

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-04-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.13425, 13431, 13432 and 11399 of 2018

And

WMP Nos.15819, 15826, 15827, 13308 and 13309 of 2018

Sadhna Tolasariya .. Petitioner in WP 13425/2018
Rajesh Gupta .. Petitioner in WP 13431/2018
Laxmi Kanta Tolasariya .. Petitioner in WP 13432/2018
Smt.Parveen Amin Bhathara .. Petitioner in WP 11399/2018

vs.

The Income Tax Officer,
Non Corporate Ward 12(4) CHE,
BSNL Tower,
No.16, Greams Road,
Chennai-600 006. ... Respondent in WP 13425/2018

The Assistant Commissioner of Income Tax,
Non Corporate Circle - 12(1) CHE,
BSNL Tower,
No.16, Greams Road,
Chennai-600 006. ... Respondent in WP 13431/2018

The Income Tax Officer,
Non Corporate Ward 11(5) CHE,
BSNL Tower,
No.16, Greams Road,
Chennai-600 006. ... Respondent in WP 13432/2018

The Income Tax Officer,
Non Corporate Ward 12(3),
Greams Road,
Chennai-600 006. ... Respondent in WP 11399/2018

WP No.13425 of 2018 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in notice under Section 148 in Notice No.ITBA/AST/S/148/2017-18/1009607803(1) in PAN.No.ABSPT8049H for AY 2011-2012, dated 31.03.2018, issued on 02.04.2018 and received on 04.04.2018 by Speed Post and quash the same as illegal and barred by limitation.

WP No.13431 of 2018 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in notice under Section 148 in Notice No.ITBA/AST/S/148/2017-18/1009570255(1) in PAN.No.AAZPG3706E for AY 2011-2012 dated 30.03.2018, issued on 02.04.2018 and received on 03.04.2018 by Speed Post and quash the same as illegal and barred by limitation.

WP No.13432 of 2018 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in notice under Section 148 in Notice No.ITBA/AST/S/148/2017-18/1009575753(1) in PAN.No.ABTPT0016D for AY 2011-2012 dated 30.03.2018, signed on 31.03.2018, issued on 02.04.2018 and received on 04.04.2018 by Speed Post and quash the same as illegal and barred by limitation.

WP No.11399 of 2018 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in notice under Section 148 in PAN.No.ADJPB8188J/NCW 12(3)/11-12 dated 31.03.2018, attached with email dated 18.04.2018 and quash the same as illegal and barred by limitation.

For Petitioner in WPs 13425,
13431,13432&11399/18 :Mr.T.Pramodkumar Chopda

For Respondent in WPs 13425,
13431,13432&11399/18 :Ms.Hema Muralikrishnan,
Senior Standing Counsel for
Income Tax.

C O M M O N O R D E R

WP Nos.13425, 13431 and 13432 of 2018 are filed challenging the notices issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act', in short) for reopening of the assessment.

2. The very notice itself is challenged in WP Nos.13425, 13431 and 13432 of 2018 mainly on the ground of limitation.

3. The learned counsel, appearing on behalf of the writ petitioners in WP Nos.13425, 13431 and 13432 of 2018 mainly contended that the notice under Section 148 of the Act had not been served on the petitioners before the last date as per the

provisions of the Act. In fact, notice had franked in the concerned Post Office only after the last date and therefore, the very issuance of notice is bad in law.

4. To substantiate the said contentions, the learned counsel for the petitioners in WP Nos.13425, 13431 and 13432 of 2018 relied on Section 27 of the General Clauses Act, 1897, wherein the meaning of 'Service by Post' is defined and the same reads as under:-

27. Meaning of service by post.-

Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

5. Referring the abovesaid Section 27 of the General Clauses Act, the learned counsel for the petitioners in WP Nos.13425, 13431 and 13432 of 2018 reiterated that the service shall be deemed to be effected by properly addressing, prepaying and posting by Registered Post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

6. Thus, it is not sufficient to establish that the respondents have served the letter on the last date, but it is to be established that the letter containing the notice served on the assessee on the last date. However, in WP Nos.13425, 13431 and 13432 of 2018, notices were not even served on the last date and were registered in the Post Office beyond the period of limitation. Therefore, the very issuance of notice itself is in violation under Section 27 of the General Clauses Act, 1897.

7. The learned counsel, appearing on behalf of the writ petitioners in WP Nos.13425, 13431 and 13432 of 2018 relying on the typed set of papers filed by the respondents, raised certain discrepancies in sending the impugned notices to the petitioners.

8. It is contended that there are certain discrepancies in the matter of making entries in the Dispatch Register and therefore, the respondents had not actually sent the impugned notices on the last date i.e., on 31.03.2018. As per the Franking facility provided by the Postal Department, the petitioners could able to find out that the consignment itself was booked on 02.04.2018 after the last date i.e., on 31.03.2018 and therefore, the notice itself is liable to be quashed.

9. The learned counsel, appearing on behalf of the writ petitioners in WP Nos.13425, 13431 and 13432 of 2018 relied on the franking details provided by the Postal Department and the seal affixed in the Post Office and contended that all these documents would establish that the impugned notice had been sent to the petitioners beyond the period of limitation and therefore, the very initiation is to be construed as Non est in Law.

10. The learned counsel, appearing on behalf of the writ petitioners in WP Nos.13425, 13431 and 13432 of 2018 strenuously contended that 'service' does not mean that 'mere sending of consignment'. The service is complete only if the impugned notices are dispatched from the Office of the respondents to the petitioners.

11. In view of the fact that the notices are not even dispatched on the last date i.e., on 31.03.2018, the impugned notices are liable to be set aside.

12. The learned Senior Standing Counsel appearing on behalf of the respondents in WP Nos.13425, 13431 and 13432 of 2018, disputed the said contentions of the learned counsel appearing on behalf of the petitioners in WP Nos.13425, 13431 and 13432 of 2018, by holding that the notices were dispatched on the last date i.e., on 31.03.2018 itself. The typed set of papers filed by the respondents, which contains the dispatch slip and relevant pages of the Dispatch Register.

13. With respect to the notices sent to the petitioners in WP Nos.13425, 13431 and 13432 of 2018 would reveal that the impugned notices were dispatched on 31.03.2018 itself and the processes undertaken by the Post Office were not relevant as far as the dispatch from the Office of the respondents are concerned.

14. In view of the fact that the Dispatch Register maintained by the Income Tax Department reveals that the impugned notices are dispatched properly by making entries in the Dispatch Register on the last date i.e., on 31.03.2018 and the consignments were handed over to the Postal Department and

the same would be sufficient to meet out the requirements of law and therefore WP Nos.13425, 13431 and 13432 of 2018 are devoid of merits and are liable to be dismissed.

15. This Court has to consider the relevant provisions of the Income Tax Act. Section 147 deals with 'Income Escaping Assessment'. Once the Assessing Officer 'has reason to believe' that any income chargeable to tax has escaped assessment for any assessment, he is competent to institute proceedings under Section 147 of the Act by complying with the requirements as contemplated under the provisions of the Act.

16. Section 148 of the Act denotes 'issue of notice where income has escaped assessment'. Once the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment, then he is empowered to issue notice under Section 148 of the Act and the procedures to be followed under Section 148 are well enumerated in the provision itself.

17. Section 149 deals with 'time limit for notice'. Thus, Section 149 would be relevant as far as the grounds raised in WP Nos.13425, 13431 and 13432 of 2018 are concerned.

18. Initiation of Section 147 of the Act, cannot be dealt with at this point of time. The issue of notice under Section 148 and the time limit for notice under Section 149 would be relevant. In WP Nos.13425, 13431 and 13432 of 2018, admittedly, the petitioners have received the notices issued under Section 148 and however, they contend that it was dispatched belatedly and after expiry of the period of limitation.

19. Section 149 of the Act denotes 'no notice under Section 148 shall be issued for the relevant assessment year if four years have lapsed, which reads as under:-

"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 six 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 four 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, has escaped assessment.

Explanation.—In determining income chargeable to tax 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 recomputation 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 six years from the end of the relevant assessment year.

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

20. Section 149 of the Act unambiguously stipulates that a notice is to be issued before four years from the end of the relevant assessment year. In certain cases beyond four years and within six years. Therefore, two circumstances are elaborated in the provisions. In certain cases, notices can be issued within four years and in certain other cases, notices can be issued beyond four years but within six years.

21. The period of four years and six years as contemplated are enumerated under the provisions of the Act. However, the point to be considered is, whether the issuance of notice dispatched and the delivery of notice to the assessee, which is to be taken into consideration for the purpose of determining the period of limitation.

22. Section 149 of the Act contemplates that no notice under Section 148 shall be issued. Thus, it categorically enumerates

the issuance of notice by the Competent Authority to the assessee, within a period of four years and six years, as the case may be. Thus, the language employed indicates "issuance of notice".

23. 'Issuance of Notice' means, the order of notice is signed by the Competent Authority. Once the order of notice is signed by the Competent Authority, that is sufficient that the actions are initiated. Thereafter, delivery or receipt of the order is irrelevant as far as the requirements contemplated under the provisions of the Income Tax Act is concerned. Thus, for the purpose of issuance of notice under Section 149 of the Income Tax Act, it is sufficient to establish that if such an order/notice is signed by the Authority Competent and if this fact is established, then it is to be construed that the provisions of the Act are complied with.

24. Let us now examine certain circumstances where there is a delay in delivering the goods either by the Process Server or by the Postal Department or on account of sudden declaration of holidays or due to public holidays etc. Various circumstances and situations are possible, which would cause delay in serving the consignment to the addressee. Various circumstances for causing delay in service of the consignment cannot be taken into consideration for the purpose of determining the period of limitation as contemplated under Section 149 of the Income Tax Act.

25. The assessee is taking advantage on account of certain unavoidable circumstances and happenings due to certain omissions on the part of the Postal Department etc. It is possible that commissions and omissions are happening in the Postal Department also. Whether an assessee can take undue advantage from such commissions and omissions of the Postal Department or Process Servers. The answer is 'No'. If such commissions and omissions of another Department is taken into consideration for the purpose of quashing the entire proceedings under the Income Tax Act, equally it is possible for some miscreants to create such circumstances, so as to escape from the clutches of law. All these mitigating factors are to be considered by the Courts. Thus, a practical and a pragmatic approach with reference to the legislative intention is to be taken into consideration for the purpose of deciding the point of limitation.

26. Thus if the revenue is able to establish that an administrative decision is taken under Section 147 of the Income Tax Act and a notice under Section 148 is signed and issued by the Authorities Competent before the last date, then it is to be construed that the notice has been issued in compliance with the

provisions of Section 149 of the Income Tax Act. Make it more clear that issue of notice is the requirement contemplated under the provisions and the service would be the next step and the same would have been done even after the last date and that will not change the character of issue of notice as completed within the meaning of Section 149 of the Income Tax Act. The case of the petitioner would be strong if the provision contemplates "service of notice" to the assessee, and such contemplation is traceable in some other provisions of the Act, for example Section 281 of the Income Tax Act.

27. As far as the contentions of the petitioners in WP Nos.13425, 13431 and 13432 of 2018 that Section 27 of the General Clauses Act, is to be invoked, this Court is of an opinion that the very provision states that, where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be 'served' by post. Therefore, the meaning of 'service by post' as defined under Section 27 of the General Clauses Act, 1897, may not have any applicability or relevancy as far as Section 149 of the Income Tax Act is concerned.

28. 'Issue of Notice' by the Competent Authority is contemplated under Section 149 of the Income Tax Act. However, 'Service of Notice' to the assessee has not been contemplated under the said provision. Thus, the 'time limit' prescribed for 'issue of notice' under Section 148 of the Income Tax Act, would not fall under the definition of 'service' under Section 27 of the General Clauses Act, 1897. Thus, Section 27 of the General Clauses Act, 1897 may not have relevance with reference to Sections 147, 148 and 149 of the Income Tax Act, 1961.

29. 'Issue of Notice' and 'Service of Notice' to the assessee cannot be compared at all. What is contemplated under Section 149 of the Income Tax Act is 'issue of notice' and not 'service of notice' to the assessee. The service part is to be complied with subsequently enabling the assessee to defend his case. Undoubtedly, the assessee can defend his case only after service. However, for reckoning the period of limitation 'issue of notice' is sufficient.

30. As far as the issues are concerned, the petitioners in WP Nos.13425, 13431 and 13432 of 2018 are bound to defend the proceedings by following the principles laid down in GKN Driveshafts (India) Ltd vs. Income Tax Officer and Others [259 ITR 19]. The respondents are bound to provide opportunities and assign reasons by following the procedures contemplated as well as the principles settled.

31. With reference to the point of limitation, it is to be construed that the impugned notices under Section 148 of the Act, were signed by the Competent Authorities on 31.03.2018 and as per the typed set of papers filed by the respondents, the notices were dispatched on the same date i.e., on 31.03.2018, which would be sufficient to satisfy the requirements under Section 149 of the Act and thus, the petitioners in WP Nos.13425, 13431 and 13432 of 2018 are at liberty to defend the case as contemplated under the provisions of the Act.

32. Accordingly, WP Nos.13425, 13431 and 13432 of 2018 stand fail and the same are dismissed. However, there shall be no order as to costs.

33. As far as WP No.11399 of 2018 is concerned, the learned counsel for the petitioner made a submission that the notice has not been served at all. However, the impugned notice, which is enclosed in WP No.11399 of 2018 reveals that the impugned notice issued under Section 148 of the Act has been signed by the Authority on 31.03.2018. However, the petitioner says that the said notice has not been received.

34. As per the discussions made in the aforementioned paragraphs, it is sufficient if the notice under Section 147 of the Act has been signed and issued by the authority. Thus, the point of period of limitation is satisfied and in WP No.11399 of 2018, which is to be construed as issuance of proceedings as contemplated under Section 149 of the Act. Therefore, the delay in receiving the documents would not provide any ground for the petitioner to quash the entire proceedings.

35. Accordingly, WP Nos. WP Nos.13425, 13431, 13432 and 11399 of 2018 fail and all the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
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Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn
To

1.The Income Tax Officer,
Non Corporate Ward 12(4)CHE,
BSNL Tower,
No.16, Greams Road,
Chennai-600 006.

2.The Assistant Commissioner of Income Tax,
Non Corporate Circle - 12(1) CHE,
BSNL Tower,
No.16, Greams Road,
Chennai-600 006.

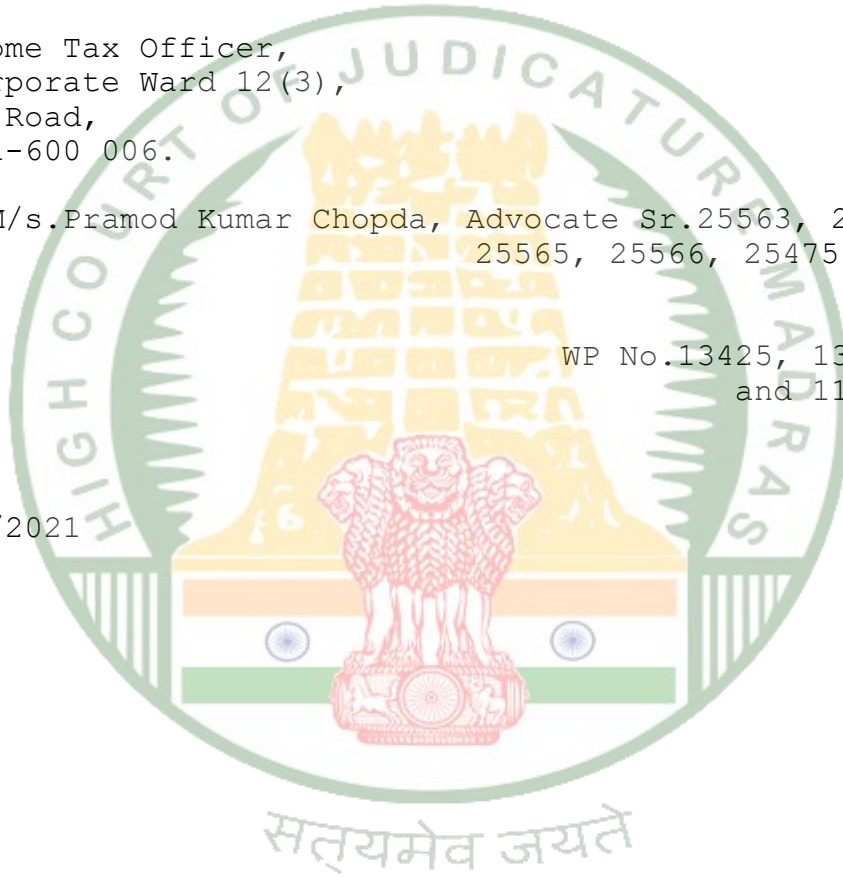
3.The Income Tax Officer,
Non Corporate Ward 11(5)CHE,
BSNL Tower,
No.16, Greams Road,
Chennai-600 006.

4.The Income Tax Officer,
Non Corporate Ward 12(3),
Greams Road,
Chennai-600 006.

+6ccs to M/s.Pramod Kumar Chopda, Advocate Sr.25563, 25564,
25565, 25566, 25475, 25478

WP No.13425, 13431, 13432
and 11399 of 2018

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