

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal No. 1795 of 2021
against
WP.No.11399 of 2018
and
C.M.P. No. 11254 of 2021

Smt. Parveen Amin Bhathara
No.17, Mylai Periya Thambi Street
Chennai - 600 001

.. Appellant / Petitioner

Versus

The Income Tax Officer
NCW-12 (3),Greams Road
Chennai - 600 006

.. Respondent / Respondent

Appeal filed under Clause 15 of The Letters Patent against the order dated 26.04.2021 passed by the learned Judge of this court in W.P. No. 11399 of 2018.

Prayer in W.P. No. 11399 of 2018:Writ Petition 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 Appellant : Mr. T. Pramod Kumar Chopda

For Respondent : Mrs. Hema Muralikrishnan
Senior Panel Counsel

JUDGMENT

R. MAHADEVAN, J.

Aggrieved by the order of dismissal dated 26.04.2021 passed by the learned Judge in WP.No.11399 of 2018, the appellant / writ petitioner / assessee has come up with this writ appeal.

2.In the writ petition, the appellant sought to quash the reassessment notice dated 31.03.2018 issued by the respondent on the ground of limitation. Originally, she filed her return of income in Form ITR-V for the assessment year 2011-2012 on 27th July 2011. She also submitted her return of income for the subsequent assessment years and lastly for the assessment year 2017-2018, electronically, which were duly acknowledged by the respondent. While so, after a lapse of more than six years from the date of submission of return of income for the assessment year 2011-2012, the appellant received an e-mail dated 18.04.2018 sent by the respondent attaching therewith a notice dated 31.03.2018 issued under section 148 of the Income Tax Act, 1961, (in short, "the Act") in exercise of the powers conferred under Section 147 of the Act, for re-opening the assessment for the assessment year 2011-2012. Stating that the notice of the respondent dated 31.03.2018 under section 148 of the Act, received by her through e-mail on 18.04.2018 is time barred as per Section 149 of the Act, the appellant preferred the writ petition bearing No. 11399 of 2018 to quash the same.

3.Opposing the relief sought by the petitioner, the respondent filed a detailed counter affidavit, inter alia stating that the notice under section 148 of the Act for re-opening the assessment was signed on 31.03.2018 and it was given to the process server for despatch to the appellant on her last known address at No.17, Mylai Periya Thambi Street, Chennai - 600 001, on the same day, but the same was returned unserved by the process server on 06.04.2018 with an endorsement that "no such person is residing in the said address". Thereafter, on the basis of the particulars furnished by the appellant in her last return of income for the assessment year 2017-2018, the notice dated 31.03.2018 was sent to the appellant's e-mail I.D. on 18.04.2018. Hence, the same is well within the period prescribed under Section 149 of the Act. The counter affidavit further proceeded to state that under section 147 of the Act, the respondent is empowered to assess, re-assess and re-compute the assessment, when there is reason to believe that certain income of the appellant has escaped from the assessment and that, the initiation of re-assessment proceedings commenced from the moment the notice dated 31.03.2018 was signed by the respondent. Therefore, the notice dated 31.03.2018 issued under section 148, received by the appellant through her mail on

18.04.2018 is well within the period of limitation. It was also stated that on receipt of the notice for re-assessment, the appellant ought to have first filed her return of income and thereafter, she can seek remedies available under law. Without doing so, the appellant rushed to this court by filing writ petition under Article 226 of the Constitution of India.

4.By order dated 26.04.2021, the learned Judge, on appreciation of the rival contentions, dismissed the writ petition by observing that "it is sufficient if the notice under section 147 of the Act has been signed and issued by the authority and therefore, the delay in receiving the documents would not provide any ground for the appellant to quash the entire proceedings". The said order of the learned Judge is questioned by the appellant / writ petitioner / assessee in this writ appeal.

5.The learned counsel for the appellant contended that the notice under section 148 of the Act for reopening the assessment for the assessment year 2011-12 beyond four years, was issued by the respondent through the appellant's registered e-mail only on 18.04.2018. As per section 149 of the Act, the time limit prescribed for issuance of notice for reopening the assessment for the assessment year 2011-12 is either 4 years i.e. on 31.03.2016 or 6 years i.e. on 31.03.2018. Therefore, reopening the assessment beyond four years by issuance of notice dated 31.03.2018 through e-mail on 18.04.2018 is clearly barred by limitation under section 149 r/w section 282 of the Act. The learned counsel further submitted that it could be evident from the Election Commission Identity Card, passport, Aadhar Card and latest income tax return that the appellant is residing at No.17, Mylai Periya Thambi Street, Chennai-1 and hence, the notice sent to the said address of the appellant returned unserved, was invented for the purpose of validating the notice dated 31.03.2018. Thus, according to the learned counsel, the respondent though signed the notice under section 148 on 31.03.2018, he sent the same to the appellant by e-mail only on 18.04.2018, which is beyond the period of limitation of six years from the end of the assessment year 2011-12. Without considering the same in a proper perspective, the learned Judge erred in dismissing the writ petition filed by the appellant. Therefore, the learned counsel prayed to allow this writ appeal by quashing the order of the learned Judge dated 26.04.2021 as well as the notice of the respondent dated 31.03.2018.

6.On the other hand, the learned senior panel counsel appearing for the respondent submitted that the notice under section 148 of the Act was signed and directed to be despatched on 31.03.2018 and hence, the same is well within the limitation period of re-opening the reassessment. The learned counsel

further submitted that the respondent office adopted all the possible modes of services to serve the notice dated 31.03.2018 on the appellant and as a last resort, the same was sent to her through e-mail, which was also received by her on 18.04.2018. In such circumstances, it cannot be said that the notice dated 31.03.2018 was received by the appellant beyond the period of limitation i.e., on 18.04.2018 and therefore, the entire re-assessment proceedings are vitiated. Having regard to all these factors, the learned Judge rightly concluded that the period of limitation has to be reckoned from the date of signing of the notice on 31.03.2018 itself, which is in accordance with the provisions contained under Sections 147 to 149 of the Act; when the reassessment was launched against the appellant by issuing a notice duly signed on 31.03.2018, the appellant has to subject herself to the same; and accordingly, dismissed the writ petition. Ultimately, the learned counsel referred to the decision of this court in *Abab Offshore Ltd v. Deputy Commissioner of Income-tax* [(2017) 78 taxmann.com 37 (Madras)] and submitted that the order of the learned Judge requires no interference at the hands of this court.

7. Heard both sides and perused the materials available on record.

8. In the present case, the respondent reopened the assessment of the appellant for the assessment year 2011-12, through notice dated 31.03.2018 under section 148 of the Act. Admittedly, the limitation period of six years for reopening the assessment, came to an end on 31.03.2018. The main plank of contention of the learned counsel for the appellant is that the notice under section 148 of the Act dated 31.03.2018 has been received by the appellant through e-mail only on 18.04.2018 i.e., after the expiry of six years from the end of the assessment year under consideration and hence, the same is clearly barred by limitation, whereas the department contended that mere signing of notice by the respondent on 31.03.2018 amounts to issuance of notice under section 149 of the Act and therefore, the same is within the limitation period.

9. To appreciate the rival contentions, it is but relevant to look into the relevant provisions of law viz., section 149 of the Act, which reads as under:

"Time limit for notice

149(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);

(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.

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."

Thus, it is clear from the above provision that the maximum time limit for issuance of notice under section 148 for reopening the assessment is six years from the end of the relevant assessment year. In the instant case, the relevant assessment year is 2011-12; the limitation of six years for initiation of reassessment proceedings expired on 31.03.2018; and notice under section 148 signed by the respondent was dated 31.03.2018. In such circumstances, this court is required to examine that such notice is in adherence to the compliance of section 149 for reassessment proceedings.

10.While the appellant stated that notice under section 148 dated 31.03.2018 was received by her through e-mail only on 18.04.2018 and hence, the same is clearly barred by limitation, it is stated on the side of the department that notice under section 148 was signed by the respondent on 31.03.2018 and the same was given to the process server to be served on the appellant on the same day, but it was returned on 06.04.2018 stating that there was no such person in the given address. After ascertaining her address from the last return of income filed by her, the said notice was sent to the appellant's registered mail ID, which was also served on 18.04.2018. Thus, according to the respondent, the reassessment proceedings commenced from the moment, when the notice was signed by the respondent on 31.03.2018 and hence, the same is well within the limitation.

11.In this context, this court would apply the doctrine of 'substantial compliance' to the facts and circumstances of the case. In the decision of the Hon'ble Supreme Court in Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and others [(2011) 1 SCC 236], it was held as follows:

"Doctrine of substantial compliance and "intended use"

32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted on some minor or in consequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of substantial compliance depends upon the facts and circumstances of each case and the purpose and object to be achieved in the context of the prerequisites which are essential to achieve the object and purpose of the rule or regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuate the object and the scope of the statute has not been met. Certainly, it means that the court would determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable object of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.

33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and direct recruitment requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words a mere attempt at compliance may not be sufficient, but actual compliance with those factors which are considered as essential."

12. In *Kanubhai M. Patel v. Hiren Bhatt and others* [(2011) 334 ITR 25 (Guj)], it was held by the Gujarat High Court that "date of issuance of notice under Section 148 Income Tax Act has to be reckoned not from the date when it was issued, but on the date when it was actually delivered on the assessee". The relevant paragraphs of the same are profitably extracted below:

"13. On a plain reading of Section 149, it is apparent that under the said provision, the maximum time limit for issuance of notice under Section 148 is six years from the end of the relevant assessment year. In the present case, the relevant assessment year in each of the petitions is 2003-2004; the impugned notices are dated 31.03.2010; and the said notices were sent for booking to the Speed Post Centre, Ahmedabad, on 07.04.2010. On behalf of the petitioners, it has been contended that the notices which have been dispatched for service only on 07.04.2010, are clearly time barred inasmuch as the date of dispatch would be the date of issue of the notices. Whereas, on behalf of the revenue, it has been contended that the notices were actually signed on 31.03.2010, hence, the said date would be the date of issue and as such, the impugned notices have been issued within the time limit prescribed under Section 149 of the Act.

14. In the background of the aforesaid facts and contentions, the core issue that arises for consideration is as to when can the notice under Section 148 of the Act be said to have been issued. In this context, it would be necessary to examine the true import of the expression "shall be issued" as employed in section 149 of the Act.

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 persons, 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 or 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 hand 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."

Thus, it is apparent from the aforesaid decisions that the issuance of notice under section 149 is complete only when the same is issued in the manner as prescribed under section 282 r/w rule 127 of the Income Tax Rules prescribing the mode of service of notice under the Act. The signing of notice would not amount to issuance of notice as contemplated under section 149 of the Act. In other words, the requirement of issuance of notice under section 149 is not mere signing of the notice under section 148, but is sent to the proper person within the end of the relevant assessment year.

13. Concededly, the notice dated 31.03.2018 issued by the respondent was served on the appellant through mail, only on 18.04.2018. Though the learned senior panel counsel appearing for the respondent produced the relevant pages of notice server book maintained by the department to show that the notice of the respondent dated 31.03.2018 under section 148 is within the limitation period, but the same only disclosed that the notice dated 31.03.2018 was returned on 06.04.2018. Further, the decision in Aban Offshore Limited case (supra) relied on the side of the respondent, is of no assistance, wherein, the postal cover showed that the franking was made on 01.04.2015, but the 'business post arrangement' between the Income Tax Department and the Department of Posts disclosed that the cover was despatched on 31.03.2015, i.e., within the period of limitation. Whereas, in this case, there is no document made available to

prove that the notice under section 148 dated 31.03.2018 was sent for despatch to the appellant, within the end of the relevant assessment year i.e., 31.03.2018. Thus, it is crystal clear that the notice under section 148 for reopening the assessment was not sent to the appellant, within the time stipulated under section 149 of the Act and hence, the same vitiates the reassessment proceedings initiated under section 147 of the Act.

14. In such view of the matter, the order of the learned Judge dated 26.04.2021 as well as the notice dated 31.03.2018 issued by the respondent are liable to be set aside and are accordingly, set aside. As a sequitur, the writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rsh

To

The Income Tax Officer
NCW-12 (3), Greaves Road
Chennai - 600 006.

+1cc to Mrs. Hema Muralikrishnan, Advocate, S.R.No.40070
+1cc to Mr.T.Pramod Kumar Chopda, Advocate, S.R.No.40417

WA No. 1795 of 2021

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