

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

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI PRADIP KUMAR CHOUBEY, HON'BLE JUDICIAL MEMBER

I.T.A. No. 214/Kol/2024
Assessment Year: 2014-15

Mamta Choraria BL-A2 Ganges Garden 106, K.C.S. Road Howrah -711102 [PAN : ACZPC6470F]	Vs	Income Tax Officer, Ward - 36(1), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Amit Agarwal, Advocate
Revenue by :	Shri Swapan Kumar Bera, JCIT, Sr. D/R

सुनवाई की तारीख /Date of Hearing : 17/04/2024
घोषणा की तारीख /Date of Pronouncement: 01/05/2024

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 (hereinafter the "Id. CIT(A)") dt. 06/12/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2014-15.

2. Though the assessee has raised various grounds of appeal, we will take up the legal issue challenging the validity of issuance of notice u/s 148 of the Act.

3. At the outset, the Id. Counsel for the assessee submitted that the time limit to issue notice u/s 148 of the Act for Assessment Year 2014-15, expired on 11/03/2021 and notice u/s 148 of the Act was issued and served through e-mail on 01/04/2021. He thus contended that the notice u/s 148 of the Act is barred by limitation and, therefore, the

proceedings carried out in consequence to such notice is illegal, bad in law and deserves to be quashed. In support of his contentions, he place reliance on the following decisions:-

- (i) *Marudhar Vintrade Private Limited vs. Union of India & Ors.*
WPA No. 4382 of 2022, order dt. 12/04/2022 (Hon'ble Calcutta High Court)
- (ii) *Sandeep Kumar Shah vs. Income Tax Officer, Ward-50(1), Kolkata - ITA No. 07/Kol/2023, order dt. 30/11/2023 (ITAT Kolkata)*
- (iii) *Ranicherra Rea Co. Ltd. vs. ITO, Ward -4(4), Kolkata - ITA No. 609/Kol/2023, date of order 26/02/2024 (ITAT Kolkata)*

3.1. On the other hand, the Id. D/R vehemently argued supporting the order of the lower authorities and stated that the notice was issued u/s 148 of the Act on 31/03/2021 only and may be for some technical reason, the e-mail was sent on 01/04/2021.

4. We have heard rival contentions and perused the record placed before us. Case of the assessee has been reopened for Assessment Year 2014-15 by issuance of notice u/s 148 of the Act. For re-opening the case of the assessee for Assessment Year 2014-15, the time limit of six year from the end of the assessment year ends on 31/03/3021. So, the notice u/s 148 of the Act is to be issued and served upto 31/03/2021. Now, in the instant case, the notice via e-mail was sent to the assessee along with the attachment of notice u/s 148 of the Act on 01/04/2021. Copy of the e-mail is at page 56 of the paper book, which is reproduced below:-

"Dear MAMTA CHORARIA,

Please find attached the Notice u/s 148 for PAN: ACZPC6470F and AY:2014-15. Please quote your PAN in all future correspondences.

Note:

- *This communication is computer generated and may not contain signature.*
- *This communication may be treated as compliant with the requirements of Income Tax Rules 127 and 127A.*
- *Signed copy may be sent separately if not already digitally signed.*
- *Please quote your PAN in all communications.*
- *Income Tax Department does not seek any taxpayer information like user name, password, details of ATM, credit cards, etc. Taxpayers are advised not to part with such information on the basis of emails."*

4.1. We further note that though the notice issued u/s 148 of the Act is dt. 31/03/2021 and has been e-mailed to the assessee on 01/04/2021, but even in the e-proceedings, available on the income-tax portal under the login-id of the assessee, notice u/s 148 of the Act is stated to have been issued on 01/04/2021.

5. From perusal of the above, it remains an admitted fact that the notice was served upon the assessee on 01/04/2021. Now, under these given facts and circumstances, where the issuance of notice u/s 148 of the Act is barred by limitation, the re-assessment proceedings deserves to be quashed in view of the settled judicial precedents. The ITAT Kolkata Bench, while dealing with identical set of facts in the case of *Sandeep Kumar Shah vs. ITO, Wd-50(1), Kolkata in ITA No. 07/Kol/2023, order dt. 30/11/2023*, has held as under:-

"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 ld. 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 ld. 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:-

.....

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 ld. 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.

6. Consistent with the view taken therein, we are inclined to hold that the impugned assessment order dt. 28/03/2022, is bad in law and

void ab initio. As we have quashed the impugned assessment by allowing the legal ground raised by the assessee, challenging the validity of notice u/s 148 of the Act, all other grounds raised by the assessee are rendered academic in nature.

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

Order pronounced in the Court on 1st May, 2024 at Kolkata.

Sd/-

(PRADIP KUMAR CHOUBEY)
JUDICIAL MEMBER

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 01/05/2024

S.C.S.P.

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