

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 07/Kol/2023
Assessment Year: 2010-11

Sandeep Kumar Shah P-281, CIT Road, Scheme VI(M) Kakurgachi Kolkata - 700054 [PAN : APRPS6509J]	Vs	Income Tax Officer, Ward - 50(1), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri A.K. Tibrewal, FCA/Amit Agrawal, Advocate
Revenue by :	Shri Ankur Goyal, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 18/10/2023
घोषणा की तारीख /Date of Pronouncement: 30/11/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi, (hereinafter the "ld. CIT(A)") dt. 30/11/2022, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal:-

"1. That the order passed by the Ld. CIT (Appeals) u/s 250 confirming the additions and disallowances made by learned assessing officer is contrary to the law and facts of the case.

2. That the Ld. CIT (Appeals) erred in denial of exemption of Long-Term Capital Gain of Rs. 41,86,458/- u/s 10(38) of the Act is bad in law and in facts.

3. That the learned CIT (Appeals) failed to appreciate that the transaction of purchase / sale was genuine and all the requisite prescribed documents submitted were in existence and hence the addition / disallowance has no legs to stand and deserves to be held ab initio null & void.

4. *That the Learned CIT(Appeals) erred in not considering the supporting and evidences filed by assessee and confirmations by share broker and stock exchange towards his claim of earning of long terms capital gain exempted u/s. 10(38) without any basis or adverse finding or documentary evidence.*

5. *That the appellant craves leave to add/or amend any ground of this appeal."*

3. The assessee has raised the following additional grounds of appeal:-

"1. *That the initiation of reassessment proceedings by the Income Tax Officer, Ward 50(4), Kolkata by issue of Notice u/s 148 on 31.03.2017 pursuant to the reasons recorded by him on 31.03.2017 and allegedly sanctioned by Ld. Principal Commissioner of Income Tax-17, Kolkata is without jurisdiction, illegal and bad in law and is liable to be quashed.*

2. *That the impugned assessment order passed by the Ld. Assessing Officer under section 147/143(3) and confirmed by Ld. Commissioner of Income Tax (Appeals), NFAC was without jurisdiction, illegal, perverse, time barred and bad in law therefore liable to be quashed.*

3. *That the appellant further submits that all facts necessary for adjudication of the aforesaid additional ground are borne out by records of the Assessing Officer and the said ground goes to the root of the matter and give rise to pure question of law.*

4. *That the Appellant refers to the Judgment of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs. Commissioner of Income Tax [1998] 97 Taxman 358 (SC) and the Judgment of Hon'ble Calcutta High Court in the case of Principal Commissioner of Income Tax-2, Kolkata vs. M/s. Eversafe Securities Pvt. Ltd. in ITAT/156/2022 IA No. GA/1/2022, GA/2/2022."*

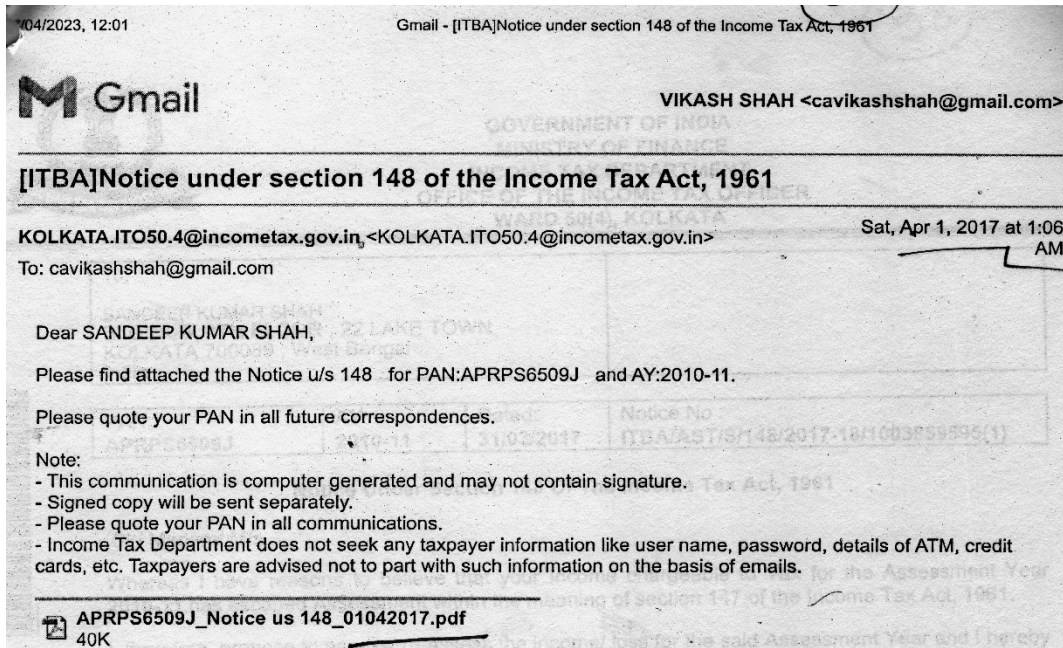
4. At the outset, the Id. Counsel for the assessee referring to the additional Ground No. 1 raised in the light of the judgment of the Hon'ble Apex Court in the case of *National Thermal Power Co. Ltd. vs. Commissioner of Income Tax [1998] 229 ITR 383 (SC)*, stated that the notice u/s 148 of the Act has been served upon the assessee on 01/04/2017 and that the time limit to serve the notice u/s 148 of the Act expired on 31/03/2017 and since the notice u/s 148 of the Act is


time barred, the assessment proceedings carried out are without jurisdiction, illegal and bad in law and liable to be quashed. The Id. Counsel for the assessee referring to various judgments relied heavily on the judgment of the Hon'ble Calcutta High Court in the case of *Marudhar Vintrade Private Limited vs. UOI & Ors. in WPA No. 4382 of 2022, judgment dt. 12/04/2022* which has been followed by this Tribunal in the case of *M/s. Osian Stock Broking Pvt. Ltd. vs. ITO in ITA No. 375/Kol/2022; Assessment Year 2009-10, order dt. 12/05/2023*.

4.1. On the other hand, the Id. D/R submitted that after obtaining proper approval notice to the assessee was issued on 31/03/2017 and, therefore, the assessment proceedings are valid and the additions made by the Assessing Officer deserves to be confirmed.

5. We have heard rival contentions and perused the record placed and carefully gone through the decision relied upon by the assessee. The legal issue raised by the assessee in the additional ground is that notice u/s 148 of the Act is time barred and, therefore, the reassessment proceedings carried out are without jurisdiction and liable to be quashed. We notice that the assessee, who is an individual, filed his return of income for Assessment Year 2010-11 on 29/07/2010 declaring income of Rs.6,24,228/-. The return was processed u/s 143(1) of the Act and thereafter the Id. Assessing Officer received certain information from DDIT (Inv.) and proceeded to reopen the assessment proceedings by way of issuance of notice u/s 148 of the Act. The time limit for issuing notice for Assessment Year 2010-11 was expiring on 31/03/2017. After obtaining the necessary approval of Id. Pr. CIT - 17, Kolkata, notice dt. 31/03/2017 was issued but it was

served on 01/04/2017 at 01:06 A.M.. Copy of the notice dt. 31/03/2017 and the email addressed to the assessee for serving notice are reproduced below:-



 GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 50(4), KOLKATA

To, SANDEEP KUMAR SHAH BLOCK-B, 4TH FLOOR, 22 LAKE TOWN KOLKATA 700089, West Bengal India			
PAN: APRPS6509J	AY: 2910-11	Dated: 31/03/2017	Notice No : ITBA/AST/S/148/2017-18/1003859595(1)

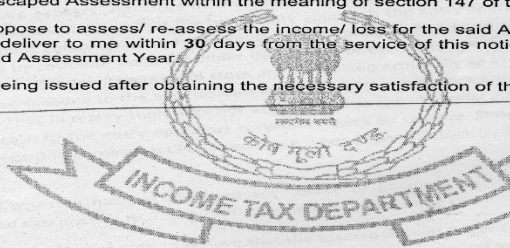
Notice Under Section 148 Of The Income Tax Act, 1961

Sir/ Madam/ M/s,

Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year 2010-11 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/ re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the PCIT 17, KOLKATA

 TAPAS SAHA
WARD 50(4), KOLKATA

6. Now, the ld. Counsel for the assessee has pleaded that the notice was served on 01/04/2017 and, therefore, it is time barred which

renders the assessment proceedings without jurisdiction. Reliance was placed on the judgment of the Hon'ble Jurisdictional High Court in the case of *M/s. Marudhar Vintrade Pvt. Ltd. (supra)*, wherein the Hon'ble Court while examining the issue of issuance of notice u/s 148 of the Act observed that the last date for issuing and serving the notice was 31/03/2021 but though the notice was dt. 31/03/2021 but it was actually uploaded for communication on 01/04/2021 at 03:00 A.M.. The Hon'ble Court held that since the provisions *w.e.f.* 01/04/2021 has been amended issuing of notice u/s 148A of the Act was mandatory before issuing notice u/s 148 of the Act, and in absence thereof all subsequent proceedings are not sustainable in law and same are quashed. We further notice that this Tribunal in the case of *Osian Stock Broking Pvt. Ltd. (supra)* considering similar type of issue pertaining to the issue of notice u/s 143(2) of the Act being time barred has held as follows:-

“3. The assessee has contested the impugned addition on various ground, *inter alia*, that the Assessing Officer had no reason to believe that the income of the assessee has escaped assessment; that the concerned Assessing Officer did not have territorial jurisdiction to frame the assessment and further that the notice issued u/s 143(2) of the Act was time barred and, therefore, the assessment framed was void *ab initio*.

4. At the outset, the ld. counsel for the assessee has submitted that since the question relating to the issue of notice u/s 143(2) of the Act hits at the very validity of the assessment order, therefore, the said issue may be adjudicated first. The ld. counsel has further submitted that the last date for issue of notice u/s 143(2) was on 30.09.2015. He has further submitted that though the notice has been shown to be signed on 30.09.2015 itself however, the same was sent at the email address of the assessee 03.11.2015. He, therefore, has submitted that by mere signing of the notice by the concerned Assessing Officer, it would not mean that the same was issued on the said date. That the date of issue of the said notice would be the date on which the email was sent on 03.11.2015. He, in this respect, has relied upon the decision of the Hon'ble Jurisdictional High Court in the case of '*Marudhar Vintrade Pvt. Ltd. vs. Union of India & Ors.*' in WPA No.4382 of 2022 order dated 12.04.2022.

5. The ld. DR, on the other hand, has submitted in this case the notice for reopening of the assessment u/s 148 of the Act was issued within the time. That once the notice u/s 148 of the Act was issued, there was no relevance of delayed issuance of notice u/s 143(2) of the Act. He has further submitted even otherwise the identity of issuance of notice will be the date on which the Assessing Officer signed the said notice which was on 30.09.2015 and hence it cannot be said that the notice u/s 143(2) of the Act was time barred.

6. We have heard the rival contentions and gone through the records. The notice in this case has been shown to be signed on 30.09.2015, however, the same was emailed to the assessee on 03.11.2015. The Hon'ble Jurisdictional Calcutta High Court in the case of *Marudhar Vintrade Pvt. Ltd. vs. Union of India & Ors.* (supra) considering the facts that the notice u/s 148 of the Act was signed on March 31 2021, however, it was actually uploaded for communication on April 1 2021 at 3 a.m. thereby treating the 1st April 2021 as issuance of impugned notice u/s 148 of the Act, quashed the reassessment proceedings holding that the provisions of Finance Act 2021 would be applicable from 01.04.2021 and therefore, before issuance any notice u/s 148 of the Act, the Assessing Officer was required to observe the statutory formalities u/s 148A of the Act. In the case in hand also, the notice was set in motion only on 03.11.2015, in our humble view, signing of the notice would not constitute as issuance of notice. The date of issuance of notice would be when it is set in motion for delivery to the assessee. So far as the contention of the ld. counsel that the issue of notice u/s 143(2) of the Act within the prescribed period in relation to the reassessment proceedings u/s 147/148 was not mandatory, we find that the issue has been settled by the various High Courts holding that even in the case of reassessment proceedings u/s 147/148 of the Act, the issuance of notice within the specified period u/s 143(2) of the Act is mandatory and that the Assessing Officer cannot assume jurisdiction u/s 143(3) of the Act without issuance of notice u/s 143(2) of the Act and this defect cannot be cured by taking recourse to the deeming fiction provided u/s 292BB of the Act. Reliance in this respect can be placed on the decision of the Delhi High Court in the case of *PCIT vs. Shree Jai Shiv Shankar Traders Pvt. Ltd.* IT Appeal No.1068 of 2013 dated 18.02.2015; Hon'ble Madras High Court in the case of *Sapthagiri Finance & Investment vs. ITO* reported in (2013) 90 DTR (Mad) 289; Hon'ble Delhi High Court in the case of *DIT vs. Society for Worldwide Interbank Financial Telecommunications* reported in (2010) 323 ITR 249 (Del); Hon'ble Allahabad High Court in the case of *CIT vs. Solarpur Cold Storage P Ltd* (2014) 50 Taxmann.com 105 (All); Hon'ble Allahabad High Court in the case of [CIT vs. Rajeev Sharma](#) reported in [2011] 336 ITR 678 (All.). Since the Assessing Officer did not issue notice u/s 143(2) of the Act within the specified time period, therefore, the Assessing Officer could not have assumed jurisdiction to frame the assessment u/s 143(3) of the Act and, therefore, the impugned assessment order is bad in law and the same is accordingly held to be non-est.

Since we have allowed the appeal of the assessee on the aforesaid legal ground, therefore, at this stage, the other grounds raised by the assessee have been rendered academic in nature.

7. In the result, the appeal of the assessee stands allowed."

7. From perusal of the above judgments and decisions it remains a legally settled position that the notice should not only be issued but also be served before the expiry of time limit provided under the Act. In other words, if the last date for issuing notice u/s 148 of the Act is 31/0/2017, then the notice should be served on or before 31/03/2017. In the instant case, the Id. Assessing Officer was required to serve notice on the assessee on or before 30/03/2017 but it was finally served on 01/04/2017 and, therefore, since the notice u/s 148 of the Act was not issued within the specified time period, the Assessing Officer could not have assumed jurisdiction to frame the reassessment order u/s 147/143(3) of the Act. Therefore, the impugned assessment order dt. 22/12/2017 is bad in law and *non-est*. Additional ground raised by the assessee is allowed. Since we have allowed the additional ground and quashed the assessment order, the remaining legal grounds as well as the grounds raised on merits are rendered academic in nature.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 30th November, 2023 at Kolkata.

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 30/11/2023

**SC Sp/2*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata