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

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Date of Decision: 23.10.2024

+ **W.P.(C) 14317/2024 & CM No.59931/2024**

ACROPOLIS REALTY PVT. LTD

.....Petitioner

Through: Mr. Sumit Lalchandani, Adv.

Versus

INCOME TAX OFFICER, WARD 1-1,

DELHI & ANR.

.....Respondents

Through: Mr. Vipul Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (Oral)

1. The petitioner has filed the present petition, *inter alia*, praying as under:

“(a) Stay the operation of the impugned notice dated 17.04.2023 issued under Section 148 of the Act in the case of the Petitioner for A.Y. 2019-20 along with the order dated 17.04.2023 passed under Section 148A(d); the impugned notice dated 01.04.2023 issued under Section 148(b) of the Act and impugned order dated 01.08.2024 disposing off objections;”

2. The petitioner filed its return of income for the assessment year (AY) 2019-20 on 20.03.2020 declaring ‘NIL’ income. The petitioner did not receive any intimation regarding its return at the material time.

3. The Assessing Officer (AO) sought to reopen the assessment by initiating proceedings under Section 148A of the Income Tax Act, 1961 (hereafter *the Act*). Accordingly, the AO issued a notice dated 01.04.2023 under Section 148A(b) of the Act (hereafter *the impugned notice*) alleging that he had information, which suggests that the petitioner’s income for the



relevant assessment year (AY 2019-20) had escaped assessment. The annexure to the impugned notice indicated that the quantum of income that has escaped assessment was ascertained at ₹4,86,300/-. The tabular statement as set out in the said annexure, is reproduced below:

“Sl. No.”	Particulars	Information
1	PAN	AAMCA4253A
2	Name	ACROPOLIS REALTY PRIVATE LIMITED
3	Assessment Year (s) Involved	2019-20
4	Income Tax Authority from whom the information received.	Insight Portal as flagged by High Risk CRIU/VRU Information.
5	Gist of the information received/ gathered	As per information, the assessee had entered into accommodation entries during the year under consideration. The pieces of information are as under which as per Insight portal are under verification: - 1. Transaction with M/s Capacious Tradex Pvt. Ltd. of Rs. 1,70,800/-. 2. Transaction with M/s Alight Tradex Pvt. Ltd. of Rs.3, 15,500/-. The above information suggests that income chargeable to tax has escaped assessment.
6	Whether the assessee has filled ITR(s) for the respective assessment years	Yes, ITR has been filed declaring income of Rs.5,18,690/- on 25.09.2019.
7	Reason why reopening is required	As per information, the assessee had entered into cash transaction during the year under consideration. The pieces of



		information are as under: - 1. Transaction with M/s Capacious Tradex Pvt. Ltd. of Rs. 1,70,800/-. 2. Transaction with M/s Alight Tradex Pvt. Ltd. of Rs.3,15,500/-. Considering the information received through Insight Portal suggests escapement of income. A show cause notice is hereby issued to the assessee requiring it to submit the details with documentary evidences. 1. Transaction with M/s Capacious Tradex Pvt. Ltd. along with supporting documentary evidences. 2. Transaction with M/s Alight Tradex Pvt. Ltd. along with supporting documentary evidences. 3. Copy of audited financials with all annexures.
8	Income escaped/likely to be escaped	Rs.4,86,300/-.”

4. Section 149(1)(a) of the Act, provides that no notice under Section 148 of the Act shall be issued beyond the period of three years except in cases that fall within the scope of Section 149(1)(b) of the Act. It is clear from the annexure to the said impugned notice that the assessee's income, which has possibly escaped assessment, is below the threshold limit of ₹50,00,000/-. Therefore, the time limit as provided in Clause (b) of Section 149(1) of the Act is not applicable. It is thus the petitioner's case that the impugned notice was issued beyond the period prescribed under the Act and



therefore the same is liable to be set aside.

5. It is the Revenue's contention that although the impugned notice bears the date of 01.04.2023, however, the same should be construed as having been issued on 31.03.2023. This contention is premised on the basis that the process for issuing the impugned notice had begun in the late hours of 31.03.2023 and the final act of affixing the digital signature – which is system generated process – was completed on 12:02 AM on 01.04.2023. It is thus contended that the delay is of only about two minutes in issuance of the impugned notice under Section 148A(b) of the Act. Therefore, the same be construed as having been issued within the period of three years from the end of the relevant assessment year (AY 2019-20).

6. The question as to when a notice can be considered as issued was considered by a Coordinate Bench of this Court in ***Suman Jeet Agarwal v. Income Tax Officer, Ward 61(1) & Ors.: Neutral Citation 2022:DHC:3994-DB***. In the said case, this Court had observed as under:

“25.12 The review of the aforesaid judgments of the Supreme Court and the several High Courts shows that all Courts have consistently held that the expression ‘issue’ in its common parlance and its legal interpretation means that the issuer of the notice must after drawing up the notice and signing the notice, make an overt act to ensure due despatch of the notice to the addressee. It is only upon due despatch, that the notice can be said to have been ‘issued’.

25.13 Further, a perusal of the Compliance Affidavit reveals that while the function of generation of Notice on ITBA portal and digital signing of the Notice is executed by the JAO, the function of drafting of the e-mail to which the Notice is attached and triggering the e-mail to the assessee is performed by the ITBA e-mail software system.



Thus, mere generation of Notice on the ITBA Screen cannot in fact or in law constitute issue of notice, whether the notice is issued in paper form or electronic form. In case of paper form, the notice must be despatched by post on or before 31st March 2021 and for communication in electronic form the e-mail should have been despatched on or before 31st March 2021.

In the present writ petitions, the despatch by post and e-mail was carried out on or after 01st April 2021 and therefore, we hold that, the impugned Notices were not issued on 31st March 2021.”

7. In the present case the impugned notice was digitally signed on 01.04.2023. Thus, the process of digitally generating the same on the system was completed on 01.04.2023. Plainly, the impugned notice could not have been issued prior to the same being signed. The fact that the steps to generate the impugned notice commenced on 31.03.2023 cannot be a ground to hold that the impugned notice was issued on 31.03.2023. The date of the said notice is correctly reflected as 01.04.2023. In addition, it is also pointed out that the DIN & Notice Number mentioned in the impugned notice – ITBA/AST/F/148A(SCN)/2023-24/1051828274(1) – also indicates that the impugned notice was issued in the financial year 2023-24.

8. In view of the above, we find merit in the contention that the re-assessment proceedings could not have been initiated beyond the period of three years from the end of the relevant assessment year (AY 2019-20) as the income in respect of which the AO has information to suggest that it has escaped assessment, is below the threshold limit of ₹50,00,000/-.



9. The petition is accordingly allowed and the impugned notices dated 01.04.2023 and 17.04.2023 as well as the impugned orders dated 17.04.2023 and 01.08.2024 are set aside. Pending application is also disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 23, 2024

‘gsr’

Click here to check corrigendum, if any