



2025:DHC:4472-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 28.05.2025

+ **W.P.(C) 12561/2022**

RAJESH CHOPRA

.... Petitioner

Versus

INCOME TAX OFFICER, WARD 62(1) DELHI... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sumit Lalchandani, Mr. Shivam Yadav, Mr. Utkarsh Kumar Gupta and Ms. Ananya Kapoor, Advocates.

For the Respondent: Mr. Debesh Panda, Senior Standing Counsel with Ms. Zehra Khan, Mr. Vikramaditya Singh and Ms. Delphina, Advocates.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE TEJAS KARIA

JUDGMENT

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition under Article 226 of the Constitution of India impugning a notice dated 30.05.2022 issued under Section 148A(b) of the Income Tax Act, 1961 [**the Act**]; an order dated 22.07.2022 passed under Section 148A(d) of the Act [**impugned order**]; and a notice dated 22.07.2022 [**impugned notice**] issued under



Section 148 of the Act pursuant to the impugned order in respect of the assessment year [AY] 2013-14.

2. The petitioner contends that the impugned notice has been issued beyond the period of limitation as prescribed under Section 149(1) of the Act and therefore, is liable to be set aside.

FACTUAL CONTEXT

3. The petitioner is an individual and is a resident of New Delhi. The petitioner filed its return of income on 08.08.2013 for AY 2013-14 under Section 139(1) of the Act, declaring a total income of ₹20,59,151/-.

4. The petitioner received a notice dated 31.03.2021 under Section 148 of the Act. The petitioner complied with the said notice and furnished its return of income on 07.04.2021, declaring the income as was declared in the original return. Thereafter, the Assessing Officer [AO] issued a notice dated 23.11.2021 under Section 143(2) read with Section 147 of the Act. The petitioner furnished a reply to the said notice and duly participated in the said proceedings. The AO issued another notice dated 22.02.2022 under Section 142(1) of the Act and the petitioner responded to the said notice as well. The said proceedings did not culminate in an assessment order, as the AO did not pass any such order at the material time.

5. The AO issued another notice dated 30.05.2022 under Section 148A(b) of the Act and called upon the petitioner to file a reply on or before 13.06.2022.



6. The said notice indicated that it was issued in view of the judgment of the Supreme Court in *Union of India and Ors. v. Ashish Agarwal: 2022 SCC OnLine SC 543*.

7. The petitioner responded to the said notice on 03.06.2022, *inter alia*, claiming that the notice issued under Section 148A(b) of the Act was invalid, as it was issued after the time for completing the assessment had expired. The petitioner further contended that the reference to the decision of the Supreme Court in *Union of India and Ors. v. Ashish Agarwal (supra)* was misplaced, as it was applicable only to notices that were issued under Section 148 of the Act during the period from 01.04.2021 to 30.06.2021. Therefore, the said decision had no application as the notice under Section 148 of the Act was issued on 31.03.2021 and the petitioner had participated in the re-assessment proceedings that were commenced pursuant to the said notice.

8. The AO did not accept the petitioner's objection as the notice dated 31.03.2021 was digitally signed at 07:44 PM but was delivered to the petitioner on 01.04.2021. The AO noted that the ITBA delivery status through the email sent bears the timestamp of 01.04.2021 at 07:30:47 AM and the delivery timestamp as 01.04.2021 at 07.30:48 AM. In view of the above, the AO concluded that the notice was issued on 01.04.2021 and not on 31.03.2021, that is, the date reflected on the notice.

REASONS AND CONCLUSION

9. The controversy involved in the present petition is in a narrow compass. It is the petitioner's case that the time for passing a re-



assessment order in respect of AY 2013-14 had expired on 31.03.2022 being the period of twelve months from the date on which the notice under Section 148 of the Act was initially issued. The Revenue controverts the same and claims that the notice dated 31.03.2021 was, in fact, issued on 01.04.2021 and therefore, is required to be treated as a notice under Section 148A(b) of the Act in terms of the decision of the Supreme Court in *Union of India and Ors. v. Ashish Agarwal* (*supra*). There is no cavil that if the original notice dated 31.03.2021 is construed as a notice served on 01.04.2021, the petitioner's challenge to the impugned notice and the impugned order is required to be rejected.

10. At this stage, it is relevant to note that in *Union of India and Ors. v. Ashish Agarwal* (*supra*), the Supreme Court had issued directions in exercise of powers under Article 142 of the Constitution of India. The relevant extract of the said judgment is set out below:

“7. Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 notice has been issued on or after 1st April, 2021. We are in complete agreement with the view taken by the various High Courts in holding so.

8. However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted



sections 147 to 151 of the IT Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a Bonafide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under section 148 after the amendment was enforced w.e.f. 01.04.2021, under the unamended section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021. There appears to be genuine non-application of the amendments as the officers of the Revenue may have been under a Bonafide belief that the amendments may not yet have been enforced. Therefore, we are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of IT Act, the High Courts ought to have passed an order construing the notices issued under unamended Act/ unamended provision of the IT Act as those deemed to have been issued under section 148A of the IT Act as per the new provision section 148A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law. Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under:

- (i) The respective impugned section 148 notices issued to the respective assesseees shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b). The respective assessing officers



shall within thirty days from today provide to the assesseees the information and material relied upon by the Revenue so that the assesseees can reply to the notices within two weeks thereafter;

- (ii) The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a one-time measure vis-a-vis those notices which have been issued under Section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts;
 - (iii) The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assesseees;
 - (iv) All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/ or shall continue to be available and;
 - (v) The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended section 148 of the IT Act irrespective of whether they have been assailed before this Court or not.
9. There is a broad consensus on the aforesaid aspects amongst the learned ASG appearing on behalf of the Revenue and the learned Senior Advocates/learned counsel appearing on behalf of the respective assesseees. We are also of the opinion that if the aforesaid order is passed, it will strike a balance between the rights of the Revenue as well as the respective assesseees as because of a bonafide belief of the officers of the Revenue in issuing approximately 90000 such notices, the Revenue may not suffer as ultimately it is the public exchequer



which would suffer. Therefore, we have proposed to pass the present order with a view avoiding filing of further appeals before this Court and burden this Court with approximately 9000 appeals against the similar judgments and orders passed by the various High Courts, the particulars of some of which are referred to hereinabove. We have also proposed to pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India by holding that the present order shall govern, not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to **PAN INDIA**.

10. 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. 524/2021 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 IT 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 IT 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 01.04.2021 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 assessee; 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 assessee including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assessee and Revenue under the Finance Act, 2021 and in law shall continue to be available.

11. The present order shall be applicable **PAN INDIA** and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 01.04.2021 issued under section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the *very* issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under Section 148 of the Act issued after 01.04.2021 are under challenge.



12. The impugned common judgments and orders passed by the High Court of Allahabad and the similar judgments and orders passed by various High Courts. More particularly, the respective judgments and orders passed by the various High Courts particulars of which are mentioned hereinabove, shall stand modified/substituted to the aforesaid extent only.”

11. In view of the PAN INDIA directions issued by the Supreme Court in *Union of India and Ors. v. Ashish Agarwal (supra)*, there is no cavil that all notices issued under Section 148 of the Act after 01.04.2021 in consonance with the provisions regarding re-assessment [Section 147 to 151 of the Act] as were in force prior to 01.04.2021, were required to be construed as notices under Section 148A(b) of the Act.

12. The present petition was listed on 12.02.2024 before the Coordinate Bench of this court and this court had passed the following order:

“1. The proceedings initiated by the respondent which are impugned herein pertain to Sections 148A(b) and (d) of the Income Tax Act, 1961 [“Act”].

2. Undisputedly, the notice under Section 148 of the Act bears the date of 31 March 2021. According to Mr. Lalchandani, a copy of the screenshot of the Income Tax Business Application [“ITBA”] portal would indicate that it was duly uploaded and was available on the portal of the Department on 31 March 2021 itself. This is so contended in light of what appears at pdf page 80 of our digital record. In addition to the above, Mr. Lalchandani also refers to the recitals appearing in the notice dated 23 November 2021 [Annexure P-5] and which too refers to the date of issuance of the notice under Section 148 of the Act as 31 March 2021.



3. However, the respondent in the counter affidavit which has been filed before us has taken the categorical stand that although the notice was digitally signed on 31 March 2021, it was sent and delivered to the petitioner on 01 April 2021. Paragraph 11 of the counter affidavit reads as under: -

“11. That the assessee’s case is also covered with the decision of Hon’ble High Court of Delhi in the case of Suman Jeet Aggarwal and that the case pertains to category ‘C’, as the notice u/s 148 of the Act in the assessee’s case for the year under consideration was digitally signed on 31.03.2021 but the notice was sent and delivered to the assessee on 01.04.2021 [ITBA delivery status through email sent time stamp 01.04.2021 at 07:30:47 AM and delivered time stamp 01.04.2021 at 07:30:48 AM].”

4. The aforesaid issues are addressed in the backdrop of the judgment of the Supreme Court rendered in **Union of India & Ors vs. Ashish Aggarwal** [(2023) 1 SCC 617] as well as the decision of the Division Bench of this Court in **Suman Jeet Agarwal vs. Income-tax Officer & Ors.** [2022 SCC OnLine Del 3141].

5. Insofar as the notice bearing a date of 31 March 2021 and digitally signed on the same date is concerned, the Division Bench in *Suman Jeet Agarwal* had held that subject to verification, determinative would be the date and time of the dispatch as recorded on the ITBA portal and that the action of the respondent would be liable to be adjudged accordingly. It was further pertinently observed that if the date and time of the dispatch recorded is found to be 01 April 2021 or thereafter, the notices would be governed by the decision rendered in *Ashish Aggarwal*.

6. In view of the aforesaid, we call upon the respondent to file an additional affidavit categorically making a disclosure therein of the date and the time when the notice in question was uploaded on the ITBA portal. The said affidavit be filed within a period of three weeks from today.”

13. In compliance with the said order, the Revenue has filed an affidavit, *inter alia*, affirming as under:



“5. That in the assessee’s case, the notice u/s 148 of the Act was issued to the assessee on 31.03.2021 for the assessment year 2013-14 which was sent and delivered to the assessee on 01.04.2021 i.e. “sent time stamp” is 01.04.2021 at 07:30:47 AM and “delivered time stamp” is 01.04.2021 at 07:30:48 AM. Further, the notice u/s 148 of the Act issued on 31.03.2021 in assessee’s case was sent through speed post on 01.04.2021 to the assessee.”

14. The Revenue had also filed an additional affidavit further affirming as under:

“7. That it is stated in compliance of the orders dated 12.02.2024 and 28.03.2025 that the notice under Section 148 in question was not generated manually, so as to give rise to a situation where it would then have to be manually “*uploaded*” on ITBA by the Respondent. It is stated that the notice was digitally generated and was digitally signed on 31.03.2021 at 07:44 PM and it must have thereafter been uploaded on the ITBA portal automatically, as per the information system programmed which operates automatically, over which the Respondent has no control at all whatsoever. As the Respondent does not have access to the records on the ITBA server, a request for the said information was made to the concerned authorities. The said information is also being tendered under cover of this affidavit as ANNEXURE-1.”

15. It is clear from the above that the notice had been signed digitally on the system on 31.03.2021 and was, thus, placed on the portal. However, the email was despatched to the petitioner on the morning of 01.04.2021 at 07:30:47 AM and was delivered at 7:30:48 AM. The notice was also despatched to the petitioner by speed post on 01.04.2021.



16. It is material to note that it is not the petitioner's case that he had, in fact, received the notice on 31.03.2021.

17. Section 149(1) of the Act proscribes issuance of notice beyond the period as stipulated in the said section. In *Suman Jeet Agarwal v. Income Tax Officer and Ors.: (2022) 449 ITR 517*, the Coordinate Bench of this Court had considered the question regarding as to the date of issue of a notice under Section 148 of the Act for ascertaining the period of limitation for issuance of such a notice. We consider it apposite to refer to the following extracts of the said decision:

“25. Question No. (I) : Whether the jurisdictional Assessing Officer's act of generating notice in the Income Tax Business Application portal on March 31, 2021, without despatching the notice meets the test of the expression "shall be issued" in section 149 of the Act of 1961, and saves the notices from being time barred?

25.1. It has emerged as an admitted position on facts, that the e-mails attaching the impugned notices dated March 31, 2021, were despatched by the Income Tax Business Application servers on April 1, 2021, or thereafter.

25.2. Faced with the aforesaid factual position, it has been contended by the Department that since generation of impugned notices on the Income Tax Business Application portal on March 31, 2021, is undisputed, the singular act of generation of notice by the jurisdictional Assessing Officer satisfies the requirement of "issued" for the purpose of section 149 of the Act of 1961 and despatch of the notice on March 31, 2021 is not a mandatory requirement.

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 Income Tax Business Application portal and digital signing of the notice is executed by the jurisdictional Assessing Officer, 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 Income Tax Business Application e-mail software system. Thus, mere generation of notice on the Income Tax Business Application 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 March 31, 2021 and for communication in electronic form the e-mail should have been despatched on or before March 31, 2021. In the present writ petitions, the despatch by post and e-mail was carried out on or after April 1, 2021 and therefore, we hold that, the impugned notices were not issued on March 31, 2021.

25.18. Additionally, the contention of the counsel for the Department that generation of section 148 notice on the Income Tax Business Application screen amounts to "issued" within the meaning of section 149 of the Act of 1961 is not borne out from the instructions issued by the Directorate of Income-tax (Systems). On the contrary, the said circulars duly recognize that after generation of notice the concerned Income-tax authority is required to take overt steps for issuing the said notice to the assessee. The circulars use the words "generation" and "issuance" distinctively. In this regard reference may be made illustratively to the following instructions :

(a) The Income Tax Business Application Assessment Instruction No. 2 (F. No. System/Income Tax Business Application/Instruction/Assessment/ 16-17/177, dated August 1, 2016) issued by the Directorate of Income-tax (System) mentions that :

"the Assessing Officer Staff/Assessing Officer Inspector will not be able to generate the notice but will be able to view the notices already generated by the Assessing Officer for taking a printout of the same, for issue to the assessee."



(b) The Income Tax Business Application Assessment Instruction No. 3 (F No. System/Income Tax Business Application/Instruction/Assessment/ 177/16-17/), dated February 3, 2017, also illustrates the same distinction :

"Details of the Authority/party from whom information is requisitioned can be entered along with date for compliance and the notice can then be generated and issued."

25.19. The counsel for the Department have also sought to argue that generation of a notice with document identification number on Income Tax Business Application screen conclusively indicates that the notice has been irrevocably issued. The submission of the respondent is not borne out from the applicable circular regarding document identification number issued by Central Board of Direct Taxes and is therefore a mere ipse dixit of the counsel.

25.20. As per Circular No. 19 of 2019 (F. No. 225/95/2019-ITA.II), dated August 14, 2019 ([2019] 416 ITR (St.) 140) issued by the Central Board of Direct Taxes, the document identification number was introduced to maintain a proper audit of trail of communications issued by the Income-tax authority. The said circular does not state that the generation of document identification number would automatically constitute issuance of the notice. Relevant extract from the aforementioned circular is reproduced as under (page 140 of 416 ITR (St.) :

".. . However, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that there have been some instances in which the notice, order, summons, letter and any correspondence (hereinafter referred to as 'communication') were found to have been issued manually, without maintaining a proper audit trail of such communication.

2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), has decided that no communication shall be issued by any Income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after October 1, 2019 unless a



computer-generated document identification number (DIN) has been allotted and is duly quoted in the body of such communication." (emphasis supplied)

In fact, in several cases, we take judicial notice that even as on date the jurisdictional Assessing Officers issue notices which do not have document identification number and in those cases the Department contends that the absence of the document identification number does not make those notices invalid.”

18. Clearly, the date of notice is vital for determining the rights of the parties and there can be no uncertainty regarding the date of issuance of notice. It is, thus necessary that the date of issue of notice be ascertained on completion of the precise steps for issuance of the notice. In terms of the decision of this Court in ***Suman Jeet Agarwal v. Income Tax Officer and Ors.*** (*supra*), as noted above, where the notice is sent electronically, the date of dispatch of the e-mail is to be considered as the date of issue of the notice. Thus, in this case the date of issue of notice would have to be taken as 01.04.2021.

19. As stated at the outset, if there is no dispute that the date of issuance of notice is considered as 01.04.2021, then the said notice was required to be treated as a notice under Section 148A(b) of the Act in terms of the decision of the Supreme Court in ***Union of India and Ors. v. Ashish Agarwal*** (*supra*).

20. It is material to note that a notice under Section 148 of the Act is a jurisdictional notice and issuance of such notice is necessary for the AO to assume jurisdiction to assess/re-assess the income under Section 147 of the Act. If the notice under Section 148 is found to be invalid, it would vitiate the proceedings commenced pursuant thereto. Thus,



merely because the parties had laboured under a misconception at the initial stage that the initial notice issued under Section 148 of the Act was valid, would not invalidate the subsequent steps taken by the Revenue in conformity with the decision of the Supreme Court in *Union of India and Ors. v. Ashish Agarwal* (*supra*) as well as the decision of this Court in *Suman Jeet Agarwal v. Income Tax Officer and Ors.* (*supra*).

21. Viewed from another perspective, if an adverse re-assessment order was passed pursuant to the notice dated 31.03.2021 (issued on 01.04.2021), the same would be vulnerable to a challenge by the Assessee on the ground that the proceedings were not in compliance with the directions issued by the Supreme Court in *Union of India and Ors. v. Ashish Agarwal* (*supra*).

22. In view of the above, we find it difficult to sustain the petitioner's challenge in the present petition. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 28, 2025
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