

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-21028-2023 (O&M)
Date of Decision: 04.03.2024

*MUNJAL BCU CENTRE OF INNOVATION AND
ENTREPRENEURSHIP, LUDHIANA THROUGH ITS AUTHORIZED
SIGNATORY SH. BHARAT GOEL.*

.....Petitioner

V/s.

COMMISSIONER OF INCOME TAX EXEMPTIONS, CHANDIGARH

.....Respondent

CORAM: **HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Alok Mittal, Advocate for the petitioner.

Mr. Amanpreet (AP) Singh, Senior Standing Counsel
for the respondent.

SANJEEV PRAKASH SHARMA, J. (Oral)

CM-3543-CWP-2024

1. This application is filed by the petitioner under Article 226 of the Constitution of India read with Section 151 CPC for staying the operation of the Show Cause Notice dated 24.02.2024 (Annexure P-6) which is a subsequent development after the filing of main Writ Petition.
2. Learned counsel for the Revenue/respondent fairly states that instead of deciding the application, the main case itself may be taken up today for hearing.
3. In view of the above, the main Writ Petition, which is listed for hearing on 18.04.2024, is taken on board today itself.

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4. We have heard learned counsel for both the parties.

5. It is a case where show cause notice dated 10.11.2022 was issued to the petitioner for initiating proceedings under Section 12A(1)(ac)(iii) of the Income Tax Act, 1961 (for short “the Act of 1961”) by the Commissioner of Income Tax Exemptions, Chandigarh, but the said notice was not sent on the petitioner’s email or otherwise and was only reflected on the *e-portal* of the Department. Thereafter, two reminders dated 13.12.2022 and 28.12.2024 in respect to the aforesaid show cause notice were also published that too on the *e-portal* of the Department. However, it is an admitted position that the said notice and reminders were not served upon the petitioner as there is no e-mail sent by them.

6. The Department in the reply has submitted that communication of the notice electronically would also include communication of notice by placing it on *e-portal*. Learned counsel for the Revenue also submits that as the petitioner had submitted his form himself on the said *e-portal*, a presumption can be drawn that he was having knowledge of the notice/reminders which were placed on the *e-portal* as there was no requirement of submitting notice personally through e-mail or otherwise.

7. We are afraid that we cannot subscribe to the submissions as advanced by the learned counsel for the Reveune/respondent. The provisions of Section 282(1) of the Act of 1961 and Rule 127(1) of the Income Tax Rules, 1962 provides for a method and manner of service of notice and orders which read as follows:-

Section 282(1) of the Income Tax Act, 1961

“282. (1) Service of notice generally - 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.*
- (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).”*

Rule 127(1) of the Income Tax Rules, 1962

127. Service of notice, summons, requisition, order and other communication. - *(1) For the purposes of sub-section (1) of section 282, the addresses (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or any other communication under the Act (hereafter in this rule referred to as "communication") may be delivered or transmitted shall be as per sub-rule (2).*

(2) The addresses referred to in sub-rule (1) shall be-

(a) *for communications delivered or transmitted in the manner provided in clause (a) or clause (b) of sub-section (1) of section 282-*

(i) the address available in the PAN database of the addressee; or

(ii) the address available in the income-tax return to which the communication relates; or

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

(iv) in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs:

Provided *that the communication shall not be delivered or transmitted to the address mentioned in item (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication:*

Provided *further that where the communication cannot be delivered or transmitted to the address mentioned in item (i) to (iv) or any other address furnished by the addressee as referred to in first proviso, the communication shall be delivered or transmitted to the following address:-*

(i) the address of the assessee as available with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of the said Act); or

(ii) the address of the assessee as available with the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); or

(iii) the address of the assessee as available with the insurer as defined in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938); or

(iv) the address of the assessee as furnished in Form No.61 to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation) under sub-rule (1) of rule 114D; or

(v) the address of the assessee as furnished in Form No.61A under sub-rule (1) of rule 114E to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation); or

(vi) the address of the assessee as available in the records of the Government; or

(vii) the address of the assessee as available in the records of a local authority as referred to in the Explanation below clause (20) of section 10 of the Act.

(b) for communications delivered or transmitted electronically-

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

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

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

(iv) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such income-tax authority.

(3) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the procedure, formats and standards for ensuring secure transmission of electronic communication and shall also be

responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to such communication.”

8. In view of the above, it is essential that before any action is taken, a communication of the notice must be in terms of the provisions as enumerated hereinabove. The provisions do not mention of communication to be “presumed” by placing notice on the *e-portal*. A pragmatic view has to be adopted always in these circumstances. An individual or a Company is not expected to keep the *e-portal* of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc.. The principles of natural justice are inherent in the income tax provisions and the same are required to be necessarily followed.

9. Having noticed as above, this Court is of the firm view that the petitioner has not been given sufficient opportunity to put up his pleas with regard to the proceedings under Section 12A(1)(ac)(iii) of the Act of 1961 and as he was not served with any notice. Therefore, he would be entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter.

10. In view of the above, Writ Petition is **allowed** and the order dated 16.01.2023 (Annexure P-5) is quashed and set aside. The Department would provide an opportunity of hearing to the petitioner and they will also allow the petitioner to appear personally for the purpose and pass a speaking order independent of the order passed earlier by them on 16.01.2023. The

same shall be done expeditiously provided the petitioner file his reply within a period of three weeks.

11. All pending applications in this case shall stand disposed of accordingly.

[SANJE4EV PRAKASH SHARMA]
JUDGE

March 4, 2024
Ess Kay

[SUDEEPTI SHARMA]
JUDGE

Whether speaking / reasoned	:	Yes
Whether Reportable	:	Yes