ Madam/ M/s,

Subject: copy of reasons-reg.

Please refer to the above.

In this regard, it is stated that you have requested to the undersigned for the reasons of copy for initiation of proceedings u/s 14/148 of the IT Act, 1961 in your case for AY 2014-15. Therefore, the same is hereby provided to you.

"1. Brief details of the Assessee:

The assessee is a company having PAN-AAACJ2324F, whose jurisdiction lies with this charge. Search, seizure and survey operations u/s 132 of the Income Tax Act, 1961 were conducted on 02.06.2016 in the case of Pritindra Nath Sanyal Group in which information was passed about the assessee company. The assessee had filed return for AY 2014-15 at income of Rs. 152,86,64,430/- and the same was processed u/s 143(1) of the Act. The case was selected for scrutiny under CASS and order u/s 143(3) was passed on 29.12.2016 at assessed income of Rs. 152,96,33,800/- after making addition of Rs. 9,69,370/- on account of income from other sources.

2. Brief details of information collected/ received by the AO :

In this case, specific information in respect of M/s Jaquar and Company Pvt Ltd has been forwarded to this office by the ACIT, Central Circle-18, New Delhi vide his letter dated 08.08.2018. The relevant portion of the aforesaid letter of ACIT, Central Circle-18, New Delhi is reproduced as under:

Note: If digitally signed, the date of digital signature may be taken as date of document.
ROOM NO:267,2nd Floor, INCOME TAX BUILDING, E-2, ARA CENTRE, JHANDEWALAN EXTENSION, NEW DELHI, DELHI, 110055
Email: DELHI.DCIT.CEN19@INCOMETAX.GOV.IN, Office Phone:23593443

Note - The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in
* DIN- Document identification No.

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"M/s Jaquar and Company Pvt Ltd. paid nearly Rs 1.5 Crore to P N Sanyal and Rinki Sanyal between September 2011 to August 2013. Furthermore, it has been admitted by Sh. P N Sanyal in his statement during the search that he was engaged in illegal liaisoning activities from which he earned commission through cash and cheque, which formed part of his unaccounted income.

The ADIT (Inv.), Unit-8(2), New Delhi in his report has stated that M/s Jaquar and Company Pvt Ltd was unable to justify the genuineness of expenses incurred on Sh. P N Sanyal and Smt Rinki Sanyal.

On perusal of the letter and assessment record of sh. P N sanyal and Smt. Rinki Sanyal, it is notice that the transactions were entered into by the assessee company during the F.Y. 2011-12 to F.Y. 2013-14:-

| Name of the party | A.Y 2012-13 | A.Y. 2013-14 | A.Y. 2014-15 |
|-------------------|-------------|--------------|--------------|
| Sh. P N Sanyal | 17,50,000/- | 30,00,000/- | 12,50,000/- |
| Smt. Rinki Sanyal | 17,50,000/- | 30,35,000/- | 12,50,000/- |

3. Analysis of information collected/ received:

On perusal of above information it is clear that M/s Jaquar and Company Pvt Ltd. has paid Rs. 25,00,000/- to Sh. P N Sanyal and Smt. Rinki Sanyal for consultancy services. During the post search investigation in P.N. Sanyal Case, statement of Sh. Bharat Bhushan Duggal, Director of M/s Jaquar and Company Pvt Ltd. was recorded in which he was unable to provide any documentary evidence showing the exact nature of services rendered by Sh. P N Sanyal and Smt. Rinki Sanyal. Neither any evidence of any contract signed between Jaquar and Sh. P N Sanyal and Smt. Rinki Sanyal was furnished nor was he able to answer on the basis of which qualification Sh. P N Sanyal and Smt. Rinki Sanyal were hired. In view of the above, it is established that in reality no service of any kind was provided by the Sh. P N Sanyal and Smt. Rinki Sanyal to the assessee and the amount of Rs 25,00,000/- relevant to A.Y. 2014-15 has escaped assessment.

4. Enquiries made by the AO as sequel to information collected/ received:

On perusal of ITD/ITBA, it is found that the assessee had filed ITR for year under consideration i.e. AY 2014-15 at income of Rs.152,86,64,430/- and no additional source of income has been disclosed by the assessee. The assessment u/s 143(3) was

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completed on 29.12.2016 at total income of Rs. 152,96,33,800/- after addition on account of income from other sources.

5. Findings of the AO:

On analysis of the information received/collected by the ACIT, Central Circle-18, New Delhi and Investigation wing it is evidently clear that the assessee i.e. M/s Jaguar and Company Ltd paid alleged "consultancy fees" to Sh. P N Sanyal and Smt Rinki Sanyal amounting to Rs 25,00,000/- for the A.Y. 2014-15. During the post investigation proceedings Sh. Bharat Bhushan Duggal, Director of M/s Jaguar and company Pvt Ltd. was unable to provide any documentary evidence showing the exact nature of services rendered by the Sh. P N Sanyal and Smt Rinki Sanyal and the source/nature of transaction was not explained by him during the enquires. In the document seized during search in the case of Sh. P.N. Sanyal, it is clear that Sh. P N Sanyal and Smt Rinki Sanyal have not provided any kind of service to the assessee. Therefore, it is clear that the amount of Rs 25,00,000/- has escaped income for the relevant assessment year.

6. Basis of forming reason to believe and details of escapement of income:

In view of the above discussion made in para 5, it is evident that **the assessee has failed to establish the delivery of service by Sh. P.N. Sanyal and Smt. Rinki Sanyal. Further, there is no contract between the assessee and the two parties. Hence, it is clear that the amount of Rs. 25,00,000/- has escaped assessment.**

In view of the above, I have reasons to believe that the case is fit case for reopening by issuing notice u/s 148 of the Income Tax Act, 1961 for the A.Y. 2014-15, since an amount of Rs. 25,00,000/- relevant to A.Y. 2014-15 has escaped assessment

7. Escapement of income chargeable to tax in relation to any assets located outside India.

N.A.

8. Findings of the AO on true and full disclosure of the material facts necessary for assessment under Proviso to section 147:

It is true that the assessee has filed a copy of annual report and audited P&L a/c and balance sheet alongwith return of income where various information/material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has produced books of accounts, annual report P&L a/c and balance sheet or other evidence as mentioned above, the requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidence could not be discovered by the AO and could have been discovered with due diligence, accordingly attracting provisions of Explanation 1 of section 147 of the Act.

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9. **Applicability of the provisions of section 147/151 to the facts of the case:**

In this case a return of income was filed for the year under consideration and scrutiny assessment u/s 143(3) of the Act was made on 29.12.2016. Since, 4 years from the end of the relevant year has expired in this case, the requirements to initiate proceeding u/s 147 of the Act are reason to believe that income for the year under consideration has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the assessment year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above (Para 6). I have carefully considered the assessment records containing the submissions made by the assessee in response to various notices issued during the assessment/reassessment proceedings and have noted that the assessee has not fully and truly disclosed facts for his assessment for the year under consideration.

It is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration thereby necessitating reopening u/s 147 of the Act.

It is true that the assessee has filed a copy of annual report and audited P&L a/c and balance sheet alongwith return of income where various information/material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has produced books of accounts, annual report P&L a/c and balance sheet or other evidence as mentioned above, the requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidence could not be discovered by the AO and could have been discovered with due diligence, accordingly attracting provisions of Explanation 1 of section 147 of the Act.

It is evident from the above discussion that in this case, the issues under consideration were never examined by the AO during the course of regular assessment. New facts have come into light during the search proceedings in the P.N. Sanyal group which have been discussed above. This fact is corroborated from the contents of notices issued by the AO u/s 143(2)/142(1). For aforesaid reasons, it is not a case of change of opinion by the AO.

In this case more than 4 years have lapsed from the end of assessment year under consideration. Hence, necessary sanction to issue notice u/s 148 has been obtained separately from Principal Commissioner of Income Tax as per the provisions of section 151 of the Act."

14. A perusal of the above reasons shows that the reopening of the assessment is after four years from the end of the relevant A.Y. Therefore, as per the relevant provisions, the Assessing Officer is bound to show that there was failure on the part of the assessee to fully and truly disclose all material facts necessary for its assessment.

15. The payment of Rs. 25 lakhs to Sanyals was towards liasoning done by them in furtherance of the contract work of the assessee. A bare perusal of the reasons mentioned hereinabove do not even allege that there has been a failure on the part of the assessee to disclose any material facts.

16. The claim of expenditure was made and was thoroughly examined during the original assessment proceedings. In our considered opinion, whether the claim of expenditure is for legitimate needs of business expediency cannot be questioned in the reassessment proceedings.

17. On the given facts of the case and in light of the reasons recorded for reopening of the assessment mentioned hereinabove, it would be pertinent to refer to the judgment of the Hon'ble

Jurisdictional High Court of Delhi in the case of E.I. Dupont India [P] Ltd 351 ITR 299. The relevant findings of the Hon'ble High Court read as under:

“6. We have heard the learned counsel for the parties and we feel that since this was a case of proposed reopening of assessment after four years from the end of the relevant assessment year it was incumbent upon the assessing officer to demonstrate that there was failure on the part of the assessee to fully and truly disclose all material facts necessary for its assessment. The purported reasons which we have extracted above do not even allege that there has been a failure on the part of the assessee to disclose any material fact. In fact, even in the impugned order dated 31.05.2012 there is no mention of what fact the assessee had failed to disclose which was necessary for the assessment in the original round of assessment. Failure to disclose all material facts necessary for assessment is a condition precedent for reopening of an assessment beyond the period of four years from the date of assessment. This is a pre-condition set out in the statute itself.

7. In view of the fact that this pre-condition has not been satisfied, we feel that the impugned notice dated 07.03.2012 as also the order dated 31.05.2012 ought to be set-aside. It is ordered accordingly. All the proceedings pursuant to the notice dated 27.03.2012 are quashed. The writ petition is allowed. There shall be no order as to costs. Consequently, all the pending applications also stand disposed of.”

18. Similar view was taken by the Hon'ble High Court of Gujarat in the case of Himson Textile Engineering Industries 83 DTR 132 wherein the Hon'ble High Court held as under:

'Though the AO in the reasons recorded, has observed that income chargeable to tax has escaped assessment on account of failure on the part of the assessee to furnish full and true particulars of income, there is nothing whatsoever to indicate as to what is the nature of failure on the part of the assessee. On perusal of the affidavit in reply filed by the respondent, it is apparent that, it is the case of the AO that the petitioner has failed to disclose fully and truly all material facts by reason of the fact that it had claimed more deduction than allowable to it. Moreover, in para 3.2 of the affidavit in reply, the AO has averred that on verification of the record, it is found that the assessee had claimed deduction u/s 80M of the Act to the tune of Rs. 32,55,000/- towards deduction u/s 80M of the Act on the dividend of Rs. 60,06,000/- received from the Unit Trust of India which was granted by the AO without discussing the issue in the assessment order and without looking into the provisions of the Act. Thus, it is apparent that the formation of belief of the AO that income chargeable to tax has escaped assessment is based upon the record before him. Under the circumstances, it is apparent that there is no failure on the part of the petitioner to disclose fully and truly all material facts and that the assessment is sought to be reopened on the ground that the earlier AO had made an error while framing the original assessment. Therefore, by merely adding a line in the reasons recorded that the petitioner had failed to disclose fully and truly all material facts the requirement of the proviso to section 147 of the Act would not be satisfied. When the AO alleges that there is failure to disclose fully and truly all material facts, he should also be in a position to

demonstrate as to what is the failure on the part of the assessee. Merely putting in a line as aforesaid would not satisfy the requirements of the proviso to section 147 of the Act.

(Para 5)

In the light of the above discussion, in the absence of any failure on the part of the petitioner to disclose fully and truly all material facts necessary for its AY under consideration, the assessment of jurisdiction on part of the AO u/s 147 of the Act after the expiry of a period of four years from the end of the relevant A.Y is without jurisdiction. Consequently, the impugned notice u/s 148 seeking to reopen the assessment u/s 147 cannot be sustained.

19. Considering the above judgment of the Hon'ble High Courts, it can be safely concluded that merely by adding a line in the reasons recorded by the Assessing Officer that the assessee had failed to disclose fully and truly all material facts, requirement of proviso to section 147 of the Act would not be satisfied for the purpose of reopening of the assessment u/s 147 of the Act.

20. Considering the facts of the case from all angles, we do not find any merit in the reopening of the assessment. Even on merits, the revenue fails and the assessee succeeds.

21. In the result, the appeal of the assessee in ITA No. 1984/DEL/2022 is allowed.

The order is pronounced in the open court on 09.06.2023.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 09th JUNE, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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| Date of dictation | |
| Date on which the typed draft is placed before the dictating Member | |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr.PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr.PS/PS | |
| Date on which the final order is uploaded on the website of ITAT | |
| Date on which the file goes to the Bench Clerk | |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |