



\$~26

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2123/2023

AVNI NATH

.....Petitioner

Through: Mr. Venketesh Chaurasia, Adv.

versus

INCOME TAX OFFICER, WARD 54(1), DELHI

.....Respondent

Through: Mr. Debesh Panda, SSC with
Mr. Vikramaditya Singh, Ms.
Zehra Khan, Mr. A. Shankar &
Mr. Ojaswa Pathak, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

02.08.2024

%

1. The order sheet would reflect that despite repeated opportunities having been granted, the respondent has failed to file a reply to the instant writ petition. We thus find no justification to defer the disposal of the writ petition any further.

2. The writ petitioner is aggrieved by the impugned notice issued under Section 148 of the **Income Tax Act, 1961**¹ issued by the respondent pertaining to **Assessment Year**² 2015-2016 as well as the impugned order under Section 148A(d) both dated 24 January 2023. From the facts which emanate from the record, it would appear that the notice under Section 148 of the Act, although dated 31 March

¹ Act

² A.Y.



2021, is stated to have been digitally signed on 01 April 2021.

3. The said fact also emerges from a reading of the objection which was taken by the petitioner-assessee in terms of its letter of 21 February 2022 wherein and in this respect it was averred as follows:-

“This is in reference to notice u/s 148 of the Income Tax Act, 1961 dated 31.03.2021 for A.Y. 2015-16 which was uploaded on ITD portal April 1, 2021 at 12:26 AM, wherein you Honour has asked the assessee to file the return of income for the assessment year under consideration.

Firstly, submitted that notice has been uploaded and served on 01.04.2021 i.e. after the amendment made by Finance Act, 2021. Mandatory Procedure under Section 148A and the substituted Sections 147 to 149 & 151 applies to Reassessment initiated on or after 01.04.2021. The notice issued under section 148 is bad in law as the same do not meet the specific requirement and the procedure prescribed under the law.

Hence the Reassessment notice issued under Section 148 uploaded on 01.04.2021 deserves to be quashed as held by the jurisdictional High Court of Delhi in the case of of Manmohan Kohli vs. Assistant Commissioner of Income Tax & Anr. W.P.(C) No. 6176/2021.

I have challenged the notice issued u/s 148 which was uploaded on 01.04.2021 by filing writ petition no. W.P.(C) 13021/2021 which is now listed on 14th March, 2022, copy of order dated 25.11.2021 is enclosed.”

4. While dealing with the aforesaid objection which was taken, the **Assessing Officer³** has merely observed thus:-

“8. As evident from the above, even after repeated request, the assessee didn't submit the required submission/explanation merely but sought to provide him copy of reason to believe at the eleventh hour of the limitation. Considering the request of the assessee and proving the natural justice, he had been providing the copy of reason to believe with the copy of approval of the competent authority accorded u/s 151 of the Act through a notice u/s 142(1) of the Act, wherein it was specifically submitted that the proceeding in his case has to be finalized in time bound manner and the limitation is reaching fast accordingly, request was made to co-operate the department and submit the desired information upto

³ AO



28.02.2022. The relevant part of the notice is reproduced hereunder:-

“Please refer to your submission filed in compliance to notice u/s 142(1) of the Income Tax Act, 1961, wherein no information desired as in the notice u/s 142(1) was furnished/supplied but some query and information was sought. In connection to your submission, it is requested to please produce or cause to be produced, the following explanation/documents/submission within the time stipulated in this notice:

- 1. You have requested to supply copy of reason to believe. The same is being supplied to you through this notice in annexure. Further, it is worth to mention here that you have requested to provide reason to believe at the eleventh hour of the limitation, which is being supplied with request to file your objection, if any at the earliest so that the same may be considered before finalization of the case. It is further taken to your knowledge that your cooperation is needed to finalization of the case within the stipulated time. It can be seen from the case record; you have been requested from time to time to co-operate the department in finalization of the issue but the same is still awaited. The department is following the rule of justice and accordingly allowing proper opportunities in desire of cooperation. Needless to submit that you are well aware that the decision of Ld. High Court will be binding on the department and the effect of the same would be given after receiving of the direction of the Ld. Court, till then your co-operation is solicited.*
- 2. It is again retreated that earlier issued notices u/s 142 (1) of the Act is still not responded properly and no proper reply/submission has been submitted/uploaded till date. **Hence, you are again requested to please comply with the notice u/s 142(1) of the Act dated 25.12.2021 & reminder on 27.01.2022 and cooperate the department to finalize the pending assessment proceeding in your case. Please note that in case of failure to submit the desired information; this office will take decision on the basis of the material on record exparte u/s 144 of the IT Act. Further, noncooperation to department and not complying the notices issued under provisions of It Act will attract the penal proceeding u/s 272A(1)(d) of the Act and imposition of penalty of Rs.10,000!- for each default.***

You are requested to furnish the above information/documentary evidences within the time



stipulated in the notice. Please note that non-compliance/incomplete reply shall be treated as you have no proper justification and also agrees with the view of the department and further action will be taken as per Income Tax Act, 1961.””

5. In light of the admitted and undisputed facts which emerge from the record, we are of the considered opinion that the challenge is liable to succeed bearing in mind the decision rendered by this Court in **Suman Jeet Agarwal v. Income-tax Officer and others (and connected writ petitions)**⁴. We note that while dealing with an identical controversy, a Coordinate Bench of this Court in *Suman Jeet Agarwal* had held as follows:-

“**25.22.** In this regard, it would be useful to note that, the impugned notice in W.P. (C) No. 5316 of 2022 was classified in category "C". However, during the pendency of the proceedings, the jurisdictional Assessing Officer on July 30, 2022 determined that the said notice though generated and signed on March 31, 2021 was issued through e-mail by the Income Tax Business Application servers on April 6, 2021. It has been brought to this court's attention that the jurisdictional Assessing Officer is now self-determined that the same shall be governed by the judgment of the Supreme Court in Ashish Agarwal (supra) and the jurisdictional Assessing Officer has accordingly proceeded to treat the notice dated March 31, 2021 as notice under section 148A(b).

The aforesaid acts of the jurisdictional Assessing Officer belie the submissions of the counsel for the Department that the generation of the notice on the Income Tax Business Application screen constitutes issuance. It further substantiates the contention of the petitioners that the date and time of issue of the e-mails by the Income Tax Business Application servers are readily available with the Department and therefore there is no disputed issue of facts.

25.23. We, therefore, answer question No. (I) in the negative against the Department and hold that the impugned notices dated March 31, 2021, which were despatched on April 1, 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 Agarwal, (supra).

25.24. With respect to impugned notices falling in category "A", there is an additional factor which evidence that the said notices were admittedly not issued on March 31, 2021. The said notices

⁴ 2022 SCC OnLine Del 3141



were digitally signed on April 1, 2021, or thereafter. The note appearing at the foot of each notice clearly declares that the date of the affixation of digital signature shall be treated as the date of the notice. The note reads "if digitally signed, the date of signature may be taken as date of document". In these notices therefore, the date of the notice itself is determined by the date of affixation of digital signature and not the date of generation. The contention of the Department that, the said note appearing at the footer of the notice has no basis in law and should be ignored by this court, cannot be accepted. The Department cannot deny the contents of its own notice and it is bound by the said contents.

25.25. In this regard it will also be useful to refer to para 2.10.6 of the Income Tax Business Application, User Assessment Manual, Version 1.9, August 2020, as referred to by the Department in its counter-affidavit in W.P. (C) No. 13814 of 2021. The said instruction draws the attention of the Income-tax Officer to the consequence of the date of digital signature and date of generation of document being different, if the digital signatures are affixed subsequently. Para 2.10.6 reads as under:

“ii. Generate and Digitally sign later (Applicable for single as well as bulk generation):

Click generate and digitally sign later. In this case, document will be generated successfully immediately.

To sign the document later, go to 'view/edit despatch register' screen. Select the status as 'pending for signing' and search.

Select the document and click sign documents. Ensure digital signature certificate is attached to the system.

Select the digital signature certificate of the user.

Click sign. Document will be signed successfully.

However, this option is required to be very carefully exercised in the case of orders as the date of generation of document and date of digital sign may be different as these will be actual date of generation and digital signing.”

Finding for notices falling under category "A"

We therefore hold that the impugned notices falling under category "A" shall be held to be dated as on the date digital signature certificate was affixed. Since the date of affixation of digital signature certificate on the impugned notices is April 1, 2021 and thereafter they were sent and delivered through the Income Tax Business Application portal on or after April 1, 2021, the impugned notices falling under category "A" can only be said to have been issued on or after April 1, 2021.

XXXX

XXXX

XXXX

31. For the reasons and principles that we have laid down, we dispose of these writ petitions with the following directions :



31.1. Category “A” : The notices falling under category “A”, which were digitally signed on or after April 1, 2021, are held to bear the date on which the said notices were digitally signed and not March 31, 2021. The said petitions are disposed of with the direction that the said notices are to be considered as show-cause notices under section 148A(b) of the Act as per the directions of the apex court in the Ashish Agarwal (supra) judgment.

XXXX

XXXX

XXXX

31.9. The notices which in accordance with the law laid down in this judgment has been verified by the jurisdictional Assessing Officers to have been issued on or after April 1, 2021 and until June 30, 2021 shall be deemed to have been Issued under section 148A of the Act of 1961 as substituted by the Finance Act, 2021 and construed to be show-cause notices in terms of section 148A(b) as per the judgment of the apex court in Ashish Agarwal (supra) and the Jurisdictional Assessing Officers shall thereafter follow the procedure set down by the Supreme Court in the said judgment which reads as follows (page 21 of 444 ITR) :

“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 assesseees which were issued under unamended section 148 of the Income-tax 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 Income-tax 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 assesseees Information and material relied upon by the Revenue, so that the assesseees 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 issued under section 148 of the unamended Act from April 1, 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) ;
(iv) All defences which may be available to the assesseees including those available under section 149 of the Income-tax Act and all rights and contentions which may be available to the concerned assesseees and the Revenue under the Finance Act, 2021 and in law shall continue to be available.”

6. Accordingly, we allow the instant writ petition and quash the impugned notice and order dated 24 January 2023 issued under Section 148 and 148A(d) respectively. We leave it open to the respondents to proceed further in terms of the liberty accorded in *Suman Jeet Agarwal* if otherwise permissible in law.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 2, 2024
sk