

WPA 16068 of 2024

**Neha Bhawsingka
Vs.
Union of India & Ors.**

Ms. Sutapa Roychowdhury
Mr. Abhijat Das
Ms. Aratrika Roy

... .. for the petitioner

Mr. Aryak Dutt

... .. for the UOI

1. The present writ petition has been filed challenging the assessment order dated March 12, 2024, passed by Respondent No. 1 under Sections 144 and 144B of the Income Tax Act, 1961, along with the related demand and penalty notices.

2. The facts in a nutshell are that the petitioner is engaged in the business of trading ferrous, non-ferrous and iron materials, operating from 506/1, Q.T. Road South, Howrah-711101. The petitioner is the assessee as defined under Section 2(7) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") and has been regularly filing income tax returns and discharging tax obligations.

3. For the assessment year 2022-2023, the petitioner filed her income tax return on November 4, 2022, declaring an income of ₹11,86,820/- and paying a tax of ₹1,93,854/-. The petitioner's registered email address for

this assessment year, as disclosed in the return, was *tradingbco@gmail.com*.

4. The Income Tax Department herein respondent no.2 sent an intimation under Section 143(1) of the Act on November 04, 2022, to the petitioner's registered email address, confirming that the return was processed without any discrepancies. Similar communications for earlier assessment years (2019-2020, 2020-2021, and 2021-2022) and the subsequent year (2023-2024) were also sent to the same registered email address.

5. Relying on this consistent practice, the petitioner was under the bona fide belief that all notices, intimations and communications for the assessment year 2022-2023 would be sent to her registered email address.

6. On April 08, 2024, the petitioner's tax consultant, while accessing the income tax portal, discovered that several notices, including under Sections 143(2) and 142(1) of the Act, as well as show cause notices, were issued for the assessment year 2022-2023. Additionally, an ex-parte assessment order dated March 12, 2024, was uploaded. These were not communicated to the petitioner's registered email address but were allegedly sent to an unregistered email address named, *karun_b2001@hotmail.com*.

7. The ex-parte assessment order, passed under Sections 144 and 144B of the Income Tax Act, disallowed

purchases aggregating to ₹7,18,52,906/- by categorizing them as non-genuine and further classified an unsecured loan amounting to ₹84,68,869/- as unexplained credit under Section 68 of the Act. Consequent to the said findings, a demand notice raising a liability of ₹4,63,81,572/-, along with penalty notices under Sections 271(1)(d) and 271AAC (1) of the Act, was issued to the petitioner. Aggrieved by the procedural and substantive irregularities in the assessment proceedings, the petitioner has preferred the present writ petition.

8. The Learned Counsel appearing on behalf of the petitioner submits that the impugned assessment order and demand notice are vitiated as the statutory notices were not served at her registered email address being *tradingbco@gmail.com* as required under Section 282 of the Act. Instead, these were sent to an unregistered email address being *karun_b2001@hotmail.com*, which is not associated with the petitioner.

9. The petitioner further submits that the failure to serve notices at a proper address deprived her of the opportunity to respond to the allegations, thereby violating the principles of natural justice. It is contended that notices under Sections 143(2) and 142(1) of the Act were neither served within the prescribed period nor communicated in the manner prescribed under the Act. This renders the entire assessment proceeding, including the impugned order, void and without jurisdiction.

10. The petitioner asserts that the ex-parte assessment order dated March 12, 2024, was passed unlawfully under Sections 144 and 144B of the Act, without granting her an opportunity to be heard or to explain the disallowance of purchases and unsecured loans.

11. The petitioner states that all prior and subsequent communications for other assessment years were sent to her registered email address, thereby creating a legitimate expectation that the same practice would be followed for the assessment year 2022-2023. Therefore, the petitioner submits that the impugned assessment order, demand notice and penalty notices be quashed, as they are arbitrary, unlawful and in breach of natural justice.

12. The petitioner further submits that the impugned order is liable to be set aside on the grounds of procedural irregularities, non-compliance with statutory provisions and lack of jurisdiction.

13. Submissions of the Learned Counsel appearing for the respondent no.2 are that the assessee, Ms. Neha Bhawsingka, herein the petitioner filed her Income Tax Return (ITR) for the Assessment Year (AY) 2022-23 electronically on November 01, 2022, under ITR-3, using PAN: AXAPJ1027F. The case was selected for scrutiny under the Computer-Assisted Scrutiny Selection (CASS) mechanism and a notice under Section 143(2) of the

Income Tax Act, 1961, was issued and served on June 01, 2023 by the National Faceless Assessment Centre (NaFAC).

14. All notices and orders were validly issued within the statutory timelines and communicated to the petitioner via her registered e-mail address being *tradingnbco@gmail.com*, as provided in her ITR. Subsequent notices were also sent to the alternate e-mail address being *karunb2001@hotmail.com*, registered in the PAN database. The delivery of these notices was duly confirmed. Additionally, a notice dated September 18, 2023 was sent via Speed Post (No. JA277173405IN) but was returned with the remark "Addressee left." Furthermore, it is noteworthy that all notices remain accessible on the petitioner's PAN database portal.

15. The proceedings were conducted in strict compliance with the Income Tax Act, 1961, and the petitioner was granted ample opportunities to respond. Allegations of a pre-determined bias or procedural irregularities are unfounded and without merit, as all actions were system-driven and within the framework of the law. The respondent further submits that the petitioner has misinterpreted Section 149 of the Income Tax Act, 1961. The notices and orders issued are legal, valid, and sustainable in law.

16. On perusal of the documents brought before the Court and considering the submissions made on behalf of the parties, this Court is of the view that the impugned assessment order dated March 12, 2024 and related demand and penalty notices are vitiated due to procedural lapses and non-compliance with statutory provisions. The statutory notices under Sections 143(2) and 142(1) of the Income Tax Act, 1961, were not served to the petitioner at her registered email address, as mandated under Section 282 of the Act. Instead, these were sent to an unregistered email address, thereby depriving the petitioner of a fair opportunity to respond, violating the principles of natural justice. Furthermore, the petitioner had a legitimate expectation, arising from consistent past practices, that all communications would be sent to her registered email address. The failure to adhere to this established protocol and the absence of proper service of notices invalidates the subsequent assessment proceedings and the ex-parte order passed under Sections 144 and 144B of the Act.

17. In ***Lok Developers v. Deputy Commissioner of Income Tax*** reported in **(2023) 455 ITR 399** the Hon'ble Bombay High Court held:

“6. The assessing officer ought to have consider the email 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 (n) fer 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 pre-empt 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 v. ITO** [Writ Petition No. 15580 of 2022, dated 15-2-2023] 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.”

18. Furthermore, the Hon’ble Allahabad High Court in ***Grs Hotel (P) Ltd. v. Union of India*** reported in **(2024) 417 ITR 68** held:

*“The notice under Section 148-A(b) of the Act, 1961 has not been issued on the registered e-mail address of the petitioner's Company. In this context, it would be profitable to quote the conclusion of a judgment passed by the Delhi High Court, wherein the Division Bench had examined an appeal from the ITAT (Income Tax Appellate Tribunal), which was challenged on similar grounds. The Division Bench after recording the contention of the parties, not only dismissed the appeal of the Department, but also held in the said judgment reported as **CIT v. Chetan Gupta**, inter alia that (382 ITR p. 628): (SCC OnLine Del para 46)
"46. To summarise the conclusions. –*

- (i) Under Section 148 of the Act, the issue of notice to the assessee and service of such notice upon the assessee are jurisdictional requirements that must be mandatorily complied with. They are not mere procedural requirements.*
- (ii) For the assessing officer to exercise jurisdiction to reopen an assessment, notice under Section 148(1) has to be mandatorily issued to the assessee. Further the assessing officer cannot complete the reassessment without service of the notice so issued upon the assessee in accordance with Section 282(1) of the Act read with Order 5 Rule 12 and Order 3 Rule 6 of the Code of Civil Procedure.*

- (iii) *Although there is change in the scheme of Sections 147, 148 and 149 of the Act from the corresponding Section 34 of the 1922 Act, the legal requirement of service of notice upon the assessee in terms of Section 148 read with Sections 282(1) and 153(2) of the Act is a jurisdictional precondition to finalising the reassessment.*
- (iv) *The onus is on the Revenue to show that proper service of notice has been affected under Section 148 of the Act on the assessee or an agent duly empowered by him to accept notices on his behalf. In the present case, the Revenue has failed to discharge that onus.*
- (v) *The mere fact that an assessee or some other person on his behalf not duly authorised participated in the reassessment proceedings after coming to know of it will not constitute a waiver of the requirement of effecting proper service of notice on the assessee under Section 148 of the*
- (vi) *Reassessment proceedings finalised by an assessing officer without effecting proper service of notice on the assessee under Section 148(1) of the Act are invalid and liable to be quashed.*

(vii) Section 292-BB is prospective. In any event the assessee in the present case, having raised an objection regarding the failure by the Revenue to effect service of notice upon him, the main part of Section 292-BB is not attracted."

19. This Court also observes that the respondent's reliance on the petitioner's PAN database or an alternate email address cannot substitute for statutory compliance. Procedural irregularities in issuing and serving notices undermine the jurisdiction and legality of the entire assessment process. The assessment order cannot be completed without issuance of a notice under Section 143 (2) of the Act. As such the assessment order passed by the respondent authorities without issuing proper notice under Section 143(2) of the Income Tax Act, the assessment proceedings as well as the assessment order passed by the Assessing Officer is bad in law and is set aside.

20. For the foregoing reasons, the writ petition is allowed, and the impugned assessment order, demand notice and penalty notices are hereby quashed. The respondent authorities are directed to issue fresh notices, if deemed necessary, strictly adhering to the statutory provisions and ensuring proper service to the petitioner.

21. All pending applications are accordingly disposed of.

22. There will be no order as to costs.

23. Urgent certified copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Rajarshi Bharadwaj, J.)