

Court No. - 3

Case :- WRIT TAX No. - 78 of 2022

Petitioner :- Daujee Abhushan Bhandar Pvt. Ltd.

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Abhinav Mehrotra

Counsel for Respondent :- A.S.G.I., Gaurav Mahajan

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Jayant Banerji, J.

1. Heard Sri Dhruv Agarwal, learned Senior Advocate, who on our request assisted the Court as Amicus curiae and also heard Sri Abhinav Mehrotra, and Sri Kapil Goel, learned counsel for the petitioner and Sri Gaurav Mahajan, learned Senior standing counsel for the respondents i.e. Income Tax Department.

2. Briefly stated facts of the present case are that the petitioner is a regular assessee. It filed its return of Income under Section 139 (1) of the Income Tax Act, 1961 (hereinafter referred to as “the Act 1961”) on 29.09.2013 for the Assessment Year 2013 – 14 and the assessment was completed.

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 assessee 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.

4. Under the circumstances, the petitioner filed objections before the Assessing Authority. One of the objections raised by the petitioner was

that the notice is time barred and thus without jurisdiction as it was issued on 06.04.2021 whereas the limitation for issuing notice under Section 148 read with Section 149 of the Act 1961 expired on 31.03.2021. The objection filed by the petitioner was rejected by the Assessing Authority holding that since the notice was digitally signed on 31.03.2021, therefore, it shall be deemed to have been issued within time i.e. on 31.03.2021.

5. Aggrieved, the petitioner has filed the present writ petition, praying for the following reliefs:-

*“(a) Issue a writ, order or direction in the nature of certiorari quashing the notice under Section 148 of Income Tax Act, Dt.31.03.2021; and the connected proceedings for reassessment of Income for A.Y. 2013-14.
(b) Issue a writ in the nature of mandamus or an order prohibiting the operation of the proceedings initiated by the respondent number 2”.*

6. Yesterday, this writ petition was heard at length and following questions were framed for determination :-

*“(i) Whether digitally signing notice would automatically amount to issuance of notice ?
(ii) Whether digitally signing a notice and issuing it are two different acts ?
(iii) Whether issuance of notice shall take place on the date and time when it is dispatched either electronically or through other mode ?
(iv) Whether merely generating notice from the Departmental Portal on 31.3.2021 and digitally signing it thereafter, would amount to issuance of notice ?
(v) Even if it is assumed that the notice under Section 148 of the Income Tax Act was issued on 31.3.2022 and despatched on 6.4.2022 then whether the unamended provision of Section 148 or amended provision of Section 148 would apply ?”*

7. With the consent of the learned counsels for the parties, only question nos. (i) (ii) (iii) & (iv), as aforequoted, are being decided and the question No. (v) is left open.

Submissions

8. Learned counsel for the petitioner submits that digitally signing a notice is an act different from the act of issuing the notice. Section 149 provides limitation for issuance of the notice under section 148. When the notice has been issued to the petitioner by the Assessing Authority beyond the period of limitation i.e. after. 31.03.2021, therefore, the notice is time barred and no proceeding can be carried by the Assessing Authority pursuant to the impugned notice under Section 148 of the Act, 1961.

9. In support of the submissions, learned counsel for the petitioner has referred the provisions of Sections 148, 149, 282(1)(c) and 282 A of the Act, 1961 and Rule 127 A of the Income Tax Rules 1962 (hereinafter referred to as “the Rules 1962”) and some definition clauses, Sections 3 and 13 of the Information Technology Act, 2000 (hereinafter referred to as “the Act, 2000”).

10. Learned counsel for the petitioner also relied upon a judgment of **Gujrat High Court in Kanubhai M. Patel (HUF) v. Hiren Bhatt or His Successors to Office (2011) 12 taxmann.com 198 (Guj.)** (paras 15, 15.1 & 16) and the judgment of this court dated 28.08.2017 in **Writ Tax No. 822 of 2016 (Smt. Kusum Agarwal Vs. Asst. Commissioner Of Income Tax, Agra And Another)**.

11. **Sri Gaurav Mahajan**, learned counsel for the Income Tax Department submits that issue of notice means, the date on which the notice is digitally signed by the Assessing Authority. Since the impugned notice under Section 148 of the Act, 1961 has been signed by the Assessing Authority on 31.03.2021 i.e. well within the period of limitation, therefore, the impugned notice is wholly valid and the writ petition is not maintainable.

12. In support of his submissions Sri Gaurav Mahajan, has relied upon a judgment of Hon'ble Supreme Court in the case of **R.K. Upadhyaya v. Shanabhai P. Patel (1987) 166 ITR 163.**

13. Both the learned counsels for the parties have jointly stated that the limitation for issuing reassessment notice under Section 148 of the Act 1961 for the Assessment Year 2013-14 would have expired on 31.3.2020 but the limitation was extended by the Taxation and other laws amendment Act 2020 whereby the limitation stood extended upto 31.3.2021. Thus, learned counsels for both the parties are agreed that the limitation for issuance of notice under Section 148 of the Act, 1961 for the Assessment Year 2013 -14 was available to the Assessing Authority upto 31.03.2021.

Discussion and Findings

14. We have carefully considered the submissions of learned counsel for the parties and perused the record of the writ petition.

15. Before we proceed to examine the rival submissions, it would be appropriate to reproduce relevant provisions, as under :-

(A) Income Tax Act, 1961

“ Section 149. Time limit for notice

(1) No notice under section 148 shall be issued for the relevant assessment year,-

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);

(b) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.

(c) if seven years, but not more than sixteen years, have elapsed from the end of the relevant assessment year, unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax which has escaped assessment.

Explanation.- In determining income chargeable to tax which has which has escaped assessment for the purposes of this sub-section, the

provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.].

(2). The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or re-computation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year.

Explanation. For the removal of doubts, it is hereby clarified that the provisions of sub-section (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the first day of April, 2012.”

Section 282

282. (1) The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as “communication”) may be made by delivering or transmitting a copy thereof, to the person therein named,—

(c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000); or

282A

(1) Where this Act requires a notice or other document to be issued by any income-tax authority, **such notice or other document shall be signed and issued in paper form or communicated in electronic form** by that authority in accordance with such procedure as may be prescribed.

(2) **Every notice or other 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.

(3) For the purposes of this section, a designated income-tax authority shall mean any income-tax authority authorised by the Board to issue, serve or give such notice or other document after authentication in the manner as provided in sub-section (2).]

(B) Income Tax Rules 1962

Rule 127 A

127A. Authentication of notices and other documents-

(1) **Every notice or other document communicated in electronic form by an income-tax authority under the Act shall be deemed to be authenticated,-**

(a) in case of electronic mail or electronic mail message (hereinafter referred to as the e-mail), if the name and office of such income-tax authority-

(i) is printed on the e-mail body, if the notice or other document is in the email body itself; or

(ii) 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;

(b) in case of an electronic record, if the name and office of the income-tax authority-

(i) is displayed as a part of the electronic record, if the notice or other document is contained as text or remark in the electronic record itself; or

(ii) is printed on the attachment in the electronic record, if the notice or other document is in the attachment,

and such electronic record is displayed on the designated website.

(2) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the designated e-mail address of the income-tax authority, the designated website and the procedure, formats and standards for ensuring authenticity of the communication.

Explanation: For the purposes of this rule, the expressions-

(i) "electronic mail" and "electronic mail message" shall have the same meanings respectively assigned to them in Explanation to section 66A of the Information Technology Act, 2000 (21 of 2000);

(ii) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000)."

(C) Information Technology Act, 2000

2 (d) "affixing electronic signature" with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for **the purpose of authenticating an electronic record by means of digital signature;**

2(p) "**digital signature**" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the **provisions of section 3;**

2(t) "**electronic record**" means data, record or data generated, image or sound stored, **received or sent** in an electronic form or micro film or computer generated micro fiche;

2(za) "**originator**" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;

Section 13

Section 13 in The Information Technology Act, 2000

13. Time and place of despatch and receipt of electronic record.-

(1) Save as otherwise agreed to **between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator.**

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:-

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,-

(i) **receipt occurs at the time when the electronic record enters the designated computer resource; or**

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;
(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.
(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.
(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).
(5) For the purposes of this section,-
(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;
(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;
(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

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 e-mail 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.**

21. The words “issue” or “issuance of notice” have not been defined under the Act 1961. However, the point of time of issuance of notice may be gathered from the provisions of the Act, 1961, the Rules, 1962 and the Act, 2000, as discussed above. Similar would be the position if the meaning of the word “issue” may be gathered in common parlance or as per dictionary meaning.

22. In Chamber's Twentieth Century Dictionary, the relevant meanings given to the word "issue" are act of sending out; to put forth; to put into circulation; to publish; to give out for use. In the New Illustrated Dictionary, the relevant meaning attributed to the word "issue" is come out; be published; send forth ; publish ; put into circulation.

23. The New Lexicon Webster’s Dictionary of the English language 1988 edition its meaning of the word “issued” as under :-

“is-sue 1. n. a flowing, going or passing out || a place or means of going or flowing out, outlet || a **publishing or giving out** || something published or given out || an outcome, result, no one knows what the final issue will be || a question, point etc. under dispute or discussion, a matter of concern || (med.) a discharge of blood etc. || (med.) an incision made to induce such a discharge || (law) offspring at issue in disagreement || in dispute to bring (or put) to an issue to cause to reach the point where a decision can and must be made to join issue to take a conflicting view to take issue to disagree 2. v. pres. part. is-su-ing past and past part. is-sued v.i. to come or flow forth || **to be derived, result | (law) to be descended || to be put into circulation**|| v.t. to publish or give out || to put into circulation, to issue a new coinage [O.F. issue, eissuel”

24. In Black’s Law Dictionary 9th edition the meaning of the word “issue” has been given as under :-

*“issue, vb. (14c) 1. To accrue <rents issuing from land> 2. To be put forth officially <without probable cause, the search warrant will not issue> 3. To **send out** or distribute officially <issue process> <issue stock> . - issuance, n.”*

25. In the case of **Kanubhai M. Patel (HUF) v. Hiren Bhatt or His Successors to Office (2011) 334 ITR 25 Gujarat High Court** has considered similar issue in the context of Section 149 of the Act 1961 and held, as under :-

“15. The expression “issue” has been defined in Black’s Law Dictionary to mean “To send forth; to emit; to promulgate; as, an officer issues orders, process issues from court. To put into circulation; as, the treasury issues notes. To send out, to send out officially; to deliver, for use, or authoritatively; to go forth as authoritative or binding. When used with reference to writs, process, and the like, the term is ordinarily construed as importing delivery to the proper person, or to the proper officer for service etc.”

15.1 In P. Ramanathan Aiyer’s Law Lexicon the word “issue” has been defined as follows:

“Issue. As a noun, the act of sending or causing to go forth; a moving out of any enclosed place; egress; the act of passing out; exit; egress or passage out (Worcester Dict.); the ultimate result or end.

As a verb, “To issue” means to send out, to send out officially; to send forth; to put forth; to deliver, for use, or unauthoritatively: to put into circulation; to emit; to go out (Burrill); to go forth as a authoritative or binding, to proceed or arise from; to proceed as from a source (Century Dict.)

Issue of Process. Going out of the hands of the clerk, expressed or implied, to be delivered to the Sheriff for service. A writ or notice is issued when it is put in proper form and placed in an officer’s hands for service, at the time it becomes a perfected process.

“Any process may be considered “issued” if made out and placed in the hands of a person authorised to serve it, and with a bona fide intent to have it served.”

16. Thus, the expression to issue in the context of issuance of notices, 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 would therefore have to be read in the aforesaid context. In the present case, the impugned notices have been signed on 31.03.2010, whereas the same were sent to the speed post centre for booking only on 07.04.2010. Considering the definition of the word issue, it is apparent that merely signing the notices on 31.03.2010, cannot be equated with issuance of notice as contemplated under section 149 of the Act. The date of issue would be the date on which the same were handed over for service to the proper officer, which in the facts of the present case would be the date on which the said notices were actually handed over to the post office for the purpose of booking for the purpose of effecting service on the petitioners. Till the point of time the envelopes are properly stamped with adequate value of postal stamps, it cannot be stated that the process of issue is complete. In the facts of the present case, the impugned notices having been sent for booking to the Speed Post Centre only on 07.04.2010, the date of issue of the said notices would be 07.04.2010 and not 31.03.2010, as contended on behalf of the revenue. In the circumstances, impugned the notices under section 148 in relation to assessment year 2003-04, having been issued on 07.04.2010 which is clearly beyond the period of six years from the

end of the relevant assessment year, are clearly barred by limitation and as such, cannot be sustained.”

26. In writ Tax No.822 of 2016 **Smt. Kusum Agarwal Vs. Asst. Commissioner Of Income Tax, Agra And Another**, decided on 28.08.2017 the Division Bench of this Court has held/observed as under:

“Sri R.R. Agarwal has cited Kanubhai M. Patel (HUF) v. Hiren Bhatt or His Successors to Office (2011) 12 taxmann.com 198 (Guj.). In this case also, the dispute was with regard to the issuance of notice u/s 148 of the Act and the limitation provided u/s 149 of the Act. The Division Bench of the Court held that merely signing of notice on a particular date cannot be equated with the date of issuance of the notice as contemplated u/s 149 of the Act. The notice therein was signed on the last date of limitation, i.e. 31.03.2010 and was actually handed over to the post office for the purposes of effecting service upon the assessee on 07.04.2010.

The same is the situation in the case we are dealing with inasmuch as the notice was signed on 31.03.2016 and was handed over to the postal authorities for effecting service upon the petitioner on 01.04.2016 as per the track report of the India Post. There is no evidence otherwise on record to establish that the notice was handed over to the post office for effecting service upon the petitioner on 31.03.2016.

In view of the aforesaid facts and circumstances of the case, we hold that the notice u/s 148 of the Act was issued to the petitioner beyond the last date of limitation prescribed and as such, is barred by time.”

27. In the case of **Delhi Development Authority Vs. H.C. Khurana (paras 14 & 15) (1993) 3 SCC** Hon'ble Supreme Court has explained the meaning of the word “issue” and held/observed as under :-

“14. 'Issue' of the chargesheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the chargesheet and taking of the necessary action to despatch the chargesheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the chargesheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations. The conclusions of the Tribunal quoted at the end of para 16 of the decision in Jankiraman which have been accepted thereafter in para 17 in the manner indicated above, do use the word 'served' in conclusion No.(4), but the fact of 'issue' of the chargesheet to the employee is emphasised in para 17 of the decision.

Conclusion No.(4) of the Tribunal has to be deemed to be accepted in Jankiraman only in this manner.

15. The meaning of the word 'issued', on which considerable stress was laid by learned counsel for the respondent, has to be gathered from the context in which it is used. Meanings of the word 'issue' given in the Shorter Oxford English Dictionary include 'to give exit to; to send forth, or allow to pass out; to let out; to give or send out authoritatively or officially; to send forth or deal out formally or publicly-, to emit, put into circulation'. The issue of a charge-sheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the charge-sheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'charge-sheet has already been issued to the employee', in para 17 of the decision in Jankiraman."

28. In the case of **State of Andhra Pradesh and others Vs. CH. Gandhi (2013) 5SCC 111(para 19)** Hon'ble Supreme Court explained the meaning of word "issue" in the context of a service matter and reiterated its earlier judgment in the case of **H.C. Khurana (supra)** observing as under :-

"19. Be it noted, in the said case, the decision rendered in Union of India and others v. K.V. Jankiraman and others [(1991) 4 SCC 109] was explained by stating thus:

– "13. ... 'The word 'issued' used in this context in Jankiraman it is urged by learned counsel for the respondent, means service on the employee. We are unable to read Jankiraman in this manner. The context in which the word 'issued' has been used, merely means that the decision to initiate disciplinary proceedings is taken and translated into action by despatch of the charge-sheet leaving no doubt that the decision had been taken. The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision.'"

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

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.

31. The writ petition is **allowed.**

Order Date :- 10.3.2022/vkg