

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
श्री संजय गर्ग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष  
[Before Shri Sanjay Garg, Judicial Member Shri Rajesh Kumar, Accountant Member]

**I.T.A. No. 50/Kol/2023**  
**Assessment Year: 2010-11**

Manoj Jain  (PAN: ADYPJ 1347 E)	Vs.	ITO, Ward-29(4), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	11.06.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	11 .07.2024
For the Appellant/ निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT (Sr. D.R)

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi dated 4.01.2023 for the AY 2010-11.

2. The assessee has challenged the reopening of assessment on legal issue assailing the order of Ld. CIT(A) affirming the said reopening of assessment which is invalidly done and is against the provisions of the Act.

3. Facts in brief are that the assessee filed return of income on 14.06.2010 declaring total income of Rs. 3,35,300/-. The AO after receiving information from Pr. DIT(Inv), Kolkata vide letter dated 21.09.2015 that the assessee has received bogus long term capital gain amounting to Rs. 1,09,35,000/-during the year from the sale of penny stock which was listed with Calcutta Stock Exchange. The scrip involved in the instant case before us is Blue Print Securities Ltd. Accordingly AO issued notice u/s 148 of the Act on 28.03.2017 which was complied with by the assessee by filing return of income on 4.4.2017 declaring total income of Rs. 3,35,300/- . The assessee filed and furnished before the AO various documents/evidences relating to purchase/sale of equity shares during the proceedings. However the submissions of the assessee did not favour with the AO and as a result the entire long term capital gain of Rs. 1,09,35,000/- was added to the income of the assessee in the assessment framed u/s 143(3) r.w.s. 147 of the Act.

4. In the appellate proceedings, the assessee challenged the reopening of assessment, however the same was held to be validly done by the AO.

5. The Ld. A.R vehemently submitted before us that the reopening of assessment as made by the AO u/s 147 read with Section 148 of the Act is invalid on three counts namely :

i) Notice u/s 148 of the Act was issued by non-jurisdiction AO

ii) Notice u/s 148 dated 28.03.2017 was unsigned by referring to page no 202 which is the copy of said notice.


iii) That the reasons recorded by AO, Ward-35(4), Kolkata whereas the notice was issued by different AO.

5.1. The Ld. A.R drew our attention to the copy of objections dated 4.04.2017 filed by the assessee to the reopening of assessment wherein it was stated in page 1 that the name of official mentioned is Shri Subrata Kumar Gauri whereas the said notice is not digitally or manually signed. The Id AR contended that the service of valid notice

is a pre-condition to assume jurisdiction by the AO. Further it was submitted in para B that Shri Subrata Kumar Gauri is not in charge of the instant ward-35(4) and Mr. Subrata Kumar Gauri is holding the additional charge, then how could he issue the notice u/s 148 dated 28.03.2017. The assessee stated that notice u/s 148 was issued by AO who did not have the jurisdiction and therefore entire reassessment proceedings were bad in law and consequent assessment framed is also invalid and non-est in the eyes of law. The Ld. A.R relied on the decision of Hon'ble Bombay High Court in the case of Prakash Krishnavatar Bhardwaj in W.P No. 9835 of 2022 dated 09.01.2023 wherein it has been held that notice issued u/s 148 has to be signed either digitally or manually failing which the notice issued is invalid. The Ld. A.R therefore prayed that in view of the aforesaid issues and defects in jurisdiction, the reopening may kindly be quashed.

6. The Ld. D.R on the other hand relied on the order of authorities below.

7. After hearing the rival contentions and perusing the material on record, we find that the assessment has been re-opened u/s 147 of the Act by issuing notice u/s 148 of the Act dated 28.03.2017 a copy of notice as is available at page 202 of PB. For the sake of convenience and ready reference, the same is extracted below:

 <p>To: MANOJ JAIN 8-B, DIAMOND TOWER, 37 DIAMOND HARBOUR ROAD, KOLKATA 700027</p> <p>PAN: ADYPJ1347E</p>	<p><b>GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE INCOME TAX OFFICER WARD 35(4), KOLKATA</b></p>	
<p>AY: 2010-11</p>	<p>Dated: 28/03/2017</p>	<p>Letter No : ITBA/AST/S/148/2016- 17/1003614862(1)</p>
<p><b>Notice Under Section 148 Of The Income Tax Act, 1961</b></p>		
<p>Sir/ Madam/ M/s,</p> <p>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.</p> <p>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.</p> <p>This notice is being issued after obtaining the necessary satisfaction of the additional Commissioner/ Commissioner of Income Tax/ Chief Commissioner of Income Tax.</p>		
<p><b>ATANU SEN SARMA WARD 35(4), KOLKATA</b></p>		

7.1. A perusal of the said notice reveals that the notice has not been signed either digitally or manually. Apparently notice issued u/s 148 of the Act was without any signature digitally or manually of the authority issuing the said notice. We have perused the decision of Hon'ble Bombay High Court in the case of Prakash Krishnavatar Bhardwaj (supra) wherein the Hon'ble Court has held as under:

*8. We have heard the learned counsel for the parties and perused the record of the petition.*

*9. It is the submission of the learned counsel for the petitioner that on perusal of the affidavit-in-reply of the respondents, there appears to be no categorical denial to the statements made by the petitioner that he has not received an order dated 02.04.2022 passed under clause (d) of Section 148A of the Act, rejecting the petitioner's submission and holding the petitioner's case to be one fit for issuing notice u/s.148 of the Act. Similarly, there is no substantial denial to the fact that the notice issued u/ s.148 dated 02.04.2022 was unsigned both digitally and manually and was never received by the petitioner by e-mail or for that matter even uploaded onto the system via e-mail. Further, a copy of the said unsigned notice was received by the petitioner by speed post only on 16.04.2022.*

*10. It is, therefore, the contention of the petitioner that the notice u/s.148 being an unsigned notice, the same is invalid and consequently proceeding on the basis of an invalid notice vitiates the entire reassessment proceedings as the same is without any jurisdiction. It is further the argument of learned counsel for the petitioner that proceeding on the basis of an invalid notice, which in any case, has been issued after three years from the end of the relevant assessment year, as required under the provisions of section 149(1)(b) of the Act, constitutes a jurisdictional error on the part of the respondents.*

*11. Learned counsel for the petitioner makes a reference to a Division Bench judgment of the High Court of Calcutta in Commissioner of IncomeTax v. Aparna Agency (P.) Ltd.1 to contend that the provisions of section 192(B) of the Act do not provide for a cure when the notice under the Act is invalid by virtue of it not having a signature affixed as is required under the relevant provisions. He further refers to another judgment of the High Court of Calcutta in B.K. Gooyee v. Commissioner of Income-tax2 and a judgment of a Division Bench of the Madhya Pradesh High Court in Umashankar Mishra v. Commissioner of Income-tax3 for the proposition that absence of a signature on notice is an invalid notice in the eyes of law and such an infirmity amounts to no notice at all.*

*12. Per contra, Mr. Ajeet Manwani, learned counsel for the respondents submits that assuming the notice u/s.148 of the Act was unsigned manually or digitally as is clear from the original record, this fact would not, by itself vitiate further proceedings in the matter, as according to him, provisions of Section 292B of the Act could cure this defect or mistake. He argues that applying the provisions of section 292B of the Act, the notice which is mistakenly not signed, would not be vitiated; since in any event the unsigned notice, at a later point of time, was sent to the petitioner by courier.*

*13. Learned counsel for the respondents refers to a judgment of the Delhi High Court in Sky Light Hospitality LLP v. Assistant Commissioner of Income-Tax4 and that of the Calcutta High Court in Commissioner of Income-Tax v. Anand And Co.5 in aid of his argument that even if the signatures were not applied on the notice, the authenticity of the notice was not*

denied; he argues that if the petitioner does not deny the authenticity of the notice, he has waived his right to raise an objection to its validity.

14. The High Court of Calcutta in *B.K. Gooyee (supra)* was considering the legal impact of an unsigned notice issued u/s.34 of the Income Tax Act, 1922 and whether there can be a waiver of a right of an assessee to challenge the same on the ground that the notice was unsigned. Whilst holding that a lack of signature on a notice invalidates the same, it has further gone on to hold that there can be no waiver to the right of an assessee to raise this objection where the condition precedent for assuming jurisdiction by the Assessing Officer is not fulfilled. To quote from the judgment it holds:

*In the present case there was more than a mere irregularity or a clerical mistake for, in my view, a notice without the signature lacks an essential and/or an integral and/or an inseparable vital part or requirement of a notice under section 34, a notice in terms of which is a condition precedent to the assumption of jurisdiction by the Income-tax Officer. It is notice with a body but without a soul. Hence, it is an invalid notice and consequently equivalent to no notice. Hence, these cases do not militate against the principle that there can be no waiver where the condition precedent for assumption of jurisdiction is not fulfilled.*

*Accordingly, my opinion is that the notice under section 34 of the Income-tax Act, 1922, to be a proper, valid and legal notice, requires to be signed by the Income-tax Officer, non-compliance of which would make it bad and all the proceedings started thereafter would be without jurisdiction. Mr. Meyer, however, in the last resort contended that in the facts of this case, the assessee in any event, waived the notice. The expression "waiver" has a professional meaning. It is true that the notice was duly served and was said to have been received by the assessee, but it is determined on high authority, that the notice under section 34 (I mean a valid notice) is a condition precedent for the assumption of jurisdiction. A notice under section 34 is therefore, not merely a procedural requirement. In its absence, it does not become a case of procedural defect. The difference between the cases of want of jurisdiction and those of irregular exercise of jurisdiction, is to be remembered in this context.*

15. Following the ratio laid down in *B.K. Gooyee (supra)* and another, a Division Bench of the High Court of Calcutta in *Aparna Agency (P.) Ltd. (supra)* whilst considering the validity of an unsigned penalty order issued u/s.271B of the Income Tax Act, 1961 and whether such a defect was curable in terms of provisions of section 292B of the Act, held thus:

*6. A close scrutiny of B.K. Gooyee's case (supra) could show that the question for consideration was regarding the irregularity in the issuing of a notice under section 34 of the Indian Income-tax Act, 1922. The notice did not contain the signature of the Income-tax Officer who issued it. It was held that service of a valid notice is a condition precedent to the assumption of jurisdiction by the Income-tax Officer to take further proceedings and that all proceedings taken in pursuance of a notice which does not contain the signature of the Income-tax Officer are invalid. It was further held that such irregularity cannot be waived and the question of its validity can be taken at any stage of the proceedings. Their Lordships of the Madhya Pradesh High Court have taken notice of the provisions contained in section 292B which provision was incorporated subsequent to the judgment in B.K. Gooyee's case (supra) and have specifically dealt with this question in the light of the provisions in section 292B. We are in respectful agreement with the view of their Lordships in Umashankar Mishra's case (supra) based on which the Tribunal in the case on hand reversed the order of the Commissioner of Income-tax (Appeals).*

7. The observations in B.K. Gooyee's case (*supra*), which, in our view, have material bearing on the questions raised before us are extracted hereunder :

*"In the present case, there was more than a mere irregularity or a clerical mistake, for, in my view, a notice without the signature lacks an essential and/or an integral and/or an inseparable vital part or requirement of a notice under section 34, a notice in terms of which is a condition precedent to the assumption of jurisdiction by the Income-tax Officer. It is notice with a body but without a soul. Hence, it is an invalid notice and consequently, equivalent to no notice."*

8. The service of a valid notice, as already noticed, is a condition precedent to the assumption of jurisdiction by the Assessing Officer. The existence of a valid notice is, therefore, a jurisdictional fact. The question, therefore, is not to be looked at from the perspective that the decision to issue notice was by an authority competent in that behalf under the Act and, therefore, submitting to his jurisdiction without objection, the inference of waiver arises. The question being one of jurisdiction, to be more specific the condition precedent to the assumption of jurisdiction what has to be seen is that the person that purported to exercise the jurisdiction vested in him had in fact exercised that jurisdiction and signed the said notice. The said test has not been satisfied in the case on hand. Unlike the judgment of this court in *Anand and Co. [1994] 207 ITR 418* relied upon by the Revenue the case on hand is not one where the authenticity of the show-cause notice is in question. In the case on hand as held by the fact-finding authority the show-cause notice has not been signed by any person and the place intended for signature was kept blank.

16. The Madhya Pradesh High Court has taken a similar view in *Umashankar Mishra (supra)* whilst following the same line of thinking as the Calcutta High Court in *B.K. Goyee (supra)* and has held as under:

4. The first question for consideration is whether the Tribunal was right in holding that the notice issued to the assessee under section 271(1)(a) of the Act was a valid notice. Now, the Tribunal has found that that notice was not signed by the ITO. Section 282 of the Act provides that a notice under the Act may be served on the person named therein as if it were a summons issued by a court under the Code of Civil Procedure, 1908. Sub-rule (3) of Rule 1 of O.5, CPC, provides that every summons shall be signed by the judge or such officer, as he appoints. In view of this provision, it must be held that the notice to show cause why penalty should not be levied issued by the ITO should have been signed by the ITO and the omission to do so invalidated the notice. In *B.K. Gooyee v. CIT [1966] 62 ITR 109 (Cal)*, the question for consideration was whether the absence of the signature of the ITO on the notice under section 34 of the Indian I.T. Act, 1922, was a mere irregularity or a clerical mistake. Dealing with this question, Datta J. Observed as follows (p. 119):

*"In the present case, there was more than a mere irregularity or a clerical mistake, for, in my view, a notice without the signature lacks an essential and/or an integral and/or an inseparable vital part or requirement of a notice under section 34, a notice the terms of which are a condition precedent to the assumption of jurisdiction by the Income-tax Officer. It is notice with a body but without a soul. Hence, it is an invalid notice and consequently, equivalent to no notice."*

5. We respectfully agree with the aforesaid observations. The Tribunal distinguished the decision in *[1966] 62 ITR 109* on the ground that the provisions of section 292B of the Act were introduced after that decision. But, that provision, in our opinion, is

*intended to ensure that an inconsequential technicality does not defeat justice. But, the signing of a notice under section 271(1)(a) of the Act is not merely an inconsequential technicality. It is a requirement of the provisions of O.5, rule 1(3) of the CPC, which are applicable by virtue of section 282 of the Act. Under the circumstances, the provisions of section 292B of the Act would not be attracted in the instant case and the Tribunal in our opinion, was not right in holding that the notice issued under section 271(1)(a) of the Act was a valid notice in the eye of law.*

*6. In view of our answer to the first question, our answer to the second question is that the Tribunal was not right in holding that the absence of the signature on the notice simply constituted a mistake or omission within the meaning of section 292B of the Act.*

*7. In view of the fact that no valid notice was served on the assessee before levying penalty, our answer to the third question is that, on the facts and in the circumstances of the case, the penalty levied under section 271(1)(a) of the Act was not valid. Thus, our answers to all the three questions referred to this court are in the negative and in favour of the assessee.*

*17. Anand And Co. (supra) cited by the Revenue, proceeds on the basis that the notice issued u/s.148 of the Act did contain a signature, but the question before the Calcutta High Court was whether the signature was authenticated or not. In that case, the signature was affixed in the form of a curved line, which the assessee claimed was not an authentic signature. It is in that context that the High Court of Calcutta in Anand And Co. (supra) has held that the notice was proper, Anand and Co. (supra) was not a where there was no signature at all on the notice, but in view of the fact that the only challenge was to the doubtful authenticity of the curved line purporting to be his signature, the assessee could not raise an objection that the notice was infact invalid. In the facts of that case, the ratio laid down therein does not aid the argument of the respondents in any manner.*

*18. Sky Light Hospitality (supra) cited by the respondents was also not a case where the notice issued to the assessee was unsigned. That was a case where the notice u/s.148 was issued with a signature, but the address of the assessee was only partly correct. It was in that context that the Delhi High Court has held that the provisions of section 292B of the Act, where there was a mistake, defect or an omission in the complete address on which the notice was issued to the assessee, would cure such defect, and an objection to the validity of the notice could not be raised. In that fact of the matter, the judgment in Sky Light Hospitality (supra) would not be applicable to the facts of the present case, which is one where the signature of the Assessing Officer was not affixed on the notice.*

*19. Applying the ratio of the judgment of the Calcutta High Court in B.K. Gooyee and Aparna Agency (P.) Ltd. (supra) to the facts of the present case, the signature of the Assessing Officer admittedly not having been affixed on the notice issued u/s.148 of the Act, the notice itself would be invalid and consequently, the Assessing Officer could not assume jurisdiction to proceed in the matter in terms of section 148 of the Act. The Madhya Pradesh High Court in Umashankar Mishra (supra) has dealt with a similar fact situation where the first substantial question of law dealt with in that case had considered the effect of whether an unsigned notice can be considered as an irregularity or clerical mistake. The Madhya Pradesh High Court after making reference to the conclusions drawn in B.K.Gooyee (supra) by the Calcutta High Court, has taken the view, that a notice without a signature affixed on it is an invalid notice and is effectively no notice in the eyes of law.*

20. *The Madhya Pradesh High Court in Umashankar (supra) has further dealt with the second substantial question of law as to whether the Tribunal was right in holding that the absence of a signature on the notice constitutes a mistake or omission within the meaning of section 292B of the Act and while addressing itself to that question, has concluded that in the absence of a signature on the notice, the same would not constitute a mistake or omission and would not be curable under the provisions of section 292B of the Act.*

21. *We are, therefore, of the considered opinion that in the present case, the notice u/s.148 dated 02.04.2022 having no signature affixed on it, digitally or manually, the same is invalid and would not vest the Assessing Officer with any further jurisdiction to proceed to reassess the income of the petitioner. Consequently, the notice dated 02.04.2022 u/s.148 of the Act issued to the petitioner being invalid and sought to be issued after three years from the end of the relevant assessment year 2015-16 with which we are concerned in this petition, any steps taken by the respondents in furtherance of notice dated 21.03.2022 issued under clause (b) of section 148A of the Act and order dated 02.04.2022 issued under clause (d) of section 148A of the Act, would be without jurisdiction, and therefore, arbitrary and contrary to Article 14 of the Constitution of India. Consequently, we quash and set aside the notice dated 02.04.2022 issued by the respondents u/s.148 of the Act, order dated 02.04.2022 under clause (b) of section 148A of the Act and notice dated 21.03.2022 issued under clause (b) of section 148A of the Act.”*

7.2. In the above decision, the Hon’ble Bombay High Court has held that re-opening of assessment on the basis of a notice issued u/s 148 of the Act which is unsigned is invalid. We therefore respectfully following the decision of Hon’ble Bombay High Court quash the assessment framed by AO as without jurisdiction as the notice issued u/s 148 is invalid as it did not bear the signature of AO.

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

Order is pronounced in the open court on 11<sup>th</sup> July, 2024

Sd/-

Sd/-

(Sanjay Garg/संजय गर्ग)

(Rajesh Kumar/राजेश कुमार)

Judicial Member/न्यायिक सदस्य

Accountant Member/लेखा सदस्य

Dated: 11<sup>th</sup> July, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shri Manoj Jain, 15B, Clive Row, Dalhousie, Kolkata-700001.
2. Respondent – ITO, Ward-29(4), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata