

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1983 OF 2022

Lok Developers	]	
Registered Partnership Firm,	]	
Lok Bhavan, Lok Bharati Complex,	]	
Marol Maroshi Road,	]	
Andheri (East), Mumbai – 400 059	]	
PAN No. : AAAFL0522G	]	.. Petitioner
v/s.		
1. Deputy Commissioner of Income tax Circle	]	
24(1), Mumbai, Room No 604,	]	
6 th Floor, Piramal Chambr, Lal Baug,	]	
Parel, Mumbai – 400012	]	
2. The National Faceless Assessment Centre	]	
E Ramp, Jawaharlal Nehru Stadium,	]	
Delhi 110 003.	]	
3. Union of India	]	
Secretary, Department of Revenue,	]	
Ministry of Finance	]	
North Block, New Delhi – 1100 01	]	..Respondents

**ALONG WITH
WRIT PETITION NO. 3037 OF 2022**

Lok Developers	]	
Registered Partnership Firm,	]	
Lok Bhavan, Lok Bharati Complex,	]	

Marol Maroshi Road,	]	
Andheri (East), Mumbai – 400 059	]	
PAN No. : AAAFL0522G	]	.. Petitioner
v/s.		
1. Deputy Commissioner of Income tax Circle	]	
24(1), Mumbai, Room No 604,	]	
6 th Floor, Piramal Chambr, Lal Baug,	]	
Parel, Mumbai – 400012	]	
2. The National Faceless Assessment Centre	]	
E Ramp, Jawaharlal Nehru Stadium,	]	
Delhi 110 003.	]	
3. Union of India, through the	]	
Secretary, Department of Revenue,	]	
Ministry of Finance	]	
North Block, New Delhi – 1100 01	]	..Respondents

ALONG WITH
WRIT PETITION NO.3042 OF 2022

Lok Developers	]	
Registered Partnership Firm,	]	
Lok Bhavan, Lok Bharati Complex,	]	
Marol Maroshi Road,	]	
Andheri (East), Mumbai – 400 059	]	
PAN No. : AAAFL0522G	]	.. Petitioner
v/s.		
1. Deputy Commissioner of Income tax Circle	]	
24(1), Mumbai, Room No 604,	]	
6 th Floor, Piramal Chambr, Lal Baug,	]	

Parel, Mumbai – 400012	]	
2. The National Faceless Assessment Centre	]	
E Ramp, Jawaharlal Nehru Stadium,	]	
Delhi 110 003.	]	
3. Union of India, through the	]	
Secretary, Department of Revenue,	]	
Ministry of Finance	]	
North Block, New Delhi – 1100 01	]	..Respondents

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Mr. Rahul K. Hakani i/by Ms. Niyati K. Hakani for the petitioner.

Mr. Akhileshwar Sharma a/w. Ms. Shilpa Goel for the respondents.

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**CORAM : DHIRAJ SINGH THAKUR AND
KAMAL KHATA, JJ.**

RESERVED ON : 18th JANUARY 2023.

PRONOUNCED ON : 15th FEBRUARY 2023.

JUDGMENT: (PER KAMAL R. KHATA, J.)

1. The above three petitions filed by the same petitioner for three different assessment years can be disposed of with a common order. The petitioner a registered partnership firm which was carrying on real estate development business is challenging the reassessment notice dated 28th March 2021, for the Assessment Years (AY) 2015-16, 2016-

17 and 2017-18 issued under section (u/s) 148 of the Act, the show cause notice for proposed variation in the draft assessment order dated 25th March 2022 and assessment order u/s 144B read with (r.w) s.144, notice of demand u/s 156. The petitioner further apprehends passing of a Penalty Notice u/s 271(1)(c) of the Act.

2. The short question that arises in this Petition is:

“Whether subsequent proceedings initiated by the revenue authorities for non-compliance of notice u/s 148 under the Income Tax Act would be vitiated on account of notice u/s 148 of the Act being served on the secondary email id registered with PAN instead of the registered primary email id or updated email id filed with the last Return of Income.”

3. Mr. Rahul Hakani learned counsel for the petitioner submitted that the impugned notice was issued on the secondary email id as per PAN card i.e. on LOKTAX2008@REDIFFMAIL.COM and not on the registered primary email id i.e. loktax201415@rediffmail.com as evinced at Exhibit P-1 of the affidavit in rejoinder at page no. 80. He submitted that the respondents ought not to have issued Notice u/s. 148 on the email-id mentioned in the Return of Income for AY 2013- 14 but on the last Return of Income filed by the petitioner. He pointed out that

the last Return of Income filed by the petitioner was for AY 2020 - 21 was on 7th January 2021 and the email id mentioned thereon was loktax2016@rediffmail.com as evinced at Exhibit P-2 of the affidavit in rejoinder at page 81. He further submitted that the notice under section 148 dated 28th March 2022 was in contravention of section 282 and 282A of the Act r.w. Rules 127 and 127A of the Income Tax Rules, 1962 r.w. notifications issued by the CBDT and consequently not in accordance with law.

He relied upon the following notifications:

(A) Notification no. 2/2016 [DGIT(S)/DIT(S)-3/AST/PAPERLESS ASSESSMENT PROCEEDINGS/96/2015-16], dated 3-2-2016

Clause 2. Accordingly, Board vide Income-tax (18th Amendment) Rules, 2015 has notified rule 127 for Service of notice, summons, requisition, order and other communication on 2nd December 2015. Sub-clause (b) of sub-rule (2) of rule 127 states that: For communications delivered or transmitted electronically –

(i) email address available in the income-tax return furnished by the addressee to which the communication relates; or

(ii) the email address available in the last income-tax return furnished by the addressee; or

(iii) in the case of addressee being a company, email address of the company as available on the website of Ministry of Corporate Affairs; or

(iv) any email address made available by the addressee to the income tax authority or any person authorized by such income tax authority.

Clause 6(i) In case of non-delivery of email on the primary email address, the notices shall be sent to other email addresses of the

assessee available with the department as mentioned in sub-rule (2) of rule 127.

(B) Notification no.4/207 [DGIT(S)/DIT(S)-3/AST/PAPERLESS ASSESSMENT PROCEEDINGS/96/2015-16], dated 3-4-2017 Clause 13.

The procedure, formats and standards for ensuring secured transmission of electronic communication using E Proceeding is specified as under:

(a) All the notices/questionnaire/letter/Orders issued from ITBA modules by any Income-tax Authority will be visible to Assessee after login under "E-Proceeding" Tab in the E-filing website of the Department in <https://incometaxindiaefiling.gov.in>, hereinafter called 'E-filing website' and may also be sent by the designated email address (e-mail address based on the designation of the income tax authority under the domain@incometax.gov.in) to the registered e-email address of the Assessee.

(b) A text message alerting the Assessee may also be sent on the mobile number registered on the E-filing website.

4. He further submitted that the respondent had not proved service on the petitioner which is a mandatory requirement and consequently the subsequent proceedings would be null and void. He submitted that the petitioner had refused to participate in proceedings that were *ab initio* null and void for want of valid service of notice.

5. Per contra, Mr. Akhileshwar Sharma learned counsel for the respondent submitted that the notice u/s 148 was issued in accordance with law. In support of his submission, he relied upon the ITBA Assessment home page at Exhibit R-2 of the Affidavit in Reply at page 75 which evinced the sent email stamp dated 28th March 2021 at

4.46.02 p.m. and delivered time stamp both dated 28th March 2021 at 4.46.03 p.m. He submitted that the petitioner had not denied the email id and that it was registered with the PAN database. He further submitted that the assessee had not filed its return of income for AY 2008-09, 2015-16 to 2018-19 and therefore the notice was issued on the email address mentioned in the return filed for AY 2013-14. He submitted that the respondent could not be held responsible for an inactive email id or the petitioner not updating the email id registered with PAN. He accordingly submitted that the petition be dismissed.

6. We heard both counsel and also perused the papers in the proceedings. In the present case on 7th January 2021 the petitioner had filed its Return of Income for AY 2020 -21 and the email id mentioned therein was loktax2016@rediffmail.com therefore the AO ought to have considered this email as provided u/r 127 (1) (b) (i) email address available in the income tax return furnished by the addressee to which the communication relates which would be the primary email id or (ii) i.e. email address available in the last income tax return furnished by the addressee. In our view the AO clearly erred in issuing a notice on the secondary email address when there was a primary email address given by the petitioner. It is common knowledge that a secondary email

address has to be used as an alternative or in such circumstances when the authority is unable to effect service of any communication on the primary address. There is no prudence in issuing an email on the secondary email address. In our view the AO ought to have sent the notice u/s 148 to both the primary address and the email address mentioned in the last Return of Income filed to preempt a jurisdictional error on account of valid service; there was neither any cost to it or any prejudice to any party for sending it on more than one email in a given circumstance as in the present case. We see no wrong with the petitioner's refusal to participate in a proceeding vitiated by valid service of notice. This Court in the case of ***Mrs. Chitra Supekar vs ITO in Writ Petition No. 15580 of 2022*** has held that it was imperative for the AO to have checked if there was a change of address before initiating a proceeding; and that a valid service of notice under section 148 is a condition precedent lest it would be a jurisdictional error.

7. We accordingly quash and set aside the notice dated 28th March 2022, and all consequential proceedings including the show cause notice for proposed variation dated 25th March 2022 and assessment order u/s 144B r.w s.144. However, the respondent will be at liberty to

proceed with the assessment after issuance of fresh notice in accordance with law.

8. Petitions allowed. No order as to costs.

(KAMAL KHATA, J.)

(DHIRAJ SINGH THAKUR, J.)