

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
SRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER

I.T.A. No.: 1416/KOL/2024
Assessment Year: 2014-15

Pradip Chandra Roy.....*Appellant*
[PAN: ADGPR 1445 P]

Vs.

ITO, Ward-1(4), Siliguri.....*Respondent*

Appearances:

Assessee represented by: Surjit Basu, Adv. and Promita Guha, Adv.

Department represented by: Supriya Pal, Addl. CIT.

Date of concluding the hearing : August 8th, 2024

Date of pronouncing the order : November 4th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2014-15 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 05.06.2024 arising out of the assessment order framed u/s 147 read with Section 144 of the Act dated 23.02.2023.

1.1. The brief facts of the case of the appellant are that the assessee, a retired person of Group-D staff of PWD Department, Government of West

Bengal, do not have any taxable income and he did not register his PAN at I.T. Portal. The assessee did not file any income tax return for the AY 2014-15 as his income remained below taxable limit. The Assessing Officer (hereinafter referred to as ld. 'AO') issued notice u/s 133(6) of the Act on 29.08.2016 on the basis that the Department was in possession of information regarding transaction made by the assessee in immovable property in the F.Y. 2013-14. It is alleged by the ld. AO that even after various reminders the assessee did not make any compliance and a notice u/s 148 of the Act dated 31.01.2021 was issued on 31.03.2021 after obtaining the necessary satisfaction of the PCIT, Siliguri. It is further alleged in the order that as there was no e-mail address registered in the e-filing Portal, the notice was served to the assessee on 28.12.2021 by affixation by the departmental Inspector. The reason to believe that your income chargeable to tax for the AY 2014-15 has escaped assessment within the meaning of Section 147 of the Act. The ld. AO had assessed the appellant by considering the entire stamp duty value of the sold property for Rs. 16,83,600/-. Instead of considering 66.67% value an amount of Rs. 16,83,600/- is treated as undisclosed capital gain u/s 148 of the Act. The said order has been challenged by the assessee before the ld. CIT(A) but appeal of the assessee has also been dismissed as there was no response on behalf of the assessee before the ld. CIT(A).

Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

1.2. Ld. Counsel for the assessee challenges the impugned order thereby taking various grounds in the memo of appeal but his main contention is that reopening of the assessment by the ld. AO by issuing of notice u/s 148 of the Act is bad in law. The ld. Counsel for the assessee has drawn our attention of this Bench that ld. AO without verifying the correctness of the information nor he did get himself satisfied by obtaining a copy of the sale deed from the office of the Additional District Sub-Registrar wrongly added back the entire stamp duty value of the sold property for Rs. 16,83,600/-. The ld. Counsel for the assessee further submits that it is apparent from the order of the ld. AO that ld. AO had signed the notice u/s 148 of the Act on 31.03.2021 but it was

not issued on 31.03.2021 rather the notice was served on the assessee on 28.12.2021 that is much after the due date of the limitation that is bad in law. He has cited the following decisions:

- a) *Ardent Steel Ltd. vs. ACIT (2018) 405 ITR 422 (Chhattisgarh)*
- b) *Kanubhai M. Patel vs. Hiren Bhatt (208) 334 ITR 25 (Guj.)*
- c) *Daujee Abhushan Bhandar P. Ltd. vs. Union of India, Writ Tax No. 78 of 2022*

1.3. On the other hand, ld. D/R supports the impugned order.

2. We have perused the records and find that the assessee has purchased a small residential flat jointly with his wife Smt. Kalpana Roy (Now dead, as the death certificate of Kalpana Roy has been filed by the assessee). It is also the definite case of the assessee that Kalpana Roy, wife of the assessee and the co-owner of the aforesaid property has died intestate leaving behind her husband and two adult sons who inherited her property in equal shares. the ld. Counsel for the assessee has also filed the sale deed before us that goes to reflect that assessee was co-owner of the said property. Now, coming to the legal question, it appears to us that the ld. AO had reopened the assessment of the assessee on wrong consideration of fact that the assessee was 100% owner of the sold property and was liable to pay tax on 100% stamp duty on the sold property which is apparently sold by him and his two sons. Sale deed has also been filed by the assessee before us. It admits of no doubt that the case of the assessee was reopened by issuance of notice on 31.03.2021 for the AY 2015-16 that is beyond four years. The ld. AO before issuance of notice u/s 148 of the Act has only stated that he received credible information that the assessee had sold immovable property. Hon'ble Apex Court in the case of *ACIT vs. CEAT Ltd.* reported in 449 ITR 171 has clearly gave their observation that— "*It is not in dispute that the assessment was sought to be re-opened beyond four years. Therefore, all the conditions under Section 148 of the Act, 1961 for re-opening the assessment beyond four years are required to be satisfied.*"

2.1. Hon'ble Calcutta High Court in the case of *Jay Shree Tea & Industries Ltd. vs. DCIT* reported in 245 ITR 0567 has further held that— "*Considering*

the observations of their Lordships before issue of notice under section 148, if he wants to issue notice after 4 years from the assessment years, the Income Tax Officer has to satisfy himself that there was an escapement of income to tax in the assessment order and secondly, that the assessee has failed to disclose fully and truly all material facts for assessment of his income."

2.2. In the present case as it appears to us that before issuance of notices the ld. AO did not get himself satisfied though he may obtain a copy of sale deed from the office of the ADSR, Siliguri to verify the truth. It is apparent from the sale deed filed by the assessee that property in question was not sold by the assessee alone but his two sons were also the vendors of the property. Now, coming to the next point that it is apparent from the assessment order that the ld. AO had signed the notice u/s 148 of the Act on 31.03.2021 but did not issue the same although the ld. AO had stated in his order that the notice was issued by him on 31.03.2021 but at the same time, the ld. AO had stated that as there was no e-mail address registered in the e-filing portal, the notice was served on the assessee on 28.12.2021. Hence, in our view, the notice was issued on 28.12.2021, much after the date of the limitation and accordingly, the issuance of notice is also bad in law. In this context, we have also noticed the judgment of the Hon'ble Chhattisgarh High Court and Hon'ble Allahabad High Court which is as follows:

In the case of Ardent Steel Ltd. (supra):

"28. Thus, the expression "to issue" in the context of issuance of notice, writs and process, has been attributed the meaning, to send out; to place in the hands of the proper officer for service. The expression "shall be issued" as used in Section 149 of the IT Act would therefore have to be read in the aforesaid context. Thus, the expression "shall be issued" would mean to send out to the place in the hands of the proper official for service. After issuing notice and after due dispatch, it must be placed in hands of the serving officer like the post office by speed post or by registered post etc., by which the officer issuing notice may not have control over the said notice after issuance of the said notice. It must be properly stamped and issued on the correct address to whom it has been addressed. Mere signing of notice cannot be equated with the issuance of notice as contemplated under Section 149 of the IT Act."

In the case of Daujee Abhushan Bhandar P. Ltd. (supra):

“29. Thus, considering the provisions of Section 282 and 282 A of the Act, 1961 and the provisions of Section 13 of the Act, 2000 and meaning of the word “issue” we find that firstly notice shall be signed by the assessing authority and then it has to be issued either in paper form or be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by modes provided in section 282 which includes transmitting in the form of electronic record. Section 12 13(1) of the Act, 2000 provides that unless otherwise agreed, the dispatch of an electronic record occurs when it enters into computer resources outside the control of the originator. Thus, the point of time when a digitally signed notice in the form of electronic record is entered in computer resources outside the control of the originator i.e. the assessing authority that shall the date and time of issuance of notice under section 148 read with Section 149 of the Act, 1961.

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.”

3. Keeping in view the facts of the case awa law settled down as discussed above, we are in this view that issuance of notice is bad in law. Since issuance of notice is bad in law, hence, all the consequent orders passed thereafter has no legal force and accordingly set aside.

4. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 4th November, 2024.

Sd/-

[Rajesh Kumar]

Accountant Member

Dated: 04.11.2024

Bidhan (P.S.)

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Copy of the order forwarded to:

1. **Pradip Chandra Roy, Surya Nagar, Rabindra Sarani, Siliguri-734006.**
2. **ITO, Ward-1(4), Siliguri.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata