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W.P.Nos.27997 of 2021 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.27997, 27998, 27999 and 28000 of 2021
and W.P.(MD) Nos.16821 and 11312 of 2021

W.P.No.27997 of 2021:

Malavika Enterprises,
rep. by its Partner M.Venkatsubramani,
241, Mint Street, Park Town,
Chennai-600 006.

.. Petitioner

Vs

1. Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001.

2. Additional/Joint/Deputy Assistant
Commissioner of Income tax/Income tax Officer
National Faceless Assessment Centre,
Delhi.

3. Income tax Officer,
Non-Corporate Ward 5(1)
BSNL Tower,
16, Greams Road,
Chennai-600 006.

.. Respondents



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W.P.No.27998 of 2021:

Malavika Enterprises,
rep. by its Partner M.Venkatsubramani,
241, Mint Street, Park Town,
Chennai-600 006.

.. Petitioner

Vs

Income tax Officer,
Non-Corporate Ward 5(1)
BSNL Tower,
16, Greams Road,
Chennai-600 006.

.. Respondent

W.P.No.27999 of 2021:

Sumitha

.. Petitioner

Vs

1. Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001.

2. Additional/Joint/Deputy Assistant
Commissioner of Income tax/Income tax Officer
National Faceless Assessment Centre,
Delhi.

3. Income tax Officer,
Non-Corporate Ward 6(1)
BSNL Tower,
16, Greams Road,
Chennai-600 006.

.. Respondents



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W.P.No.28000 of 2021:

Sumitha

.. Petitioner

Vs

Income tax Officer,
Non-Corporate Ward 6(1)
BSNL Tower,
16, Greams Road,
Chennai-600 006.

.. Respondent

W.P.(MD) No.16821 of 2021:

K.Devaraj,
Trustee of St. Mary's Cathedral Trust,
Bishop's House, 12A, Convent Road,
Melapudur, Trichy-620 001.

.. Petitioner

Vs

1. Central Board of Direct Taxes,
rep. by Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001.

2. The Income Tax Officer, Exemption Ward,
No.4, Williams Road,
Cantonment, Trichy-620 001.

.. Respondents

W.P.(MD) No.11312 of 2021:

K.Devaraj,
Trustee of St. Mary's Cathedral Trust,
Bishop's House, 12A, Convent Road,
Melapudur, Trichy-620 001.

.. Petitioner



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Vs

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- 1.The Income Tax Officer,
Exemptions Ward,
No.4, William's Road, Cantonment,
Trichy-620 001.
- 2.The Commissioner of Income Tax (Exemptions),
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.
- 3.The Principal Chief Commissioner of Income Tax,
NeAC Income Tax, Mayur Bhawan,
Connaught Lane, Barakhamba,
New Delhi, Delhi-110 001.

.. Respondents

W.P.Nos.27997 and 27999 of 2021 filed under Article 226 of the Constitution of India praying for a Writ of Declaration declaring the Explanation to Clause A(a) contained in the Impugned Notification in Notification No.20/2021/F.NO.370142/35/2020-TPL in S.O.1432(E) dated 31.03.2021 as modified by notification in Notification No.38/2021/F.No.370142/35/2020-TPL in S.O.1703(E) of 2021 dated 27.04.2021 as modified by Notification No.74/2021/F.No.370142/35/2020-TPL dated 25.06.2021 as unconstitutional, illegal and ultra vires the Constitution of India, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and Income Tax Act, 1961.

W.P.No.27998 of 2021 filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records and quash



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the notice in PAN: AAJFM1326L dated 31.03.2021 in DIN & Notice No.ITBA/AST/S/148/2020-21/1032092412(1) issued under Section 148 of the Income-tax Act, 1961 for the Assessment Year 2013-14 and the consequential notices u/s 143(2) and 142(1) for AY 2013-14 dated 14.07.2021 and 01.12.2021 respectively issued by the respondent.

W.P.No.28000 of 2021 filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records and quash the notice in PAN: AASPS4149J dated 31.03.2021 but served on 05.04.2021 in DIN & Notice No.ITBA/AST/S/148/2020-21/1032056618(1) issued under Section 148 of the Income-tax Act, 1961 for the Assessment Year 2016-17 and the consequential notices u/s 143(2) and 142(1) for AY 2016-17 dated 08.07.2021 and 09.12.2021 respectively issued by the respondent.

W.P.(MD) No.16821 of 2021 filed under Article 226 of the Constitution of India praying for a Writ of Declaration or any other Writ order or direction in the nature of Declaration declaring the `Explanation to Clause A(a) contained in the Impugned Notification in Notification No.20/2021/F.NO.370142/35/2020-TPL in S.O.1432(E) dated 31.03.2021 as modified by notification in Notification No.38/2021/F.No.370142/35/2020-TPL in S.O.1703(E) of 2021 dated 27.04.2021 issued by the 1st respondent as unconstitutional, illegal and ultra vires the Constitution of India, the Taxation and Other Laws (relaxation and Amendment of Certain provisions) Act, 2020 and Income Tax Act, 1961.



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WEB COPY W.P.(MD) No.11312 of 2021 filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records relating to the notice in DIN ITBA/AST/S/148/2020-21/1032105022(1) dated 31.03.2021 & DIN ITBA/AST/F/143(2)_4/2021-22/1033645892(1) dated 23.06.2021 issued by the first respondent and quash the same.

W.P.Nos.27997 and 27998 of 2021:

For the Petitioner : Mr.V.S.Jayakumar

For the Respondents : Mrs.Hemamuralikrishnan
Sr. Standing Counsel and
Mr.Prabhu Mukund Arunkumar
for respondent Nos.1 and 2
in W.P.No.27997 of 2021

: Mr.A.P.Srinivas
Sr. Standing Counsel and
Mr.ANR Jayaprathap
for respondent No.3
in W.P.No.27997 of 2021
and sole respondent in
W.P.No.27998 of 2021

W.P.Nos.27999 and 28000 of 2021:

For the Petitioner : Ms.J.Sree Vidya



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For the Respondents : Mrs.Hemamuralikrishnan
Sr. Standing Counsel and
Mr.Prabhu Mukund Arunkumar
for respondent No.1
in W.P.No.27999 of 2021

: Mr.A.P.Srinivas
Sr. Standing Counsel and
Mr.ANR Jayaprathap
for respondent Nos.2 & 3
in W.P.No.27999 of 2021
and sole respondent
in W.P.No.28000 of 2021

W.P.(MD) Nos.16821 and 11312 of 2021:

For the Petitioner : Mr.V.S.Jaya Kumar

For the Respondents : Mrs.Hemamuralikrishnan
Sr. Standing Counsel and
Mr.Prabhu Mukund Arunkumar
for respondent No.1 in
W.P.(MD) No.16821 of 2021

: Mr.A.P.Srinivas
Sr. Standing Counsel and
Mr.ANR Jayaprathap
for respondent No.2
in W.P.(MD) Nos.16821 of
2021 and respondent Nos.1 to
3 in W.P.(MD) No.11312 of
2021



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COMMON ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

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W.P.Nos.27997 and 27999 of 2021 and W.P. (MD) No.16821 of 2021 are filed to declare the Explanation to Clause A(a) contained in the notification dated 31.3.2021, as modified by the notification dated 27.4.2021, with further modification on 25.6.2021, as unconstitutional, illegal and ultra vires the Constitution of India, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [for brevity, "*the TOLA Act, 2020*"] and the Income Tax Act, 1961 [for brevity, "*the Act of 1961*"].

2. For convenience, we are referring to the facts of W.P.No.27997 of 2021 filed by Malavika Enterprises.

3. Learned counsel for the petitioner submits that the Explanation to Clause A(a) contained in the impugned notifications indirectly extends the operation of the old provisions of the Act of 1961 beyond 31.3.2021 under the guise of a clarification by a delegated legislation and, therefore, has to be declared as unconstitutional. He further submits that when the time limit for issuance of notice under



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Section 148 of the Act of 1961 stood expired between 20.3.2020 and 31.12.2020, by virtue of the Explanation to Clause A(a) the powers under the old provisions are indirectly extended by way of the notifications.

4. It is further submitted that Section 3(1) of the TOLA Act, 2020 permits the Central Government to issue notification for completion of any proceeding, passing of any order, or issuance of any notice under the provisions of the Specified Act. The impugned notifications issued by the Central Board of Direct Taxes are ultra vires insofar as they contain the "Explanation" clarifying that the pre-amended Sections 148, 149 and 151 of the Act of 1961 shall govern the issue of notice under Section 148 of the Act of 1961 post 1.4.2021 and that Section 3(1) of the TOLA Act, 2020 authorizes the Central Government to only extend the time limits.

5. At this juncture, learned counsel for the petitioner submitted that before taking up the writ petitions in regard to the challenge to the vires of the Explanation to Clause A(a), the connected writ petitions filed by the same petitioners may be considered to find out



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whether the notices under Section 148 of the Act of 1961 were issued on or before 1.4.2021. If this courts comes to the conclusion that notices were issued prior to 1.4.2021, the challenge to Explanation to Clause A(a) would be only for academic purpose and, therefore, the prayer was to first examine the issue as to whether the notices under Section 148 of the Act of 1961 were issued on or before 1.4.2021.

6. The issue aforesaid is relevant for the reason that there was an amendment to the Act of 1961 by the Finance Act, 2021 to amend Section 148 of the Act of 1961, apart from other provisions, and if notice under Section 148 of the Act of 1961 was given to the petitioners on or after 1.4.2021, it would be governed by the amended provisions and not by the old Act and in case notices were issued prior to 1.4.2021, then the case would be governed by the old provisions of Section 148 of the Act of 1961 and, therefore, the challenge to Explanation to Clause A(a) would not be required to be addressed in these matters.

7. Taking the aforesaid into consideration, we had taken up the connected writ petition of the same petitioner, being W.P.No.27998 of



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2021, to find out as to whether notice under Section 148 of the Act of 1961 in that case was issued on or before 1.4.2021.

8. Coming to the facts of the case, it is stated that notice under Section 148 of the Act of 1961 is said to have been issued on 31.3.2021 for the assessment year 2013-2014, followed by consequential notices. It is the case of the petitioner that the notice is said to have been issued vide email at 6.42 pm, but was served on 1.4.2021 at 2 am and, therefore, the unamended provision of Section 148 of the Act of 1961 would not be applicable to the case. However, the notice dated 31.3.2021 has been issued under the unamended provision, i.e. the old provision of Section 148 of the Act of 1961, as it stood prior to 1.4.2021 and, therefore, is liable to be set aside.

9. To substantiate his argument, learned counsel for the petitioner relied on a judgment of the Division Bench of the Allahabad High Court in the case of ***Daujee Abhushan Bhandar Pvt Ltd v. Union of India and others*** [Judgment dated 10.3.2022 in Writ Tax No.78 of 2022] and submitted that the very same issue has been taken up and decided by the Allahabad High Court and is applicable to



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this case. The prayer was made accordingly to govern the present writ petitions by the judgment supra.

10. Learned counsel for the petitioners appearing in other writ petitions also argued in the same line.

11. We have considered the submissions made by learned counsel for the petitioners.

12. In this batch of cases, each assessee has preferred two writ petitions - one challenging the Explanation to Clause A(a) and the impugned notifications issued from time to time and the other challenging the notices issued under Section 148 of the Act of 1961 on the ground that such notices could not have been issued under the old Act when notices were served after 31.3.2021. Thus, much would depend on the finding about the date of issuance of the notice under Section 148 of the Act of 1961. It is also in the background that in a case the issue of limitation may also come into play, as it was to expire on 31.3.2021.



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13. To address the issue aforesaid, we need to refer to Sections 148 and 149 of the Act of 1961, as they stood before amendment, hereunder:

"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



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(b) subsequently a notice has been served under sub-section (2) of 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, re-assessment 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 subsection (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



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sub-section (2) of section 153, every such notice referred to in this clause shall be 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.

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



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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 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 nonresident 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.



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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."

[emphasis supplied]

Section 149 of the Act of 1961, quoted above, provides time limit for issuance of the notice under Section 148 of the Act.

14. Section 282 of the Act of 1961 stipulates the manner of service of notice and Section 282A of the Act of 1961 prescribes the form of issuance of such notice, i.e., signed and issued in paper form or communicated in electronic form. Rule 127A of the Income Tax Rules, 1962 [for brevity, "*the Rules of 1962*"] states about the authentication of notices and other documents. The aforesaid provisions are quoted hereunder for ready reference:

Sections 282 and 282A of the Act of 1961:

"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**



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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)."



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"282A. Authentication of notices and other documents.—

(1) **Where this Act requires a notice or other document to be issued by any income-tax authority, such notice or other document shall be signed and issued in paper form or communicated in electronic form by that authority in accordance with such procedure as may be prescribed.**

(2) **Every notice or other document to be issued, served or given for the purposes of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.**

(3) *For the purposes of this section, a designated income-tax authority shall mean any income-tax authority authorised by the Board to issue, serve or give such notice or other document after authentication in the manner as provided in sub-section (2)."*

Rule 127A of the Income Tax Rules, 1962:

"127A. Authentication of notices and other documents-

(1) **Every notice or other document communicated in electronic form by an income-**



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tax authority under the Act shall be deemed to be authenticated,-

(a) in case of electronic mail or electronic mail message (hereinafter referred to as the e-mail), if the name and office of such income-tax authority-

(i) is printed on the e-mail body, if the notice or other document is in the email body itself; or

(ii) is printed on the attachment to the e-mail, if the notice or other document is in the attachment, and the e-mail is issued from the designated e-mail address of such income-tax authority;

(b) in case of an electronic record, if the name and office of the income-tax authority-

(i) is displayed as a part of the electronic record, if the notice or other document is contained as text or remark in the electronic record itself; or

(ii) is printed on the attachment in the electronic record, if the notice or other document is in the attachment, and such electronic record is displayed on the designated website.



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(2) *The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the designated e-mail address of the income-tax authority, the designated website and the procedure, formats and standards for ensuring authenticity of the communication.*

Explanation: For the purposes of this rule, the expressions-

(i) "electronic mail" and "electronic mail message" shall have the same meanings respectively assigned to them in Explanation to section 66A of the Information Technology Act, 2000 (21 of 2000);

(ii) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000)."

[emphasis supplied]

15. Section 282(1) of the Act of 1961 provides that service of notice or summon or requisition may be made by delivering or transmitting a copy thereof to the person therein named. However, the amended provision of Section 282A of the Act of 1961 was brought



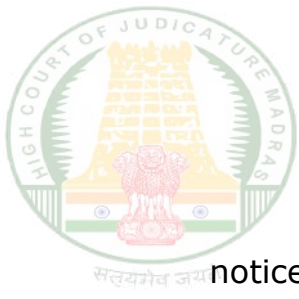
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which provides that notice or document shall be signed and issued in paper form or communicated in electronic form in accordance with such procedure as may be prescribed. Sub-section (2) of Section 282A of the Act of 1961 is quite relevant. It provides that every notice or document to be issued, served or given for the purposes of this Act by any income tax authority shall be deemed to be authenticated if the name and office of a designated income tax authority is printed, stamped or otherwise written thereon.

16. Rule 127A of the Rules of 1962, extracted above, provides that every notice or other document communicated in electronic form by an income tax authority under the Act shall be deemed to be authenticated in case of electronic mail or electronic mail message, if the name and office of such income-tax authority is printed on the email body and if the notice or other document is in the email body itself. Rule 127A of the Rules of 1962 is elaborate and would further be discussed subsequently.

17. In the facts of the present case, it is not in dispute that notice under Section 148 of the Act of 1961 is an electronically generated



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notice issued on 31.3.2021. The petitioner has raised issue about the receipt of notice on the day subsequent to 31.3.2021 without explaining that the requirement of provisions is for issuance of notice and not of the receipt. The issue thus cannot be taken up from the fact about the receipt of the notice, but in reference to the issuance of the notice. It is more so when Rule 127A(1) of the Rules of 1962 provides that every notice communicated in electronic form by an income tax authority is deemed to be authenticated.

18. A perusal of the notice dated 31.3.2021 shows it to have been sent through email and as per Rule 127A(1) of the Rules of 1962, it is deemed to be authenticated if the name and office of the income tax authority is printed on the email body or is printed on the attachment to the email. The notice in the instant case shows the name and office of the income tax authority printed on the attachment to the email. The petitioner could not bring any fact on record to show that notice under Section 148 of the Act of 1961 was not issued by the electronic mode, i.e., by email, on 31.3.2021 and, that too, when the fact regarding digital signature of the authority could not be disputed. In fact, the digital signature of the authority is also on 31.3.2021 and,

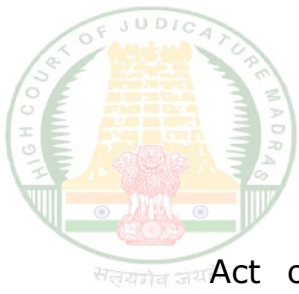


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therefore, we do not find that it is a case where notice under Section 148 of the Act of 2021 was issued on or after 1.4.2021, rather it was issued prior to the date aforesaid.

19. At this stage, we will consider the judgment of the Allahabad High Court in ***Dajee Abhushan Bhandar Pvt Ltd***, supra, which is also in reference to the same provisions. While discussing the issue, the Division Bench of the Allahabad High Court has referred to Rule 127A of the Rules of 1962 which deals with communication in the electronic form and after referring to Section 13 of the Information Technology Act, 2000, it was held that despatch of an electronic record occurs when it enters a computer resource outside the control of the originator. Therefore, if a notice is digitally signed by the income tax authority and it is entered by the income tax authority in computer resource outside the control, then that point of time would be the time of issuance of the notice.

20. After recording the aforesaid finding, the Division Bench of the Allahabad High Court further examined the definition of the words "*issue*" and "*issuance of notice*" which have not been defined under the



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Act of 1961. The dictionary meaning of both the words were thereafter taken and after considering different judgments, the Division Bench finally came to the conclusion that mere digitally signing the notice is not issuance of notice. The impugned notice under Section 148 of the Act of 1961 in that case was received on 6.4.2021 and, therefore, it was treated to be time barred.

21. What we find relevant from the judgment in **Daujee Abhushan Bhandar Pvt Ltd**, supra, is consideration of facts given in paragraph 3 with a conclusion in the last paragraph and for ready reference, both these paragraphs are quoted herein:

"3. Subsequently, the Assessing Authority attempted to initiate proceedings under Section 148 of the Act, 1961. For this purpose, a notice under Section 148 of the Act, 1961 for the Assessment Year 2013-14 was digitally signed by the Assessing Authority on 31.3.2021. It was sent to the assesses through e-mail and e-mail was undisputedly received by the petitioner on his registered e-mail I .D. on 06.04.2021. The limitation for issuing notice under Section 148 read with Section 149 of the Act, 1961 was upto 31.03.2021 for the Assessment Year 2013-14.



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30. In view of the discussion made above, we hold that mere digitally signing the notice is not the issuance of notice. Since the impugned notice under Section 148 of the Act, 1961 was issued to the petitioner on 06.04.2021 through e-mail, therefore, we hold that the impugned notice under section 148 of the Act, 1961 is time barred. Consequently, the impugned notice is quashed."

22. In paragraph 3, it has been noted that the notice under Section 148 of the Act of 1961 was digitally signed by the authority on 31.3.2021 and was sent to the assessee through email, but email was received by the assessee on 6.4.2021 and thereby taking the date of receipt to be relevant, the judgment was rendered favourable to the assessee. With due respect to the Division bench of the Allahabad High Court, the issue threadbare discussed by it refers to the date of issuance and not of receipt, but after making discussion in reference to all the provisions, conclusions have been drawn referring to the date of receipt, without discussion as to when it enters a computer resource outside the control of the originator and for that purpose, we would like to refer to paragraphs 16 to 20 of the judgment in **Daujee**



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Abhushan Bhandar Pvt Ltd, supra, with which we record our agreement:

"16. Sub Section (1) of Section 149 starts with a prohibitory words that "no notice under Section 148 shall be issued for the relevant Assessment Year after expiry of the period as provided in sub Clauses (a) (b) and (c)". There is no dispute that the notice must be issued by the Assessing Authority within the period of limitation as provided in Section 149 of the Act, 1961. Section 282 of the Act, 1961 provides for mode of service of notices. Section 282 A provides for authentication of notices and other documents by signing it. Sub- Section 1 of Section 282 A uses the word " "Signed" and "issued in paper form" " or "communicated in electronic form by that authority in accordance with such procedure as may be prescribed". **Thus, signing of notice and issuance or communication thereof have been recognised as different acts.**

17. Rule 127 A(1) of the Rules 1962 provides that every notice or other document communicated in electronic form by an authority under the Act shall be deemed to be authenticated in case of electronic mail or electronic mail message (e-mail) if the name and



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office of such income tax authority is printed on the e-mail body, if the notice or other document is in the e-mail body itself, or is printed on the attachment to the e-mail, if the notice or other document is in the attachment and the e-mail, is issued from the designated e-mail address of such income tax authority. **Thus, the issuance of notice and other document would take place when the email is issued from the designated e-mail address of the concerned income tax authority.**

18. Since Section 149 of the Act 1961 requires notice to be issued by Income Tax Authority, therefore, in terms of sub Section (1) of Section 282 A it has to be signed by that authority and to be issued in paper form or communicated in electronic form by that authority in accordance with procedure prescribed.

19. The communication in electronic form has been prescribed in Rule 127 A of the Rules 1962 which provides a procedure for issuance of every notice or other document and the e-mail in electronic form/electronic mail which has to be issued from the designated e-mail address of such income tax authority.



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20. **Thus, after digitally signing the notice the income tax authority has to issue it to the assessee either in paper form or through electronic mail.** Sub-Section (1) of Section 13 of the Act 2000 provides that dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator. The aforesaid sub Section (1) of Section 13 indicates the point of time of issuance of notice. **Therefore, after a notice is digitally signed and when it is entered by the income tax authority in computer resource outside his control i.e. the control of the originator then that point of time would be the time of issuance of notice."**

[emphasis supplied]

23. The paragraphs referred to above show the manner of issuance of notice by electronic mode and when it would be taken to have been issued, but then the judgment was rendered in reference to the date of receipt of the notice, without showing that after the notice was digitally signed on 31.3.2021, it was not sent being entered by the income tax authority in computer resource outside his control. Thus, with due respect to the Division Bench of the Allahabad High Court, the



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conclusions finally drawn on the facts of that case cannot be applied, rather we cannot change the language of the provision by changing the word "*issuance*" to that of "*receipt*".

24. Finding that the notice in question was issued on 31.3.2021, we do not find a case in favour of the petitioners and, accordingly, W.P.Nos.27998 and 28000 of 2021 and W.P.(MD) No.11312 of 2021 are dismissed. However, it is with liberty to the petitioners to challenge the assessment orders, if they so choose, by availing the remedy as provided under law. The dismissal of these writ petitions would not come in the way of the petitioners availing the remedy in accordance with law.

25. In view of the finding rendered herein above that notices were issued before 1.4.2021, W.P.Nos.27997 and 27999 of 2021 and W.P.(MD) No.16821 of 2021 challenging the validity of Explanation to Clause A(a) modified by notifications issued from time to time are not pressed and, accordingly, the said writ petitions are dismissed.

26. There will be no order as to costs. Consequently,



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W.M.P.Nos.29574, 29576, 29578, 29579, 29572 and 29575 of 2021
and W.M.P. (MD) Nos.8833, 8835, 13706 and 13707 of 2021 are
closed.

(M.N.B., CJ) (D.B.C., J.)
29.03.2022

Index : Yes/No

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W.P.Nos.27997 of 2021 etc.

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To

- 1.The Secretary,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001.
- 2.The Income Tax Officer, Exemption Ward,
No.4, Williams Road,
Cantonment, Trichy-620 001.
- 2.The Commissioner of Income Tax (Exemptions),
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.
- 3.The Principal Chief Commissioner of Income Tax,
NeAC Income Tax, Mayur Bhawan,
Connaught Lane, Barakhamba,
New Delhi, Delhi-110 001.
- 4.The Additional/Joint/Deputy Assistant
Commissioner of Income tax/Income tax Officer
National Faceless Assessment Centre,
Delhi.
- 5.The Income tax Officer,
Non-Corporate Ward 5(1)
BSNL Tower, 16, Greams Road,
Chennai-600 006.
- 6.The Income tax Officer,
Non-Corporate Ward 6(1)
BSNL Tower, 16, Greams Road,
Chennai-600 006.



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W.P.Nos.27997 of 2021 etc.

THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

W.P.Nos.27997, 27998, 27999 and 28000 of 2021
and W.P.(MD) Nos.16821 and 11312 of 2021

29.03.2022