

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.135/RPR/2025

निर्धारण वर्ष / Assessment Year : 2017-18

Maa Sharda Corporation
16A, Raj Vatika, Baloda Bazar Road,
Samariya, Raipur-492 001 (C.G.)
PAN: AASFM4607R

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(2), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ravi Agrawal, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

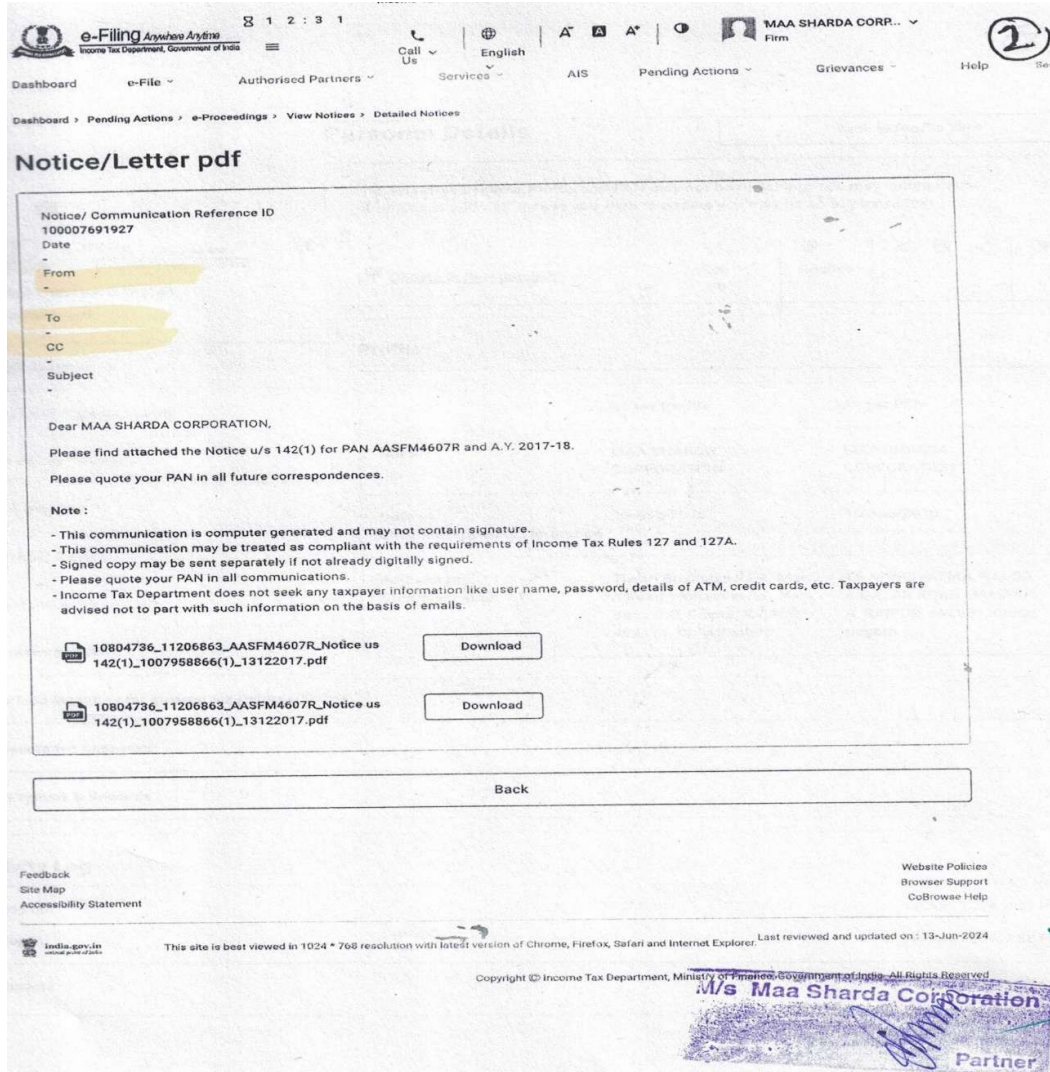
सुनवाई की तारीख / Date of Hearing : 17.07.2025

घोषणा की तारीख / Date of Pronouncement : 21.07.2025

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM**

This appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 27.01.2025 for the assessment year 2017-18 as per the grounds of appeal on record.

2. In this case the assessee has raised both legal ground as well as grounds on merits. In so far the first and foremost legal ground is concerned, the assessee has assailed that the department has not issued and served any notice u/s. 142(1) of the Income Tax Act, 1961 (for short 'the Act') to the assessee as clearly shown through the screen shot of the online portal of the department. For the sake of completeness the same is extracted as follows:



Referring to the said screen shot, the Ld. Counsel for the assessee has pointed out that “From” portion is blank and then, column “To” is also blank. Further, there is no date mentioned in the said notice and subject portion is also blank. It was submitted by the Ld. Counsel that in effect, the notice u/s.142(1) of the Act has not been served on the assessee for the relevant assessment year which vitiates the assessment order as

arbitrary, bad in law. The Ld. Counsel in this regard has placed reliance on the decision of the Hon'ble High Court of Delhi in the case of **Sumanjeet Agarwal Vs. Income Tax Officer, Ward-61(1) & Ors, 449 ITR 517 (Del.)** wherein the question of law before the Hon'ble High Court were as follows:

“4. Category D: is in respect of writ petitions where Notice is dated 31st March, 2021 or before, digitally signed on or before 31st March, 2021, no service either by e-mail or by post or any other mode and assessee came to know later on through Portal or receipt of subsequent notice under Section 142(1).”

That answering the said question of law in favour of the assessee against the revenue, the Hon'ble High Court has held and observed as follows:

“28.1. With respect to the Notices falling under the category ‘D’ dated 31st March 2021 and digitally signed on 31st March 2021 it has been stated that, they were not served on the assessee either by e-mail or post or by courier services as they were just uploaded on the E-filing portals of the assessee. It is the case of the petitioners that no real time alert was received by the assessee and the Department has not disputed this fact.

28.2. The mode of service of electronic record, i.e., Notices in the present case is provided under Section 282 of the Act of 1961 and Rule 127 of the IT Rules. The mode of service of a notice, electronically, is prescribed in Section 282 of the Act of 1961, it states that service may be made by transmitting a copy in the form of electronic record as per chapter IV of the Act of 2000. It also states that the CBDT is empowered with the responsibility to make rules providing addresses for communication through electronic mail or electronic mail message. The CBDT vide Rule 127(b) of IT Rules prescribed email addresses, as made available by the assessee, for communication transmitted electronically.

28.3. Thus, there is no dispute that the transmission of an electronic notice by placing an authenticated copy in the registered account of the assessee on the E-filing portal is not specifically prescribed in Section 282 and Rule 127. Instead, it finds a mention in the CBDT Notification - No. 4/2017 dated 3.04.2017. The said notification, provides that, the notices issued by any income tax authority will be visible to the assessee after logging in under "E-Proceeding" tab in the E-filing portal and that an e-mail "may also" be sent to the registered e-mail address of the assessee. It also mentions that a text message notifying a real time alert to the assessee "may also" be sent to the mobile number registered on the E-filing website.

28.4. The "E-Proceedings", as per the Notification No.4/2017 is optional. The assessee has to register for the same and can also choose to opt out of it by notifying the Department.

28.5. It is unclear to us as to why e-mail based communication of notices is made optional in the Notification No. 4/2017, despite it being the statutorily prescribed mode of service through electronic transmission. Further, the ITBA portal itself is programmed in such a way that it triggers the e-mail software system when a notice is generated by the JAO and an authenticated copy of the same is thereafter also uploaded in the E-filing portal of the assessee, hence the Department cannot contend that it had done away with e-mailing of notices issued. Most importantly, the Department has been consistently using this mode of e-mail based communication to transmit notices and no reason whatsoever has been provided to explain as to why these Notices were not e-mailed to the select few assessee falling under category 'D' and was only uploaded on the E-filing portal. It is also unclear as to why the Notices though digitally signed on 31st March 2021 were never e-mailed to the assessee, because, as per the Compliance Affidavit, upon affixation of DSC by the JAO the e-mail software system of the ITBA portal would be automatically triggered.

28.6. It should be noted that, when the legislature decided to include this mode of transmission i.e. placing it on the E-filing portal/registered account of the assessee, as valid service in the Act of 1961, it duly included the safeguard of a real time alert. For reference, Section 144 B(6)(ii)(a) of the Act of 1961 statutorily recognizes this mode of transmission between the Income Tax authority and the assessee. Section 144 B(6)(ii)(a) reads as under:

“Section 144B (6)(ii)(a)

xxx xxx xxx xxx

(ii) every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of— placing an authenticated copy thereof in the registered account of the assessee; or.

.....

and followed by a real time alert”

Finding for Notices falling under category ‘D’

28.7. We hold that, in order for this mode of transmission i.e. uploading of the Notices in the E-filing portal of the assessee, to be considered valid service, the Department should have issued a real time alert as provisioned in the aforementioned Section 144(B)(6)(ii)(a) of the Act of 1961. Since, the prescribed mode of service is not followed it is akin to no due despatch of Notices, therefore it cannot be said that the Notices were validly issued.”

3. The Ld. Counsel for the assessee also relied on the decision of the ITAT, Raipur, “DB” Bench in the case **of Mamta Agrawal Vs. Pr. CIT, Raipur-1, ITA No.39/RPR/2022, dated 21.06.2024** wherein the Tribunal after placing reliance on the said decision of the Hon’ble High Court of Delhi has held and observed as follows:

“12. Learned AR, further, placed his reliance in the case of Suman Jeet Agrawal & Ors. Vs. Income Tax Officer & Ors. passed in W.P.(C) No. 10/2022 and other connected matter, wherein, the Hon’ble Delhi High Court had discussed the entire procedure regarding communication of notices by the department to the assessee under provisions of Section 282 of the IT Act from the said order, relevant Question, Observations and Findings of the Hon’ble Delhi High Court applicable in the present case of the assessee is culled out as under:

28. Question (V): Whether upload of the Section 148 Notice on the "My Account" of the assessee on the E-filing portal is valid transmission under the Act of 1961? - The Court has answered this in the negative, against the Department.

28.1 With respect to the Notices falling under the category 'D' dated 31st March 2021 and digitally signed on 31st March 2021 it has been stated that, they were not served on the assessee either by e-mail or post or by courier services as they were just uploaded on the E-filing portals of the assessee. It is the case of the petitioners that no real time alert was received by the assessee and the Department has not disputed this fact.

28.2 The mode of service of electronic record, i.e., Notices in the present case is provided under section 282 of the Act of 1961 and Rule 127 of the IT Rules.

The mode of service of a notice, electronically, is prescribed in Section 282 of the Act of 1961, it states that service may be made by transmitting a copy in the form of electronic record as per chapter IV of the Act of 2000. It also states that the CBDT is empowered with the responsibility to make rules providing addresses for communication through electronic mail or electronic mail message. The CBDT vide rule 127(b) of IT Rules prescribed email addresses, as made available by the assessee, for communication transmitted electronically.

28.3 Thus, there is no dispute that the transmission of an electronic notice by placing an authenticated copy in the registered account of the assessee on the E-filing portal is not specifically prescribed in section 282 and rule 127. Instead, it finds a mention in the CBDT Notification - No. 4/2017 dated 3-4-2017. The said notification, provides that, the notices issued by any income tax authority will be visible to the assessee after logging in under "EProceeding" tab in the E-filing portal and that an e-mail "may also" be sent to the registered e-mail address of the assessee. It also mentions that a text message notifying a real time alert to the assessee "may also" be sent to the mobile number registered on the E-filing website.

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28.5 It is unclear to us as to why e-mail based communication of notices is made optional in the Notification No. 4/2017, despite it being the statutorily prescribed mode

of service through electronic transmission. Further, the ITBA portal itself is programmed in such a way that it triggers the e-mail software system when a notice is generated by the JAO and an authenticated copy of the same is thereafter also uploaded in the E-filing portal of the assessee, hence the Department cannot contend that it had done away with emailing of notices issued. Most importantly, the Department has been consistently using this mode of e-mail based communication to transmit notices and no reason whatsoever has been provided to explain as to why these Notices were not e-mailed to the select few assessees falling under category 'D' and was only uploaded on the E-filing portal. It is also unclear as to why the Notices though digitally signed on 31st March 2021 were never e-mailed to the assessees, because, as per the Compliance Affidavit, upon affixation of DSC by the JAO the e-mail software system of the ITBA portal would be automatically triggered.

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"Section 144B (6)(ii)(a)

** ** *

(ii) every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of—

placing an authenticated copy thereof in the registered account of the assessee; or.

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and followed by a real time alert" Finding for Notices falling under category 'D'

28.7 We hold that, in order for this mode of transmission i.e. uploading of the Notices in the E-filing portal of the assessees, to be considered valid service, the Department should have issued a real time alert as provisioned in the aforementioned Section 144(B)(6)(ii)(a) of the Act of 1961. Since, the prescribed mode of service is not followed it is akin

to no due despatch of Notices, therefore it cannot be said that the Notices were validly issued.

28.8 However, since the assessee in the present case did become aware of the Notices later and the assessment proceedings in their cases are still pending, we are not inclined to quash these Notices.

28.9 It has come on record that the ITBA records the time and date when the E-filing portal is accessed by the assessee, so the first date on which the Notices were accessed by the assessee is duly available. This date will be considered by the JAOs as the date of issuance of Notices by the JAOs.

Illustratively, in W.P. (C) 13888 of 2021 the Notice dated 31st March 2021 was never served on the assessee, instead the assessee claims that he became aware of the same on 23rd November, 2021 while checking his E-filing portal, the JAO is directed to verify the date on which the Notice was first viewed by the assessee, and consider the same as the date of issuance.

13. Drawing support from the aforesaid judgment of Hon'ble Delhi High Court, it was the prayer of the learned AR that since the notice for revisionary proceeding u/s 263 of the IT Act was not served upon the assessee in terms of provisions of IT Act as categorically explained by the Hon'ble High Court. To substantiate further the genuineness of such fact and contention qua non service of notice to assessee, Ld. AR furnished a notarised affidavit dated 30.04.2024 duly signed by the assessee stating that "such notice was not received by me at any time physically or by email. That I had not received any real time alert on my registered Mobile No. "7089298777" in connection with issue of any such show cause notice by the Ld. PCIT".

14. Backed by aforesaid submissions, Ld. AR advanced the argument that since the department was unable to establish that service of notice was not done following the prescribed procedure or mode of service as prescribed in the Act, the same is akin to no due despatch of notice. Ld. AR requested that an order originated on basis of an unserved notice, thereby the assessee was deprived of on account of no proper opportunity of being heard, therefore, the same is null and void ab initio in the eyes of law and, accordingly, order passed by Ld. PCIT under u/s 263 of the IT Act in the case under consideration is liable to be quashed.

15. On the other hand, Ld. Sr. DR. vehemently supported the order passed by the Ld. PCIT and report of the Ld. AO.

16. We have considered the rival submissions, perused the material available on records and case law relied upon by the Ld AR. In the present case, it is the allegation of the assessee, supported with affidavit that notice u/s 263 dated 13.03.2021, which was though uploaded on the ITBA portal on assessee's ID, but the same is not a valid service of notice in accordance with the prescribed mode of transmission between Income Tax Authority and the assessee under the provisions of section 144B (6)(ii)(a) of the Act. Ld. AR of the assessee strongly placed his reliance on the order of Hon'ble Delhi High Court in the case of Suman Jeet Agarwal (Supra), wherein Hon'ble Court had discussed the various under categories of service of notice. Assessee's case is squarely falls under Q4 dealing with category "D" in the said judgment, which deliberates upon the notices issued dated 31st March, 2021 or before, digitally signed on or before 31st March, 2021, no service either by e-mail or by post or any other mode and assessee came to know later on though Portal or receipt of subsequent notice under section 142(1). In present case, department have admitted that the notice could not be served through email but have also claimed that it has been despatched through Dak, however, unable to substantiate the same with any corroborative evidence/document or despatch register even after several opportunities granted to prove the same. It could also not be established by the revenue that any real time alert is send to the assessee while the notice was uploaded on the portal, on the contrary assessee denied receipt of any real time alert by submitting an affidavit to this effect. This indicates that the department has no documentary proof to support their claim that they have validly served the notice to the assessee. We, thus, find merits in the contentions raised by the Ld. AO that notice u/s 263 in absence of service though prescribed mode, cannot be treated as a valid notice and so the order passed u/s 263 initiated by issue of such notice is unsustainable.

17. In view of the aforesaid observations, respectfully following the guiding principles enumerated by Hon'ble Delhi High Court in the case of Suman Jeet Agarwal (Supra), we accept the conditions of the assessee considering the facts of the present case that the assessee was not validly put to notice for proceedings initiated u/s 263 of the Act, therefore the order passed following such notice which is not validly

server is liable to be quashed and we do so. In result Ground No 2 of the present appeal of the assessee, stands allowed.

18. As, we have quashed the revisionary order u/s 263 for the want of valid service of notice, therefore, we are not adverting to the other contentions raised by the assessee, thus the same are left open.

19. Resultantly, the appeal of the assessee in ITA 39/RPR/2022 is allowed in terms of our aforesaid observations.”

4. The Ld. Sr. DR could not place on record any evidence to show that notice u/s. 142(1) of the Act was served on the assessee.

5. The facts involved in the present appeal clearly shows that there has not been any valid service of notice to the assessee in accordance with the prescribed mode of transmission between the Income tax authority and the assessee as per provision of Section 144B clause (6)(ii)(a) of the Act. In fact, the notice in the case of the assessee as evident from the Income Tax portal does not spell out viz. (i) who has sent the said notice? (ii) to whom notice has been sent?; (ii) subject of the notice, therefore, it can be construed that such notice u/s. 142(1) of the Act has not been issued at all leaving apart serving of the same to the assessee. That in absence of any evidence contrary to the contention placed on record by the Ld. Counsel for the assessee and taking guidance of the aforesaid judicial pronouncements, I hold that for such non issuance of notice u/s. 142(1) of the Act and non serving of such notice to the assessee as per valid mode of transmission makes the assessment order arbitrary, bad in law

and void ab initio and accordingly, the same is liable to be quashed. I order accordingly.

6. Since the assessment is quashed thereafter all the other proceedings becomes non-est in the eyes of law. As the legal issue has been answered in favour of the assessee therefore the grounds on merits becomes academic only.

7. As per the aforesaid terms the grounds of appeal raised by the assessee stands allowed.

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

Order pronounced in open court on 21st day of July, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 21st July, 2025.

SB, Sr. PS

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur