आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई। **IN THE INCOME TAX APPELLATE TRIBUNAL** **'A' BENCH: CHENNAI** **श्री एबी टी. वर्की, न्यायिक सदस्य एवं** **श्री मनोज कुमार अग्रवाल,** लेखा सदस्य **के समक्ष** **BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND** **SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**		
आयकर अपील सं./**ITA No.1424/Chny/2024** निर्धारण वर्ष**/Assessment Year: 2012-13**		
Mr. K. Mohan Raj, D.No.61/10, Travellers Bungalow Road, Old Pet, Krishnagiri-635 001.	**v.**	The ITO, Ward-1(1), KRN Complex East, K. Theatre Road, Krishnagiri-1.
[**PAN: ARZPM 1267 H**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
अपीलार्थी की ओर से/ Appellant by	:	Mr.T.S.Subramaniam, FCA
प्रत्यर्थी की ओर से /Respondent by	:	Dr. Samuel Pitta, JCIT
सुनवाईकीतारीख/Date of Hearing	:	20.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	18.10.2024

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 30.06.2023 for the Assessment Year (hereinafter in short "AY") 2012-13.

2. At the outset, there is a delay of '258' days in filing of the appeal against the impugned order of the Ld.CIT(A). The reason for the delay has been attributed to the assessee being hospitalized due to an accident

which resulted in hip joint injuries, because of which, he was hospitalized and was not able to get in touch with the Ld.AR to file the appeal. In order to prove the accident and injuries, assessee has filed medical certificate and an affidavit which we have perused, and since, the aforesaid facts couldn't be contradicted, we find reasonable cause for the delay and therefore, we are inclined to condone the delay and proceed with the grounds of appeal raised by the assessee. The only relevant grounds of appeal are Ground Nos.14 & 15, the other grounds are merely describing facts. Therefore, only Grounds No.14-15 are taken up for adjudication.

3. Ground No.14 is a legal issue that after re-opening of assessment u/s.147 of the Income Tax Act, 1961 (hereinafter in short 'the Act'), the AO has not issued u/s.143(2) notice, despite the assessee filing return of income. Therefore, the consequent framing of assessment order is bad in law.

4. The brief facts relating to the legal issue are that for AY 2012-13, the AO issued notice u/s.148 of the Act on 28.03.2019 calling for the return of income (RoI) to be filed which the assessee filed on 24.12.2019 along with the reply dated 23.12.2019. (i.e. one week before the assessment was framed on 30.12.2019 and assessment becoming time-barred). Therefore, it is noted that despite notice u/s.148 of the Act was

issued on 28th March, 2019, the assessee preferred to file a return pursuant to the notice only one week before the assessment was framed after re-opening of assessment. Therefore, in the peculiar facts and circumstances of the case, we are disinclined to entertain the legal issue as to whether the assessment order dated 30.12.2019 framed by the AO is bad in law for non-issuance of notice u/s.143(2) of the Act. For that we rely on the decision of the co-ordinate Bench of this Tribunal, dated 17.08.2023 for AY 2012-13, wherein it was observed as under:-

> 12. We have gone through the various decisions relied upon by the assessee and in all the cases invariably within the time stipulated in the notice issued under section 148 of the Act, either the assessee or the authorized representative either filed the return of income or submitted that the original return of income may be treated as the return of income filed pursuant to the notice under section 148 of the Act. Here in this case no return of income was filed within the time, and no return of income was filed till the commencement of hearing. It was only when the proceedings are going on, that too without obtaining the permission of the learned Assessing Officer the return was filed online and on the next day the learned Assessing Officer was informed of such online filing.
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> 13. For these reasons, we brush aside the contention of the assessee that for want of issuance of notice under section 143(2) of the Act, the assessment is bad under law. Next contention of the assessee is that assessment is bad for want of sanction of the learned PCIT before issuance of notice under section 148 of the Act.

5. Therefore, we don't entertain this legal issue raised by the assessee on the peculiar facts of the case, because, assessee can't take the benefit of his own action of submitting Return of Income only one week prior to completion of assessment order which was getting time barred. Therefore, we uphold the observation made by the Ld.CIT(A) dismissing this legal ground as under:

> 7.4 I have carefully considered the facts of the case, the submission of the appellant and evidences on record. The appellant submitted that he has filed his Return of Income on 24.12.2019 and the assessment completed /u/s.144 without issuing the notice U/s.143(2) of the Act is legally not maintainable. In this connection, the appellant has relied on the decision of ITAT "D" Bench in ITA.NO.361/MDS/2009 in the case of Mrs. R. Vijayalakshmi, Salem-2 for 16.10.2009. In that case the Income Tax Appellate Tribunal "D" Bench, Chennal cancelled the assessment made without issue of notice U/s.143(2) of the Act. However, in that case it may be noted that the appellant had filed the return of income 27.10.2006 which was much earlier than the time barring date, in the current case, the appellant has filed the return of Income on 24.12.2019 just 7 days before the time barring date which would have left the AO with only 4 working days excluding holidays to process the return and issue a notice u/s 143(2) of the Act and such action would not have been possible considering the time available. Such late filing o the retum either deliberately or even unintentionally would lead to the whole assessment proceedings getting time barred. Therefore, the appellant cannot be allowed to file return just before the end of time barring date and claim the assessment process is not valid on account of non issue of 143(2) notice as if such action are allowed. it will open a whole pandoras box where if assessees feel that they are at a disadvantage in such proceedings, will delay the matter till the end of time barring and file return at last minute to vitiate the assessment proceedings on technicalities.
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> 7.5 Notice U/s.148 dated 28.03.2019 was issued and served to the appellant on 01.04.2019, wherein it was required to furnish the return in the prescribed form within 30 days of service of notice. Subsequently notice u/s.142(1) dated 22.11.2019 was issued and served to the Assessee to furnish the return on or before 27.11.2019. However, the Assessee filed the return only on 24.12.2019 which is beyond the time given in the notices. Further, the appellant has not given any reasonable cause as to why it was not able to file the return timely in response to the 148 notice. Therefore, this claim of the appellant that the assessment completed u/s 144 without issuing the notice u/s.143(2) of the Act is legally not maintainable is not tenable.

6. Therefore, we concur with the action of the Ld.CIT(A) and don't entertain this legal issue.

7. Ground No.15 is challenging the service of notice u/s.148 of the Act on 01.04.2019, which according to the assessee is bad in law. It is not in dispute that the AO has issued notice u/s.148 of the Act on 28.03.2019 which was well within the limitation provided by the Act and therefore, service of the notice after 31.03.2019 would not affect the legality of the notice issued u/s.148 of the Act. For such a proposition, the Ld.DR relied on the decision of the Hon'ble Madras High Court in the case of Malavika

Enterprises reported in [2022] 137 taxmann.com 398 (Madras), wherein, it has been held as under:-

> 15. Section 282(1) of the Act of 1961 provides that service of notice or summon or requisition may be made by delivering or transmitting a copy thereof to the person therein named. However, the amended provision of Section 282A of the Act of 1961 was brought which provides that notice or document shall be signed and issued in paper form or communicated in electronic form in accordance with such procedure as may be prescribed. Sub-section (2) of Section 282A of the Act of 1961 is quite relevant. It provides that every notice or document to be issued, served or given for the purposes of this Act by any income tax authority shall be deemed to be authenticated if the name and office of a designated income tax authority is printed, stamped or otherwise written thereon.
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> 16. Rule 127A of the Rules of 1962, extracted above, provides that every notice or other document communicated in electronic form by an income tax authority under the Act shall be deemed to be authenticated in case of electronic mail or electronic mail message, if the name and office of such income-tax authority is printed on the email body and if the notice or other document is in the email body itself. Rule 127A of the Rules of 1962 is elaborate and would further be discussed subsequently.
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> 17. In the facts of the present case, it is not in dispute that notice under Section 148 of the Act of 1961 is an electronically generated notice issued on 31.3.2021. The petitioner has raised issue about the receipt of notice on the day subsequent to 31.3.2021 without explaining that the requirement of provisions is for issuance of notice and not of the receipt. The issue thus cannot be taken up from the fact about the receipt of the notice, but in reference to the issuance of the notice. It is more so when Rule 127A(1) of the Rules of 1962 provides that every notice communicated in electronic form by an income tax authority is deemed to be authenticated.
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> 18. A perusal of the notice dated 31.3.2021 shows it to have been sent through email and as per Rule 127A(1) of the Rules of 1962, it is deemed to be authenticated if the name and office of the income tax authority is printed on the email body or is printed on the attachment to the email. The notice in the instant case shows the name and office of the income tax authority printed on the attachment to the email. The petitioner could not bring any fact on record to show that notice under Section 148 of the Act of 1961 was not issued by the electronic mode, i.e., by email, on 31.3.2021 and, that too, when the fact regarding digital signature of the authority could not be disputed. In fact, the digital signature of the authority is also on 31.3.2021 and, therefore, we do not find that it is a case where notice under Section 148 of the Act of 2021 was issued on or after 1.4.2021, rather it was issued prior to the date aforesaid.
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> 19. At this stage, we will consider the judgment of the Allahabad High Court in Daujee Abhushan Bhandar Pvt Ltd, supra, which is also in reference to the same provisions. While discussing the issue, the Division Bench of the Allahabad High Court has referred to Rule 127A of the Rules of 1962 which deals with communication in the electronic form and after referring to Section 13 of the Information Technology Act, 2000, it was held that despatch of an electronic record occurs when it enters a computer resource outside the control of the originator. Therefore, if a notice is digitally signed by the income tax authority

and it is entered by the income tax authority in computer resource outside the control, then that point of time would be the time of issuance of the notice.

20. After recording the aforesaid finding, the Division Bench of the Allahabad High Court further examined the definition of the words "issue" and "issuance of notice" which have not been defined under the Act of 1961. The dictionary meaning of both the words were thereafter taken and after considering different judgments, the Division Bench finally came to the conclusion that mere digitally signing the notice is not issuance of notice. The impugned notice under Section 148 of the Act of 1961 in that case was received on 6.4.2021 and, therefore, it was treated to be time barred.

21. What we find relevant from the judgment in Daujee Abhushan Bhandar Pvt Ltd, supra, is consideration of facts given in paragraph 3 with a conclusion in the last paragraph and for ready reference, both these paragraphs are quoted herein:

> "3. Subsequently, the Assessing Authority attempted to initiate proceedings under Section 148 of the Act, 1961. For this purpose, a notice under Section 148 of the Act, 1961 for the Assessment Year 2013-14 was digitally signed by the Assessing Authority on 31.3.2021. It was sent to the assesses through e-mail and e-mail was undisputedly received by the petitioner on his registered e-mail I .D. on 06.04.2021. The limitation for issuing notice under Section 148 read with Section 149 of the Act, 1961 was upto 31.03.2021 for the Assessment Year 2013-14.
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> 30. In view of the discussion made above, we hold that mere digitally signing the notice is not the issuance of notice. Since the impugned notice under Section 148 of the Act, 1961 was issued to the petitioner on 06.04.2021 through e-mail, therefore, we hold that the impugned notice under section 148 of the Act, 1961 is time barred. Consequently, the impugned notice is quashed."

22. In paragraph 3, it has been noted that the notice under Section 148 of the Act of 1961 was digitally signed by the authority on 31.3.2021 and was sent to the assessee through email, but email was received by the assessee on 6.4.2021 and thereby taking the date of receipt to be relevant, the judgment was rendered favourable to the assessee. With due respect to the Division bench of the Allahabad High Court, the issue threadbare discussed by it refers to the date of issuance and not of receipt, but after making discussion in reference to all the provisions, conclusions have been drawn referring to the date of receipt, without discussion as to when it enters a computer resource outside the control of the originator and for that purpose, we would like to refer to paragraphs 16 to 20 of the judgment in Daujee Abhushan Bhandar Pvt Ltd, supra, with which we record our agreement:

> "16. Sub Section (1) of Section 149 starts with a prohibitory words that "no notice under Section 148 shall be issued for the relevant Assessment Year after expiry of the period as provided in sub Clauses (a) (b) and (c)". There is no dispute that the notice must be issued by the Assessing Authority within the period of limitation as provided in Section 149 of the Act, 1961. Section 282 of the Act, 1961 provides for mode of service of notices. Section 282 A provides for authentication of notices and other documents by signing it. Sub- Section 1 of Section 282 A uses the word " "Signed" and "issued in paper form" " or "communicated in electronic form by that authority in accordance with such procedure as may be prescribed". Thus, signing of notice and issuance or communication thereof have been recognised as different acts.

17. Rule 127 A(1) of the Rules 1962 provides that every notice or other document communicated in electronic form by an authority under the Act shall be deemed to be authenticated in case of electronic mail or electronic mail message (e-mail) if the name and office of such income tax authority is printed on the e- mail body, if the notice or other document is in the e mail body itself, or is printed on the attachment to the e-mail, if the notice or other document is in the attachment and the e-mail, is issued from the designated e-mail address of such income tax authority. Thus, the issuance of notice and other document would take place when the email is issued from the designated e-mail address of the concerned income tax authority.

18. Since Section 149 of the Act 1961 requires notice to be issued by Income Tax Authority, therefore, in terms of sub Section (1) of Section 282 A it has to be signed by that authority and to be issued in paper form or communicated in electronic form by that authority in accordance with procedure prescribed.

19. The communication in electronic form has been prescribed in Rule 127 A of the Rules 1962 which provides a procedure for issuance of every notice or other document and the e-mail in electronic form/electronic mail which has to be issued from the designated e-mail address of such income tax authority.

20. Thus, after digitally signing the notice the income tax authority has to issue it to the assessee either in paper form or through electronic mail. Sub-Section (1) of Section 13 of the Act 2000 provides that dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator. The aforesaid sub Section (1) of Section 13 indicates the point of time of issuance of notice. Therefore, after a notice is digitally signed and when it is entered by the income tax authority in computer resource outside his control i.e. the control of the originator then that point of time would be the time of issuance of notice."

[emphasis supplied]

23. The paragraphs referred to above show the manner of issuance of notice by electronic mode and when it would be taken to have been issued, but then the judgment was rendered in reference to the date of receipt of the notice, without showing that after the notice was digitally signed on 31.3.2021, it was not sent being entered by the income tax authority in computer resource outside his control. Thus, with due respect to the Division Bench of the Allahabad High Court, the conclusions finally drawn on the facts of that case cannot be applied, rather we cannot change the language of the provision by changing the word "issuance" to that of "receipt".

24. Finding that the notice in question was issued on 31.3.2021, we do not find a case in favour of the petitioners and, accordingly, W.P.Nos.27998 and 28000 of 2021 and W.P.(MD) No.11312 of 2021 are dismissed. However, it is with liberty to the petitioners to challenge the assessment orders, if they so choose, by availing the remedy as provided under law. The dismissal of these writ petitions would not come in the way of the petitioners availing the remedy in accordance with law.

25. In view of the finding rendered herein above that notices were issued before 1.4.2021, W.P.Nos.27997 and 27999 of 2021 and W.P.(MD) No.16821 of 2021 challenging the validity of Explanation to Clause A(a) modified by notifications

issued from time to time are not pressed and, accordingly, the said writ petitions are dismissed.

Therefore, respectfully following the binding precedent of Hon'ble High Court (supra), we dismiss this legal issue also.

8. For completeness, coming to the merits of the addition, we note that the Ld.CIT(A) has noted as under:-

7.6 With regard to the merits of the addition made of Rs 26,72,772, the appellant submitted that he was approached by a property purchaser by name MRS.P.VIDYA who is working as a School Teacher to purchase a Residential House through the appellant. The appellant submitted that as the Seller of the property is also known to the appellant namely Mr.D.Jayabharath and in order to satisfy the other Legal Formalities of verifying the Title Deed of the documents the amounts given by Mrs.P.Vidya for purchase of the property was temporarily deposited in his Bank Account. The appellant submitted that Mrs.P.Vidya is also School Teacher and who is assessed to Income Tax in PAN.NO.AHYPV2823K and she purchased a vacant site on 30.01.2012 by Registered Doc. No.280/2012 Registered in the Sub-registrar Office-1, Krishnagiri for a sum of Rs.6,25,000/-. The appellant submitted that he deposited the said Advance amount given by the proposed buyer of the property namely Mrs.P.Vidya in his Bank account which were later withdraw and given to the seller of the property when the Document was Registered on 30.01.2012. The appellant has also submitted that he obtained a Jewel Loan of Rs.54,500- in the Month of November 2011 which is also taken as cash deposits in the total figure of Rs.26,77,272- made by the AO. The appellant had submitted an affidavit of Mrs P Vidya and copies of the sale deed as evidences. In view of the additional evidences submitted and to verify the claim of the appellant that he deposited the cash of P.Vidya in his bank account, on 25.04.2023 a remand report was called for from the AO to verify such claims. Reminders were sent to the AO on 18.05.2023 and 13.06.2023 but no such remand report has been received from the AO till date, therefore, it is presumed that the AO has nothing to offer on the remand made. As such, the evidences are being admitted under Rule 46A as they are crucial to the issue in appeal.

7.7 1 find that Mrs.P.Vidya in her Affidavit Dt.06.02.2021 has admitted that as the seller of the property was known to the appellant, the sale consideration of the property was paid through the appellant to the seller of the property. And the source of funds has been given as her salary savings. I also find that Mrs P Vidya is assessee to tax and the purchase of property is been duly reflected by her in her IT Returns. The appellant submitted that Property consideration received in cash by the appellant on behalf of purchaser and paid to seller was Rs 13,10,000. However, it is seen that the appellant himself submitted that Mrs.P.Vidya is a School Teacher and who is assessed to Income Tax in PAN.NO.AHYPV2823K and she purchased a vacant site on 30.01.2012 by Registered Doc. No.280/2012 Registered in the Sub-registrar Office-1. Krishnagiri for a sum of Rs.6,25,000/- The copy of the sale deed also reflects Rs 6,25,000 only. Therefore, I find that the claim of appellant that Property consideration received in cash by the appellant on behalf of purchaser and paid to seller was Rs 13,10,000 is not correct and proven by the evidences submitted. It is only Rs 6,25,000 as seen from the documents submitted. The balance amount of Rs 6,85,000/ is not explained by the appellant.

Therefore, in view of the above discussion the income of the appellant is to be calculated as under:

Income from business u/s 44AD	Rs.	1,25,050
Income from other source	Rs.	50,000
Undisclosed cash deposited u/s 69	Rs.	6,85,000
Total	Rs.	8,60,000

9. We note that the Ld.CIT(A) has given partial relief to the assessee and also sustained an addition of [Rs.13,10,000/- **minus** Rs.6,25,000/-] Rs.6,85,000/-. We note that the assessee has not brought any evidence/material to substantiate his explanation about the nature & source of cash deposits of Rs.6,85,000/-. Therefore, we don't find any infirmity in the action of the Ld.CIT(A) confirming the addition of Rs.6,85,000/-. Therefore, on merits assessee doesn't succeed and hence dismissed.

10. In the result, appeal filed by the assessee stands dismissed.

Order pronounced on the 18th day of October, 2024, in Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 18th October, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF