



W.P.No.4437 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	11.07.2023
Pronounced On	03.11.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.4437 of 2022

and

W.M.P.Nos.4578 of 2022 & 1664 & 1667 of 2023

Subramaniam Rohini

... Petitioner

Vs.

1. The Income Tax Officer,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.

2. The Assistant Commissioner of Income Tax,
Circle – 67(1), Delhi,
Civic Centre, Minto Road,
New Delhi – 110 002.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India,
for issuance of a Writ of Certiorari to call for the records in DIN &
Notice No:ITBA/AST/S/148/2020-21/1032105741(1) dated 31.03.2021



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on the file of the second respondent relating to the Assessment Year 2014-2015 and quash the same.

For Petitioner : Mr.G.Baskar

For Respondents : Mr.R.S.Balaji
Senior Standing Counsel

ORDER

1. The petitioner is aggrieved by the Impugned Notice dated 31.03.2021 notice issued by the second respondent under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2014-2015.

2. The petitioner, a senior citizen and a retired Central Government Employee appears to have sold an ancestral property during 2014. The petitioner had filed the Income Tax Return for the Assessment Year 2014-2015 on 24.04.2021.

3. Income from sale of the said property was not included in the income of petitioner on the ground that it was an income from sale of an agricultural property and therefore agricultural income and therefore not liable to income from capital gains.



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4. A notice dated 31.03.2021 was issued to the petitioner under Section 148 of the Income Tax Act, 1961 (In short IT Act,1961) for the Assessment Year 2014-2015, as it stood prior to the substitution/repeal with its new set of provisions with effect from 01.04.2021. The said notice was issued to the petitioner on the ground that the petitioner had not declared income from the sale of the said property in the return filed on 24.04.2021 for the Assessment Year 2014-2015.

5. The said notice was digitally signed at 8.16 p.m by the concerned Officer before uploading the same in the Web Portal on 31.03.2021. The notice was thereafter delivered to the petitioner by e-mail on the following day on 01.04.2021 at about 7.12.04 a.m. Thus, the said notice was communicated to the petitioner on 01.04.2021. The hard copy of the said notice dated 31.03.2021 was also separately dispatched through post on 07.04.2021 and was later received by the petitioner.



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6. The petitioner therefore filed a Return of Income on 24.04.2021, pursuant to the aforesaid notice and participated in the proceedings. Mean while, the Hon'ble Supreme Court rendered its decision on 04.05.2022 in a batch of cases in **Union of India and others Vs. Ashish Agarwal**, 2023 1 SCC 617, 2022 SCC Online SC 543/[2022] 138 taxmann.com 64(SC).

7. The decision in **Union of India and Others vs. Ashish Agarwal**, 2022 SCC Online SC 543/[2022] 138 taxmann.com 64(SC) arose on account of several decisions of different High Courts. The decisions records that approximately 90,000 such re-assessment notices were issued under Section 148 of the IT Act, 1961 which stood amended w.e.f 01.04.2021 and that more than 9,000 writ petitions were before the various High Courts across the country and that the High Courts had taken a divergent view and that few High Courts had set aside the reassessment notices issued under Section 148 of the IT Act, 1961 as time-barred.



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8. The Hon'ble Supreme Court after examining the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and the notification issued therein observed that as per the explanation to Notifications dated 31.03.2021 and 27.04.2021 issued under Section 3 of the aforesaid Act, the provisions as they existed prior to the amendment by the Finance Act, 2021, shall apply to the reassessment proceedings initiated thereunder.

9. However , the Hon'ble Supreme Court in **Ashish Agarwal's** case ultimately held as follows:-

"(i) The respective impugned section 148 notices issued to the respective assesseees shall be deemed to have been issued under section 148A of the Income Tax Act, 1961 as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b). The respective assessing officers shall within thirty days from today provide to the assesseees the information and material relied upon by the Revenue so that the assesseees can reply to the notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(b) be dispensed with as a one-time measure vis-a-vis those notices which have been issued under section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts;



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(iii) The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assessee;

(iv) All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available and;

(v) The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended Section 148 of the Income Tax Act, 1961 irrespective of whether they have been assailed before this Court or not."

10. This view has been followed by a Division Bench of this Court in a **Smt.Parveen Amin Bhathara Vs. Income-Tax Officer**, [2022] 143 taxmann.com 353 (Madras).

11. It is the specific case of the petitioner that the impugned notice dated 31.03.2021 was digitally signed at 8.16 p.m. and was dispatched through e-mail and was received by the respondents only on the following day and therefore, beyond the prescribed period of limitation under Section 149 of the IT Act, 1961 as it stood till 31.03.2021.



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12. It is submitted that the fact that the notice was physically delivered after on 07.04.2021 also makes it clear that the impugned notice was time barred and re-assessment at best could be only under the new positions as in force with effect from 01.04.2021 in terms of the said decision of the Hon'ble Supreme Court.

13. It is submitted that as per Section 3(1) of Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TLA Act, 2020) extending the effective date for the provisions of Section 148A of the IT Act, 1961 as inserted by Finance Act, 2021 with effect from 01.04.2021 which stipulate the mandatory statutory obligations on the respondent, is *ultra vires* and consequently, the notice under Section 148 of the IT Act, 1961 dated 31.03.2021 was issued without following mandatory statutory obligations under Section 148A as inserted by Finance Act, 2021 with effect from 01.04.2021, is incorrect and therefore it is liable to be quashed.



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14. It is submitted that despite the enforcement of Finance Act, 2021 with effect from 01.04.2021 which was inserted as a substitution to Section 148 of the IT Act, 1961, the Revenue has issued the impugned notice reopening assessment under old provisions of Section 148 of the IT Act, 1961 and therefore the impugned notice issued under old provisions of Section 148 of the IT Act, 1961, was bad in law.

15. It is submitted that notices dated 26.11.2021, 06.01.2022 and 25.01.2022 issued under Section 142(1) and communication dated 27.01.2022 in response to the request for reasons for re-opening of assessment were also bad in law for the same reasons.

16. It is submitted that the communication dated 27.01.2022 enclosed an undated reasons for re-opening the assessment after obtaining sanction under Section 151 of the IT Act, 1961. It is further submitted that one Mr. Trilok Singh, Income Tax Officer, Ward 67(1) had signed same recording his satisfaction to reopen the assessment on the ground that income escaped assessment.



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17. It is submitted that the said communication dated 27.01.2022 was counter signed by the Additional Commissioner of Income Tax, Range-67, Delhi and approved/sanctioned by the Principal Commissioner of Income Tax, Delhi-15 only later.

18. It is submitted that it is evident on a bare perusal of the Form for recording reasons for initiating proceedings under Section 147 and for obtaining sanction under Section 151 of the IT Act, 1961, the information with respect to sale of agricultural lands was received as early as on 30.11.2018 from the Income Tax Officer, Chennai.

19. It is submitted that therefore submitted that the impugned notice dated 31.03.2021 issued after more than two years since then was clearly an afterthought. It is therefore submitted that it can be logically concluded that the second respondent had this information with him long back and was satisfied that no income escaped assessment. The undated sanction by the higher officials which is annexed along with the communication dated 27.01.2022 goes to prove that the sanction had



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been granted after issuance of the impugned notice thus was violative of Section 151 of the IT Act, 1961.

20. It is further submitted that the impugned notice had been digitally signed by one Mr. Debashish Roy, Circle 67(1), Delhi, while the undated form for recording reasons and obtaining sanction had been signed manually by one Mr. Trilok Singh, Ward 67(1), Delhi, who is a different officer.

21. The learned counsel for the petitioner would place reliance on the decision of the Division Bench of Delhi High Court in **Suman Jeet Agarwal Vs. Income-Tax Officer**, [2022] 143 taxmann.com 11 (Delhi).

A specific reference is made to Paragraph 26.23, which reads as under:-

"26.23. We also take judicial notice of the fact that the Department from May, 2022, for Notices issued on or after 1st April 2021, has considered the date and time of despatch of the notices as recorded by the ITBA portal as the date of issuance and disregarded the date of generation of notice i.e. 31-3-2021. For notices despatched on or after 1st April 2021, the Department, following the Supreme Court's Order in Ashish Agarwal (supra) considered the notices as issued under Section 148A of the Act of 1961. This shows that the Department itself acknowledges and admits that



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the date of generation is distinct from date of issuance and the Department considers the despatch by ITBA Portal as the date of issue for the purpose of Section 149 of the Act of 1961."

22. It is therefore submitted that the impugned notice, which has been issued under Section 148 of the IT Act, 1961 has to be treated as a notice issued under Section 148A of the IT Act, 1961 as in force with effect from 01.04.2021 notwithstanding the fact that there was relaxation under the provisions of Section(3) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and the notification issued therein.

23. The learned Senior Standing Counsel for the respondents would submit that the writ petition is devoid of merits, as the petitioner has participated in the proceedings by filing the Return of Income on 24.04.2021 pursuant to the impugned notice dated 31.03.2021 and 24.04.2021. It is submitted that notice was digitally signed at 8.16 p.m. On 31.03.2021 and uploaded in the system and was delivered to the petitioner on the following day.



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24. It is submitted that the question of violation of principles of natural justice would not arise as the respondents have issued several notices under Section 143(2) and 142(3) of the Act calling upon the petitioner to file evidences to which the petitioner has also replied.

25. It is submitted that notice was issued on 31.03.2021 and the system delivered the notice to the petitioner on the following day. However, the fact remains that the notice has been issued on the date when it was signed digitally at about 8.16 p.m. on 31.03.2021.

26. The learned Senior Standing Counsel further submits that under similar circumstances, this Court has also dismissed a writ petition in W.P.No.27997 of 2021 by its order dated 29.03.2022 in **Malavika Enterprises Vs. Central Board of Direct Taxes**, [2022] 137 taxmann.com 398 (Madras).



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WEB COPY 27. By way of rejoinder, the learned Counsel for the petitioner submits that the decision of the Division Bench of this Court in **Malavika Enterprises case** (referred to supra) is prior to the decision of the Hon'ble Supreme Court in **Ashish Agarwal's case** (referred to supra).

28. I have considered the arguments advanced by the learned Counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

29. The facts are not in dispute. Limitations for issuance of notice under Section 148 of the IT Act, 1961, was to be governed by Section 149 of the IT Act, 1961 as it stood till 31.03.2021. Section 149 of the IT Act, 1961 as it stood prior to its amendment reads as under:-

Section 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) 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*



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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.*



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30. Substituted Section 149 of the IT Act, 1961 w.e.f reduced the permissible time limit for issuance of such a notice to three years. Such notice could be issued only in exceptional case within ten years from the end of the relevant year. It also provides further additional safeguards which were absent under the earlier regime pre-Finance Act, 2021.

31. The last date for issuance of the notice under Section 148 of the IT Act, 1961 for the Assessment Year 2014-2015 to the petitioner was on 31.03.2021 under the old regime prior to 1.4.2021.

32. The last day for issuing notice for re-opening the assessment for the Assessment Year 2014-2015 in a case where income escaped assessment under proviso to Section 147 of the IT Act, 1961 expired on 31.03.2021.

33. The impugned notice was digitally signed on 31.03.2021 i.e., on the date on which the old Section 148 was still in force prior to its substitution with effect from 01.04.2021. The impugned notice was delivered for despatch in the system for delivery to the petitioner.



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34. The impugned notice was delivered to the petitioner on the following date at 7.12.04 a.m, the day on which old provisions stood substituted with new provisions. The hard copy of the same notice was also despatched to the petitioner on 07.04.2021 and was also received by the petitioner on the following day.

35. In **Union of India and Others vs. Ashish Agarwal**, 2023 1 SCC 617; 2022 SCC Online SC 543, the Hon'ble Supreme Court held as under:-

*“22. Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, **provided Section 148 notice has been issued on or after 1-4-2021**. We are in complete agreement with the view taken by the various High Courts in holding so.*

23. However, at the same time, the judgments of the several High Courts would result in no reassessment



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proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted Sections 147 to 151 of the Income Tax Act, 1961. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bona fide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under Section 148 after the amendment was enforced w.e.f. 1-4-2021, under the unamended Section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of Sections 147 to 151 of the Income Tax Act, 1961 as per the Finance Act, 2021.

24. *There appears to be genuine non-application of the amendments as the officers of the Revenue may have been under a bona fide belief that the amendments may not yet have been enforced. Therefore, we are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of the Income Tax Act, 1961, the High Courts ought to have passed an order construing the notices issued under the unamended Act/unamended provision of the Income Tax Act, 1961 as those deemed to have been issued under Section 148-A of the Income Tax Act, 1961 as per the new provision Section 148-A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of Sections 147 to 151 of the Income Tax Act, 1961 as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of Sections 147 to 151 of the*



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Income Tax Act, 1961 and which may be available under the Finance Act, 2021 and in law.

25. *Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under:-*

- i. The respective impugned Section 148 notices issued to the respective assessees shall be deemed to have been issued under Section 148-A of the Income Tax Act, 1961 as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of Section 148-A(b). The respective assessing officers shall within thirty days from today provide to the assessees the information and material relied upon by the Revenue so that the assessees can reply to the notices within two weeks thereafter;*
- ii. The requirement of conducting any enquiry with the prior approval of the specified authority under Section 148-A(a) be dispensed with as a one-time measure vis-à-vis those notices which have been issued under Section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts;*
- iii. The assessing officers shall thereafter pass an order in terms of Section 148-A(d) after following the due procedure as required under Section 148-A(b) in respect of each of the assessees concerned;*
- iv. All the defences which may be available to the assessee under Section 149 and/or which may be available under the Finance Act, 2021 and*



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in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available.

- v. *The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended Section 148 of the Income Tax Act, 1961 irrespective of whether they have been assailed before this Court or not."*

36. The case of the petitioner and the case that was considered by the Hon'ble Supreme Court in **Union of India and Others vs. Ashish Agarwal**, 2023 1 SCC 617; 2022 SCC Online SC 543; [2022] 138 taxmann.com 64(SC) are totally different.

37. There the notices were issued after 01.04.2021 under Section 148 to 151 of the IT Act, 1961 as they stood prior to 01.04.2021 by placing reliance on Notification No.20/2021 dated 31.03.2021 and Notification No.38/2021 dated 27.04.2021 under the provisions of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance read with Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance Act, 2020.



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38. They *inter alia* extended the time lines/limitation prescribed under Section 149 of the IT Act, 1961 for issuance of notice under Section 148 of the IT Act, 1961, as it stood prior to 01.04.2021 as detailed below:-

Date of Notification	Original Limitation for issuance of notice under Section 148 of the Act	Extended Limitation
31.03.2020	20.03.2020 to 29.06.2020	30.06.2020
24.06.2020	20.03.2020 to 31.12.2020	31.03.2021
31.03.2021	31.03.2021	30.04.2021
27.04.2021	30.04.2021	30.06.2021

39. The explanation to the 3rd and the 4th mentioned notification above were issued under Section 3 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance Act, 2020. They stipulated that the provisions, as they existed prior to the amendment by the Finance Act, 2021, shall apply to the reassessment proceedings initiated there under.

40. The amendment to the provisions of Income Tax Act, 1961 with effect from 01.04.2021 by Finance Act, 2021, is of no relevance to the facts of the case as the notice was digitally signed and issued on 31.03.2021.



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41. The facts of the petitioner's case is different from the facts of the cases that were covered by the decision of the Hon'ble Supreme Court in **Ashish Agarwal's case** (referred to supra) and the decision of the Division Bench of this Court in **Parveen Amin Bhathara's case** (referred to supra), relied upon the by the petitioner.

42. Therefore, the reliance placed by the petitioner on the decision of this Court in a batch of writ petitions by a common order dated 04.02.2022 in the case of **Vellore Institute of Technology vs. Central Board of Direct Taxes and another** rendered in W.P.No.15019 of 2021 and etc., setting aside the reassessment notice issued under Section 148 of the Income Tax Act,1961 on or after 01.04.2021 are not relevant as admittedly the notice was issued by the petitioner within the time stipulated in Section 149 of the Income Tax Act,1961 as it stood till 31.03.2021.

43. The above decision applies to cases where notices were issued on or after the first April of 2021. These notices were issued under the



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Taxation and other Laws (Relaxation of Certain Provisions) Ordinance

Act, 2020 due to the Outbreak of COVID-19 Pandemic. That apart, changes brought to the IT Act, 1961 by Finance Act, 2021 with effect from 01.04.2021 are substantive in nature and therefore cannot apply to proceedings that were validly initiated prior to coming into force of amendment, as admittedly the notice was digitally signed on 31.03.2021 and put in the system before the limitation expired.

44. A reference may be made to Section 3 of the Indian Contract Act, 1872. Section 3 of the Indian Contract Act, 1872 deals with communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances. A communication of proposals is deemed to be made by any act or omission of the party proposing such proposal by which he intends to communicate such proposal which has the effect of communicating it. Section 3 of the Indian Contract Act, 1872 reads as follows:-

“3. Communication, acceptance and revocation of proposals:-

The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by



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any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.”

45. As per Section 4 of the Indian Contract Act, 1872, communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. Section 4 of the Indian Contract Act, 1872 reads as follows:-

“4. Communication when complete.—*The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.*

The communication of an acceptance is complete, as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,— as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; as against the person to whom it is made, when it comes to his knowledge.”



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46. The expression used in Section 149 of the IT Act, 1961 is issued.

Issuance of notice under Section 148 of the IT Act, 1961 is therefore deemed to be complete once notice is ready for being delivered or being dispatched. The fact that the impugned notice was digitally signed on 31.3.2021 makes it clear that the impugned notice was issued under the old provision. Further, under Sub-section (1) to Section 282 of the IT Act, 1961, 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:-

- (a) by post or by such courier services as may be approved by the Board; or*
- (b) in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons; or*
- (c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000); or*
- (d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.*



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47. As per Sub-section (2) to Section 282 of the IT Act, 1961, the Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named.

48. As per Rule 127A(1)(a)(i) of the IT Rules, 1962, 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 and the e-mail, is issued from the designated e-mail address of such income tax authority.

49. Similarly, 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



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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.

50. Rule 127A(1)(a)(i) of the IT Rules, 1962 reads as under:-

“127A(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 e-mail 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.”

51. Thus, the issuance of notice and other document through e-mail from the designated e-mail address of the concerned income tax authority is valid.



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52. Therefore, once the notice was signed and delivered for being despatched whether through post or through e-mail it is deemed to have been issued for the purpose of Section 149 of the IT Act,1961. Communication and delivery of such communication can be on a date after it is issued.

53. Section 149 of the IT Act,1961 as it stood prior to its substitution with effect from 01.04.2021 which has been extracted above also makes it clear no notice under Section 148 shall be issued for the relevant assessment year in terms of the sub-clause (a), (b) & (c) to Section 149(1) of the IT Act,1961

54. It is not the actual communication of the notice that is relevant. It is the issuance of the notice. Notice can be issued on the last date. All that is required is that it should be dispatched. Once the notice has been dispatched either electronically or through post or the last date prescribed under Section 149 of the IT Act,1961, the proceeding cannot be questioned as time barred. The decision of the Supreme Court in **Ashish Agarwals Case** rendered on 04.05.2022 which was in the context of delay due TLA Act, 2020 will not come to the rescue of the petitioner.



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55. It therefore cannot be said that either the impugned notice that was issued to the petitioner on 31.03.2021 was time barred or that the assessment had to be completed under the amended provisions of the IT Act, 1961 with effect from 01.04.2021.

56. In fact, a Division Bench of this Court in **Malavika Enterprises Vs. Central Board of Direct Taxes**, [2022] 137 taxmann.com 398 (Madras), dismissed the writ petition while dealing with a case under similar circumstances. Therefore, the challenge to the impugned notice in this writ petition has to fail.

57. That apart, the petitioner has also participated in the proceedings by filing a response on 24.04.2021 along with a Return of Income. The petitioner has also received notices and has also been served with the reasons for reopening the assessment on 27.01.2022. The petitioner has also received another notice on 13.02.2022 under Section 142(1) of the IT Act, 1961.



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WEB COPY 58. Therefore, there is no merits in the present writ petition.

Therefore, this writ petition is liable to be dismissed. It is accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

03.11.2023

Neutral Citation : Yes/No
Internet : Yes/No
Index : Yes / No
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To

1. The Income Tax Officer,
National Faceless Assessment Centre,
Income Tax Department,
Ministry of Finance,
Room No.401, 2nd Floor, E-Ramp,
Jawaharlal Nehru Stadium,
Delhi – 110 003.
2. The Assistant Commissioner of Income Tax,
Circle – 67(1), Delhi,
Civic Centre, Minto Road,
New Delhi – 110 002.



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Pronouncing Order in
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