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W.P.Nos.14343 & 14348 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.08.2023	Pronounced on: 10.11.2023
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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.14343 & 14348 of 2022 and
W.M.P.Nos.13551, 13552, 13554 & 13556 of 2022

Asha Jain

.. Petitioner
(in both cases)

Vs.

1.The Additional / Joint / Deputy / Assistant Commissioner
of Income Tax / Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2.Income Tax Officer,
Non-Corp. Ward 4(1), Chennai,
No.16, Greams Road,
Chennai – 600 006.

.. Respondents
(in both cases)

Prayer in W.P.No.14343 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondents in AKUPA1086C and quash the impugned notice in ITBA/AST/S/148/2020-21/1031949815(1) for the Assessment Year 2013-14 dated 30.03.2021 issued by the 2nd respondent and the consequential impugned order in ITBA/AST/S/147/2021-22/1042070788(1) dated 30.03.2022 passed by the 1st respondent as illegal, without jurisdiction and not in accordance with law.



Prayer in W.P.No.14348 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the 2nd respondent in PAN No.AKUPA1086C and quash the impugned notice in ITBA/AST/S/148/2021-22/1031949815(2) issued under Section 148 of the Income Tax Act, 1961 dated 07.04.2021 for the Assessment Year 2013-14 by the 2nd respondent as illegal and without jurisdiction.

(In both cases):

For Petitioner : Mr.R.Sivaraman
For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel for IT

COMMON ORDER

In W.P.No.14343 of 2022, the petitioner has challenged the Impugned Notice dated 30.03.2021 for the Assessment Year 2013-2014 issued under Section 148 of the Income Tax Act, 1961 and the consequential Assessment Order dated 30.03.2022 for the same Assessment Year 2013-2014.

2.On 07.04.2021, the petitioner received another identically worded Notice passed under Section 148 of the Income Tax Act, 1961 for the same Assessment Year 2013-2014 which was electronically sent and uploaded and transmitted to the petitioner. The petitioner has challenged the same in W.P.No.14348 of 2022.



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3.The specific case of the petitioner is that the Impugned Assessment Order dated 30.03.2022 for the Assessment Year 2013-2014 based on the notice dated 30.03.2021 issued under Section 148 of the Income Tax Act, 1961 and impugned Notice dated 07.04.2021 for the same Assessment Year 2013-2014 are unsustainable as they are neither signed and have been simply uploaded and transmitted to the petitioner for the first time on 15.04.2021 after Section 148A was inserted of the Income Tax Act, 1961 with effect from 01.04.2021.

4.It is submitted that at best the new procedure under the new regime under Section 148A of the Income Tax Act, 1961 ought to have been followed as held by the Hon'ble Supreme Court in **Union of India vs. Ashish Agarwal**, (2022) 444 ITR 1.

5.If it is the case of the respondent that the impugned notice dated 31.03.2021 and 07.04.2021 were issued under Section 148 of the Income Tax Act, 1961 on 07.04.2021 they were to be treated as notice issued under Section 148A of the Income Tax Act, 1961, as held by the Hon'ble Supreme Court in **Union of India vs. Ashish Agarwal**, (2022) 444 ITR 1. Consequently, it is submitted that the Impugned Assessment Order



dated 30.03.2022 is liable to be quashed.

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6.The learned counsel for the petitioner submits that the impugned notice dated 30.03.2021 impugned in W.P.No.14343 of 2022 is not a notice in the eye of law as it was not signed by a competent officer.

7.Continuing further, the learned counsel for the petitioner has drawn attention to the decision of the High Court of Delhi in **Suman Jeet Agarwal Vs. Income Tax Officer**, [2022] 449 ITR 517 (Delhi). The learned counsel for the petitioner has drawn attention to the questions of law that were considered by the Hon'ble Division Bench of the Delhi High Court in the above case and specifically submits that question No.1, which is the issue in the present case has been answered in negative against the Income Tax Department. Question No.1 in para.no.24 of the decision of the Delhi High Court reads as under:

“24. The aforementioned submissions made by both the parties give rise to the following questions of law for consideration by this Court:-

I. Whether the JAO's act of generating Notice in the ITBA portal on 31st March, 2021 without despatching the Notice meets the test of the expression 'shall be issued' in Section 149 of the Act of 1961, and saves the Notices from



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W.P.Nos.14343 & 14348 of 2022

- being time barred?*
- II. *Whether "despatch" as per section 13 of the Act of 2000 is sine qua non for issuance of Notice through electronic mail for the purpose of Section 149 of the Act of 1961?*
- III. *Whether the time taken by the ITBA's e-mail software system on 31st March, 2021, in despatching the e-mails to the assesseees is not attributable to the JAOs and the Notices will be deemed to have been issued on 31st March, 2021?*
- IV. *Whether the section 148 Notices sent as an attachment through e-mails, from the designated e-mail addresses of the JAOs, which do not bear the respective JAO's digital signature, are valid under section 282A the Act of 1961 read with rule 127A of the IT Rules?*
- V. *Whether upload of the section 148 Notice on the "My Account" of the assessee on the E-filing portal is valid transmission under the Act of 1961?*

Analysis and reasons

25. *Question No. (I): Whether the JAO's act of generating Notice in the ITBA portal on 31st March, 2021, without despatching the Notice meets the test of the expression 'shall be issued' in Section 149 of the Act of 1961, and saves the Notices from being time barred?*

The Court has answered this in the negative in favour of the assessee.

.....

- 25.23 *We therefore answer question no.(I) in negative against the Department and hold that the impugned Notices dated 31st March, 2021, which were despatched on 1st April, 2021, or thereafter, would not meet the test of 'issued' under Section 149 of the Act of 1961 and would be time barred, unless saved by the judgment of the Supreme Court in Ashish Aggarwal*

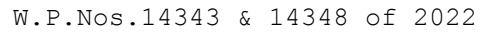


(*supra*).”

8.Hence, it is submitted that the proceedings initiated vide notice dated 30.03.2021, which was despatched on 15.04.2021 was liable to be interfered with. As far as the subsequent notice that was issued on 07.04.2021 is concerned, it is barred under law in terms of the decision of the Hon'ble Supreme Court in **Union of India vs. Ashish Agarwal**, (2022) 444 ITR 1.

9.It is therefore submitted that although the period overlaps with the time when the country was under the partial lockdown, the relaxation of time / limitation by the decisions of the Hon'ble Supreme Court and Taxation and other Laws (Relaxation of Certain Provisions), Ordinance, 2020 and The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, in view of outbreak of COVID-19 pandemic are not relevant in the light of decision of the Hon'ble Supreme Court in **Union of India Vs. Ashish Agarwal**, (2022) 444 ITR 1.

10.On the other hand, the learned Senior Standing Counsel for the respondents would submit that the Impugned Order is well reasoned and does not require any interference.



15. That after the petitioner had been provided due opportunities to present her case before the Revenue, but due to her own negligence and/or malicious conduct in attempting to frustrate the assessment procedure, the Respondents vide Assessment Order u/s. 147 r/w S.144B r/w S.147 dated 30.03.2021, passed the order assessing the total income of the petitioner to be Rs.10,86,900/-



along with penalty notice u/s.271(1)(c).

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13.The learned Senior Standing Counsel for the respondents submitted that the notice dated 30.03.2021 was issued through mail and physically despatched on 07.04.2021. It is submitted that the time lag was on account of non-availability of staffs in the Income Tax Department on account of partial lockdown imposed during the second wave of COVID-19 pandemic.

14.It is submitted that since the petitioner failed to respond to the first notice, the second notice was sent through mail on 07.04.2021 and was physically despatched to the petitioner on 15.04.2021. Hence, there is no irregularity in the proceedings initiated thus so far. Hence, he prays for dismissal of the Writ Petition.

15.It is submitted that the petitioner has received the notice dated 07.04.2021 on the following date, which was also acknowledged by the petitioner on the 9th of April 2021. It is submitted that the notice dated 30.03.2021 was despatched only subsequently on 15.04.2021 by bulk e-mail sent at 12.10.30 A.M., which corresponds to pg.no.102 of the petitioner's typed set of papers.



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16.The learned Senior Standing Counsel for the respondents would submit that at the time of issuing notices under Section 148 of the Income Tax Act, 1961, COVID 19 pandemic was at its peak, due to which the regular functioning of the Income Tax Department was affected and disrupted.

17.It is further submitted that due to lack of man power, many notices were delayed by a week's time. However, with difficulties, the Income Tax Department had issued notice dated 30.03.2021 to the petitioner which was mailed and dispatched through to the assessee on 07.04.2021. Subsequent notice dated 07.04.2021 was sent to the assessee through e-mail on 15.04.2021.

18.It is further submitted that in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C).No.3 of 2020, the Hon'ble Supreme Court held as follows:

“Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A.No.21 of 2022 with the following directions:



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W.P.Nos.14343 & 14348 of 2022

1. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings."

19.It is submitted that the delay in departmental proceedings may be condoned and prayed for dismissal of both the Writ Petitions.

20.It is therefore submitted that these writ petitions are liable to be dismissed and the petitioner should be directed to work out his remedy before the Appellate Commissioner under Section 246A of the Income Tax Act, 1961.

21.By way of rejoinder, the learned counsel for the petitioner would compare pg.no.2, which is a screen shot of the bulk e-mail sent on 07.04.2021 at about 04.17.22 P.M. It is submitted that this is the notice dated 07.04.2021 which was sent to the petitioner. Hence, it is submitted that the said notice issued under Section 148 of the Income Tax Act, 1961 after the amendment which came into force on 01.04.2021 was without jurisdiction. Hence, the Impugned Order dated 30.03.2022 is also



liable to be quashed.

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22.The Hon'ble Supreme Court referred to supra in **Union of India** vs. **Ashish Agarwal**, (2022) 444 ITR 1 has summarized the position as follows:-

“10. In view of the above and for the reasons stated above, the present Appeals are allowed in part. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in W.T.No.524 of 2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:-

- i. The impugned section 148 notices issued to the respective assessees which were issued under unamended Section 148 of the IT Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under Section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148A(b). the assessing officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assesees can reply to the show-cause notices within two weeks thereafter;*
- ii. The requirement of conducting any enquiry, if required, with the prior approval of specified authority under Section 148A(a) is hereby dispensed with as a one-time measure vis-a-vis those notices which have been*



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W.P.Nos.14343 & 14348 of 2022

issued under Section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts.

Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required;

iii. The assessing officers shall thereafter pass orders in terms of Section 148A(d) in respect of each of the concerned assesseees; Thereafter after following the procedure as required under Section 148A may issue notice under Section 148(as substituted);

23.I have heard the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

24.There are two notices issued under Section 148 of the Income Tax Act, 1961 for the same Assessment Year 2013-2014. The first notice issued to the petitioner is dated 30.03.2021. It is not digitally signed. Same notice has been issued in time. It is beyond the limitation under Section 147 of the Income Tax Act, 1961 as it stood till 31.03.2021. The second notice issued to the petitioner is dated 07.04.2021.



25.If notice issued on the later dated on 07.04.2021 is considered valid, the trajectory of the Assessment has to be completed in accordance with the new regime with effect from 01.04.2021 in terms of the decision of the Hon'ble Supreme Court in **Union of India vs. Ashish Agarwal**, (2022) 444 ITR 1, referred to *supra*.

26.On the other hand, if the notice was issued to the petitioner on 31.03.2021, the question of either challenging the notice dated 30.03.2021 issued under Section 148 of the Income Tax Act, 1961 or the consequential Assessment Order dated 30.03.2022 cannot be countenanced and therefore the Writ Petitions have to be dismissed.

27.Therefore, the argument of the learned counsel for the petitioner that the notice issued on 30.03.2021 under Section 148 of the Income Tax Act, 1961 cannot be construed to be a notice in the eye of law because it was not signed cannot be countenanced in the light of Rule 127A of the Income Tax Rules, 1962.

28.As per Rule 127 A (1) of the Income Tax Rules, 1962, every notice or other document communicated in electronic form by an income-



tax authority under the Act shall be deemed to be authenticated. As per Rule 127 A (1) (a) of the Income Tax Rules, 1962, in case of electronic mail or electronic mail message, if the name and office of such income-tax authority is there it is sufficient. Rule 127 A of the Income Tax Rules, 1962 reads as under:-

“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,



31.03.2021 in annexure to Section 142(1) notice dated 16.08.2021 refers to impugned notice dated 30.03.2021 issued under Section 148 of the Income Tax Act, 1961, as it stood prior to its substitution with effect from 01.04.2021.

31.Considering the above, the proceedings should have been decided in accordance with paragraph Nos.7 to 10 of the decision of the Hon'ble Supreme Court in **Union of India vs. Ashish Agarwal**, (2022) 444 ITR 1, referred to *supra*.

32.Thus, the impugned notice dated 30.03.2021 impugned in W.P.No.14343 of 2022 ought to have been decided in accordance with the new provisions with effect from 01.04.2021 in terms of decision of the Hon'ble Supreme Court in **Union of India vs. Ashish Agarwal**, (2022) 444 ITR 1, referred to *supra*, as it has been admittedly served on the petitioner only on 07.04.2021 in terms of annexure to Section 142(1) notice dated 16.08.2021.

33.Consequently, the impugned Assessment Order dated 30.03.2022 pursuant to impugned notice dated 30.03.2021 is liable to be



quashed for passing a fresh order under the new regime in terms of the decision of the Hon'ble Supreme Court in **Union of India vs. Ashish Agarwal**, (2022) 444 ITR 1, referred to *supra*, as expeditiously as possible, preferably within a period of six (6) months from the date of receipt of a copy of this order.

34.Considering the fact that the dispute pertains to the Assessment Year 2013-2014, issuing of the second notice dated 07.04.2021 under Section 148 of the Income Tax Act, 1961 impugned in W.P.No.14348 of 2022 was unnecessary. Therefore, impugned noticed dated 07.04.2021 under Section 148 of the Income Tax Act, 1961 is quashed. Accordingly W.P.No.14348 of 2022 is allowed.

35.In the result, W.P.No.14343 of 2022 stands allowed by way of remand. W.P.No.14348 of 2022 is allowed by quashing the impugned notice dated 07.04.2021. Consequently, the connected Miscellaneous Petitions are closed. No costs.

10.11.2023

Rgm / krk

Index : Yes / No



W.P.Nos.14343 & 14348 of 2022

Internet : Yes / No
Neutral Citation : Yes / No

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C.SARAVANAN, J.

Rgm / krk

To

- 1.The Additional / Joint / Deputy / Assistant Commissioner
of Income Tax / Income Tax Officer,
National Faceless Assessment Centre,
Delhi.
- 2.Income Tax Officer,
Non-Corp. Ward 4(1), Chennai,
No.16, Greams Road,
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