IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.62 of 2017
and
C.M.P.No.1126 of 2017

M/s.Aban Offshore Limited,
Represented by its Vice President-Finance
Mr.Vijay Saheta ... Appellant / Petitioner

Vs.

The Deputy Commissioner of Income Tax,
Corporate Circle I (1),
VI Floor, New Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ... Respondent / Respondent

Prayer: Appeal under Clause 15 of the Letters Patent, against the Order dated 08.11.2016 passed in W.P.No.29643 of 2015.

For Appellant : Mr.C.Baskar

For Respondent : Mr.B.Ramanakumar
Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This Writ Appeal is directed against the Order dated **08.11.2016** of the Writ Court in **W.P.No.29643 of 2015** (hereinafter referred to as the 'Impugned Order').

2. By the Impugned Order, the Writ Court dismissed the Writ Petition filed by the Appellant/Writ Petitioner. In the said Writ Petition, the Appellant/Writ Petitioner has challenged Notice dated **31.03.2015** issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as “IT Act”) as it stood then for the **Assessment Year 2008-2009**.

3. Operative portion of the Impugned Order dated **08.11.2016** of the Writ Court in **W.P.No.29643 of 2015** reads as under:-

> “12. On a careful reading of the decision in the case of Kanubhai M.Patel (HUE) (supra), it is clear that the same would not apply to the facts of the present case. In the said case, the undisputed fact was that the notices in question were sent for booking to the Speed Post centre only on 07.04.2010 and this was confirmed by the Department of Posts by their report, which was taken on record by the Court. Therefore, the decision in the case of Kanubhai M.Patel (HUF) (supra), is facturally distinguishable and does not in any manner advance the case of the petitioner.

13. Coming back to the facts of the present case, there is nothing on record to dispute the "business post arrangement" between the Income Tax Department and the Department of Posts to show that the cover was despatched on 31.03.2015 and the copy of the Despatch Register signed by the Despatching Officer has been produced and there is nothing to discredit this document. Apart from that, the Department of Posts, Business Post Centre, Chennai has given a letter on 25.09.2015, stating that item No.73 addressed to the petitioner was received by their designated personnel from the office of the respondent on 31.03.2015. This communication, which has come from the Department of Posts cannot be discredited nor disbelieved. The communication dated 25.09.2015, is a confirmation to the effect that the postal cover was received by the designated personnel of the Department of Posts on 31.03.2015.

14. Thus, in the light of the arrangment between the respondent Department and Department of Posts, it is held that the despatch having been done in terms of "business post arrangment" is sufficient to hold that the notice was despatched well within the period of limitation. Accordingly the first contention raised by the petitioner is rejected."

4. It is the specific case of the Appellant/Writ Petitioner that the Notice dated **31.03.2015**, issued under Section 148 of the IT Act was beyond the period of limitation prescribed under Section 149 of the IT Act as it stood during the period in dispute. The Appellant further states that the rest of the issues are subject matter of merits, and are not the subject matter of the present Writ Appeal.

5. In this connection, the learned counsel for the Appellant placed reliance on the decision of the Hon'ble Gujarat High Court in **Kanubhai M Patel HUF** Vs. **Hiren Bhatt or his successors to Office** in **Special Civil Application Nos. 5295, 5296 and 5297 of 2010** dated **13.07.2010.** There, Notices dated **31.03.2010** were issued under Section 148 of the IT Act to the Assessee for the **Assessment Year 2003-2004** and were dispatched to the Assessee by Speed Post.

6. There, the speed post cover bore the postal stamping dated **31.03.2010** of the Speed Post Booking Centre, Ahmedabad. The said Notices were however received by the Appellant therein only on **08.04.2010**.

7. Under these circumstances, the Appellant therein obtained a Certificate of Acknowledgment from the Postal Department as to the exact date of booking of the post and date of delivery of post with the EMI speed post numbers therein. The Postal Authority confirmed that the said Notices dated **31.03.2010** were sent for booking to the Speed Post Centre, Ahmedabad only on **07.04.2010** and thus were delivered on **08.04.2010** to the Appellant therein. It is in this background, the Hon'ble Gujarat High Court concluded as follows:-

> ***"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."***

8. However, the facts of the present case are slightly different. The facts on record reveal that Notice dated **31.03.2015** under Section 148 of the IT Act was received by the Appellant only on **06.04.2015**. The postal cover enclosed at Page No.417A shows that the stamp on postal cover was paid using a Franking Machine for a sum of Rs.39/- towards stamp charges.

9. The postal tracking downloaded by the Appellant from the website of the Ministry of Communication and Information Technology in respect of the speed post cover bearing **Reference No.ET126757387IN** indicates that the intimation in question was booked on **02.04.2015** for being sent to the Appellant and was finally delivered to the Appellant on **06.04.2015**.

10. Drawing analogy from the above decision, it is the case of the Appellant that the Impugned Notice dated **31.03.2015** was issued beyond the period of six years limitation prescribed under Section 149(1)(b) of the IT Act for the purpose of Section 147 and Section 148 of the IT Act.

11. Learned counsel for the Appellant also drew the attention of this Court to Section 27 of the General Clauses Act, 1897. It is submitted that where any Central Act or Regulation made after the commencement of the said Act authorizes or requires any document to be served by post, whether the expression **“serve”** or either of the expressions **“give”** or **“send”** or any other expression is used, **“unless a different intention papers”**, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is

proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

12. It is therefore submitted by learned counsel for the Appellant that the postal cover reveals that the postal cover was not prepaid on the date of issuance of Notice dated **31.03.2015** and therefore the impugned proceedings is deemed to have elapsed due to limitation under Section 149 of the IT Act.

13. On the other hand, the learned Senior Standing Counsel for the Respondent would submit that the Income Tax Department has an arrangement with the Postal Department as per the "Business Post Arrangement", wherein designated personnel of the Department of Posts, collects postal covers in person physically from each of the designated Ranges/Commissionerates of the Income Tax Department and acknowledge the receipt of the postal covers in the Dispatch Register maintained at each of the Ranges/Commissionerates.

14. It is submitted by the learned Senior Standing Counsel for the Respondent that after due acknowledgment in the Dispatch Register, the said designated personnel of the Department of Posts, carries the postal covers to the Post Office for onward transmission to the addressees. It is submitted that the

Post Office uses Franking Machine for stamping and dispatching the postal covers to the addressees. It is therefore submitted that the procedure of physical handing over of the postal cover at the counter does not arise.

15. We have considered the arguments advanced by the learned counsel for the Appellant and the learned Senior Standing Counsel for the Respondent.

16. Since this Court had a doubt as to whether the Franking Machine was with the Income Tax Department or with the Post Office within the Income Tax Department, we had therefore adjourned the case after hearing the aforesaid submission and directed the Respondent to file an Affidavit regarding the same. We had also asked the learned Senior Standing Counsel for the Respondent to explain the method by which notices were being dispatched by the Income Tax Department.

17. On behalf of the Respondent, the Assistant Commissioner of Income Tax, Corporate Circle, Chennai, filed an affidavit on **10.09.2024**, wherein it is stated as follows:-

> "2. The re-assessment notice u/s. 148 was issued in the case of Writ Petitioner for the A.Y.2008-09 on 31.03.2015.

3. The notice dated 31.03.2015 was despatched from the respondent's office on 31.03.2015 to the Department of Post as evident by Despatch Register maintained by the Department and duly confirmed by the letter issued by the Department of Posts, India dated 25.09.2015 which would prove beyond doubt that the said notice u/s. 148 was issued and despatched on 31.03.2015, well within the prescribed statutory period.

4. In this connection, it is relevant to note that as per the 'Business Post' arrangement, designated personnel of the Department of Post collect in person, physically, the documents/communications to be mailed from each of the designated Ranges/Commissionerates and acknowledge in the despatch register maintained in the Ranges/Commissionerates. After due acknowledgment in the despatch register, the said designated personnel of the Postal Department carry the documents to the Post Office for onward transmission. Therefore, the procedure of physical handing over of the document by this office in the Post Office as given in the 'Speed Post Operation Manual' does not arise.

5. Hence, the petitioner's allegation that the notice is issued from this office beyond 31.03.2015 is incorrect and contrary to the record. The despatch as per the Business Post Arrangement with the Department of Posts, India is a valid mode of service and therefore the issuance of notice is within the time period prescribed under the Section 149 of the Act.

6. It is humbly submitted that the counter signature was made by the designated personnel of the Department of Posts. The practice is to hand over the tapal to the designated personnel of the Postal Department who will counter sign the register as a token of receiving the tapal from the Department. Though efforts are made to ascertain the name of the Postal Department person, the same could not be gathered due to lapse of time. It is also submitted that the designated person of the Postal Department who counter signed the register on 31.03.2015 was regularly collecting the tapal even after 31.03.2015 as was evident from the register. The copies of the

> register for the dates 06.04.2015, 07.04.2015 and 09.04.2015 have been enclosed herewith.
>
> 7. The signature of the despatch official is only from the Income Tax Department and the counter signature is not made by any official of the Income Tax Department.
>
> 8. It is respectfully submitted that there is no Franking Machine in the Income Tax Office Premises to place any stamp on behalf of the Postal Department and the practice is to handover the tapal to the designated person of the Postal Department."

18. We are aware of the fact that the Post Office is located within the Ayakar Bhavan Complex at Mahatma Gandhi Road, Nungambakkam, Chennai – 34 where both the Income Tax Department and the Central Excise Department are/were located. The said Post Office not only caters to needs of these two Departments but also Public who visits the Ayakar Bhavan and residents within the Complex.

19. Section 147 of the IT Act was amended by Finance Act, 2021 with effect from **01.04.2021**. The amended provision is not relevant to the facts of the case. *Proviso* to Section 147 of the IT Act as it stood during the period in dispute is relevant.

20. As per *proviso* to Section 147 of the IT Act as it stood during the period in dispute, where an assessment under sub-section (3) to Section 143 or under it has been made for the relevant Assessment Year, no action shall be taken under it after the expiry of four years from the end of the relevant Assessment Year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under sub-section (1) to Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his/her assessment, for that Assessment Year.

21. As per Section 148 of the IT Act, an Assessing Officer shall serve on the Assessee a Notice requiring him/her to furnish within such period, as may be specified in the notice, a return of his/her income or the income of any other person in respect of which he/she is assessable under this Act during the previous year corresponding to the relevant Assessment Year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of the IT Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139 of the IT Act.

22. Section 147 and Section 148 of the IT Act during the period in dispute read as under:-

Section 147 of the IT Act	Section 148 of the IT Act
147. Income escaping assessment. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) **Provided that** where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the	**148. Issue of notice where income has escaped assessment.** (1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139. **Provided that** in a case- (a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and (b) subsequently a notice has been served under sub-section (2) of

Section 147 of the IT Act	Section 148 of the IT Act
assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year: **Provided further that** the Assessing Officer may assess or reassess such income, other than the income involving matter which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment. **Explanation 1**.- Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso. **Explanation 2**.- For the purpose of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:- (a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is	section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice: **Provided further that** in a case - (a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and (b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be

Section 147 of the IT Act	Section 148 of the IT Act
assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax; (b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understand the income or has claimed excessive loss, deduction, allowance or relief in the return; (c) where an assessment has been made, but- i. income chargeable to tax has been underassessed; or ii. such income has been assessed at too low a rate; or iii. such income has been made the subject of excessive relief under this Act; or iv. excessive loss or depreciation allowance or any other allowance under this Act has been computed. **Explanation 3**.- For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that	deemed to be a valid notice. **Explanation**.- For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section. (2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

Section 147 of the IT Act	Section 148 of the IT Act
the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.	

23. Section 149 of the IT Act contemplates time limit for issuance of Notice. In this case, Assessment Year was **2008-2009**. Therefore, the last date for issuance of Notice under Section 148 of the IT Act would have expired on **31.03.2015**. The Impugned Notice is also dated **31.03.2015**. Section 149 of the IT Act as it stood before **01.04.2021** reads as under:-

Section 149 of the IT Act
149. Time limit for notice. (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 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

Section 149 of the IT Act
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.

24. It is the case of the Income Tax Department that the Notice dated **31.03.2015** was indeed handed over to the Postal Department as per 'Business Post Arrangement' and was subsequently stamped by the Postal Department on **01.04.2015** and thereafter dispatched on **02.04.2015**.

25. The learned Senior Standing Counsel for the Respondent has also produced the note book maintained by the Income Tax Department showing the acknowledgment of the staff of the Postal Department acknowledging the receipt of the covers on **31.03.2015** for being dispatched to several assessees including the Appellant. Attempt of the Appellant to state that the envelope was

not stamped and therefore did not satisfy the requirement of Section 27 of the General Clauses Act, 1897, cannot be countenanced in view of specific language in Section 27 of the said Act.

26. As per Section 27 of the General Clauses Act, 1897, if Notice was to be sent by post, "service" shall be deemed to have been effected properly by addressing, prepaying and posting by registered post, a letter containing the document. The language in Section 27 of the General Clauses Act, 1897, is with a qualification. It uses the expression **"unless different intention papers".**

27. If the Notice was sent by pre-stamping and by handing over the postal covers at the postal counter, it can be said that the Notice was not sent by **31.03.2015**. Since the Income Tax Department has a **'Business Post Arrangement'** whereby the postal covers are received from the Office of the Income Tax Department and thereafter stamped by the Postal Department using a Franking Machine at Post Office, it cannot be said that the Notice under Section 148 of the IT Act was not issued on **31.03.2015** by the Income Tax Department. Therefore, it cannot be said that the postal cover was not

dispatched or not issued on **31.03.2015** for the purpose of Section 148 of the IT Act and Section 149 of the IT Act.

28. That apart, in terms of Section 282 of the IT Act, the method for service of notice has been prescribed. Section 282 of the IT Act reads as under:-

Section 282 of the IT Act
282. Service of notice generally. (1) 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 services 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. (2) 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. **Explanation**.- For the purposes of this section, the expressions "electronic mail" and "electronic mail message" shall have the meanings as assigned to them in Explanation to section 66A of the Information Technology Act, 2000 (21 of 2000)."

29. Section 282 of the IT Act has to be read along with Section 149 of the

IT Act and Section 27 of the General Clauses Act, 1897. The expression **"unless different intention papers"** in Section 27 of the General Clauses Act, 1897, has to be given its full meaning in the context. It would imply a situation where Notice is handed over to the Postal Department without affixing stamp.

30. Illustration (f) to Section 114 of the Indian Evidence Act, 1872, also impels the Court to presume that the common course of business has been followed in particular cases as held by the Hon'ble Supreme Court in **Harcharan Singh** Vs. **Shivrani and others**, (1981) 2 SCC 535 / AIR 1981 SC 1284.

31. Therefore, it has to be held that the Impugned Notice dated **31.03.2015** was issued in time by the Respondent Department. We therefore find no reasons to interfere with the Impugned Order **08.11.2016** of the Writ Court. Therefore, this Writ Appeal is liable to be dismissed.

32. The Respondent is directed to complete the proceedings as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

33. In the result, this Writ Appeal is dismissed with the above observation. No costs. Connected Miscellaneous Petition is closed.

[R.S.K., J.] **[C.S.N., J.]**

01.10.2024

Neutral Citation : Yes / No

kkd / arb

To:

The Deputy Commissioner of Income Tax,
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VI Floor, New Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

R.SURESH KUMAR, J.

<u>and</u>

<u>C.SARAVANAN, J.</u>

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<u>W.A.No.62 of 2017</u>

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