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

+ W.P.(C) 4511/2022

**CLUSTER OVERSEAS PRIVATE
LIMITED**

..... Petitioner

Through: Mr. Mudit Bansal, Advocate.

versus

INCOME TAX OFFICER WARD 6(1) DELHI Respondent

Through: Mr. Sanjay Kumar, Senior Standing
Counsel for Revenue.

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Date of Decision: 09th November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

Review Petition 279/2022

1. The present application has been filed by Revenue seeking a review of the judgment dated 27th September, 2022, insofar as the judgment at paragraph 10 directs the Assessing Officer ('AO') to determine the date of issuance of the notice issued under Section 148 of the Income Tax Act, 1961, (the 'Act') dated 31st March, 2021 and holds that such date of issuance is determined by the AO to be 31st March, 2021, to complete the reassessment proceedings within 12 weeks as per the procedure as it existed prior to the amendment.

2. Learned senior standing counsel for the Revenue states that though this Court by its order dated 24th March, 2022, was pleased to stay the assessment proceedings pursuant to the reassessment notices, the AO being unaware of the said order had passed the assessment order in this case on 26th March, 2022. He states that no recovery proceedings were initiated in furtherance of the said assessment order and they were kept in abeyance till further orders of this Court. He states that as per the AO, the impugned Section 148 notice had been issued on 31st March, 2021, and in this regard he seeks to place reliance on the speed post booking receipt filed along with the counter affidavit. He states that in these facts, Revenue may be permitted to initiate recovery and penalty proceedings in furtherance of assessment order dated 26th March, 2022.

3. In reply, learned counsel for the Petitioner, who appears on advance notice states that the assessment order dated 26th March, 2022 is null and void since it is contrary and in direct conflict with the stay order dated 24th March, 2022. He further states that the action of the AO in completing the assessment proceedings is also in violation of the direction issued by the Supreme Court in **GKN Driveshafts (India) Ltd. v. ITO, [2002] 125 Taxman 963 (SC)** because the order disposing the objections filed by the Assessee was passed mechanically. He states that the assessment order relies upon a Suspicious Transaction Report ('STR') regarding a credit of Rs. 4,97,00,000/- however, the said STR was not provided to the Assessee and it therefore, could not respond to the allegations in this regard. He further states that the submission of the Revenue that the speed post booking receipt is dated 31st March, 2021, is incorrect since the tracking report of the postal slip downloaded from the official website evidences that it was received on

02nd April, 2021.

4. In rejoinder, the learned senior standing counsel for the Revenue states that the notice was handed over to the postal department on 31st March, 2021 and relies upon the list filed along with the counter affidavit which as per him bears the signature of an official of the post office on the third page.

5. We have heard the learned counsel for the parties. There is no dispute that the assessment order dated 26th March, 2022, was passed in contravention of the interim order dated 24th March, 2022. Further, the said order has been passed without providing any opportunity to the petitioner to respond to the alleged information against it, in accordance with the judgment of **GKN Driveshafts (supra)**. Therefore, the said assessment order dated 26th March, 2022, is null and void and is hereby set aside.

6. The AO is directed to provide a copy of the STR relied upon in its order dated 26th March, 2022 within two (02) weeks. The Assessee shall furnish its reply and explanation to the transactions reported in the STR within a period of two (02) weeks thereafter. The AO shall also adjudicate on the plea of the Assessee that the tracking report available on the official website of the postal department records the date of issuance as 02nd April, 2022, while determining the date of issuance of notice. The AO shall after determining the date of issuance of notice proceed with the matter in accordance with the directions issued by this Court and in accordance with law.

7. In view of the aforesaid directions, the judgment dated 27th September, 2022 is modified to read as under:

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 4511/2022 and CM APPL. Nos. 13496-97/2022, 26039/2022
and 18486/2022

CLUSTER OVERSEAS PRIVATE LIMITED Petitioner
Through : Mr. Mudit Bansal and Mr. Ramesh
Kumar Jain, Advocates.

versus

INCOME TAX OFFICER
WARD 6(1) DELHI Respondent
Through : Mr. Sanjay Kumar, Senior Standing
Counsel for Revenue with Ms. Easha
Kadian, Advocate.

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Date of Decision: 27th September, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 13497/2022

*Exemption allowed, subject to all just exceptions.
Accordingly, this application is disposed of.*

CM APPL. No. 26039/2022

The said application has been filed by the petitioner contending that the Section 148 notice served through Speed Post and the notice available on the ITBA Portal bear distinct Document Identification Numbers ('DIN'). It is contended that upon verification it was found that the Section 148 notice sent through speed post, which bears the DIN & Notice No: ITBA/AST/S/148/2020-21/1032022972(1) does not exist on the ITBA Portal. It is stated that no record of the said DIN is available on the ITBA portal and no explanation for this has been offered in the counter affidavit,

giving rise to the apprehension that it is not genuine.

It is stated that the Section 148 Notice available on the ITBA Portal bears a distinct DIN & Notice No: ITBA/AST/S/148/2020-21/1032075144(1).

The learned Senior Standing Counsel for the Respondent/ Department, has handed over a print out of e-mail dated 26th May, 2022, addressed by the Assessing Officer ('AO') to the ITBA seeking a clarification with respect to allotment of two distinct DINs to the Section 148 Notice issued to the Assessee and the reply e-mail dated 01st July, 2022, issued by ITBA to the AO confirming generation of Section 148 Notice bearing DIN ITBA/AST/S/148/2020-21/1032022972(1) and explaining the circumstances in which the said DIN is not presently traceable in the system. The contents of e-mail dated 01st July, 2022, reads as under:-

"Please refer to your below email on the subject cited above. In this regard, I am directed to send the below facts of the case referred by you, as reported by the technical team of ITBA, for information and necessary further action at your end:-

"Notice generation u/s 148 is a bulk generation screen. As analyzed, DIN: ITBA/AST/S/148/2020-21/ 1032022972(1) matches with the series DIN generated in ITBA system. However, due to technical issue in bulk generation process, the document struck in intermittent state of processing due to which the bulk generation process failed. The failure resulted in queue the documents for generation in system. But since the document was under processing, the view/Download screen has shown the status of view document before roll back, and the user might have downloaded the document from that link before process got rolled back. The same document could have been manually signed and dispatched by user. Further, due to technical issues, the process of document generation was retrigger and old document with DIN: ITBA/AST/S/148/2020-21/1032022972(1) was neither saved in ITBA system nor shared with e-filing.

After the process got rolled back, the system retriggered the document generation for notice u/s 148 vide DIN: ITBA/AST/S/148/2020-21/1032075144(1). As per system validation, the new notice u/s 148, for PAN:AAACV3744K, AY:2013-14, Document issued with DIN: ITBA/AST/S/148/2020-21/1032075144(1) on 3/31/2021 5:11:51 PM. Further, same shared with e-filing and on email on 16-Apr-2022. (after expiration of 15 days for signing).""

In view of the aforesaid explanation provided by ADIT, ITBA, in its e-mail it is evident that the Section 148 notice sent to the petitioner by speed post as well as the Section 148 notice available on the ITBA portal and sent by email, though bearing distinct DINs are genuine. Pertinently, the contents of the said notices are also identical. The print of the emails comprising of seven (7) pages are taken on record.

Accordingly, no cause for initiating any action arises in the present application and the same is disposed of.

W.P.(C) 4511/2022, CM APPLs. 13496/2022 (for stay) & 18486/2022 (for quashing assessment order)

1. Present writ petition has been filed challenging the validity and legality of notices dated 31st March, 2021 issued under Section 148 of the Income Tax Act, 1961 ('Act of 1961') for Assessment Year ('AY') 2013-14.
2. Learned counsel for the petitioner has stated that the impugned notice dated 31st March 2021 with DIN & Notice No: ITBA/AST/S/148/2020-21/1032075144(1) was issued after 31st March, 2021 vide email. The petitioner received the said e-mail, with the manually signed impugned notice attached, on 30th June, 2021. The petitioner has also stated that an unsigned copy of the impugned notice was also uploaded on the ITBA portal.
3. It is further stated that another notice under Section 148 with a distinct DIN & Notice No: ITBA/AST/S/148/2020-21/1032022972(1) dated 31st March, 2021, for the same AY 2013-14 was sent vide speed post and

received at the registered address on 03rd April 2021. This notice was not uploaded on the ITBA portal.

4. The primary contention of the petitioner is that the date of issuance of the impugned notices should be considered for the purpose of determining limitation and not the date of preparation or generation.

5. The petitioner has stated that the impugned notices were issued without following the mandate of limitation prescribed under Section 149 of the Act of 1961 as amended by the Finance Act, 2021. It was also argued that the provisions of Section 282A(1) of the Act of 1961, which requires that any notice or document to be issued under the Act has to be signed mandatorily, was not followed for the impugned notice bearing DIN & Notice No: ITBA/AST/S/148/2020-21/1032075144(1) dated 31st March 2021, as an unsigned copy of the notice was uploaded in the E-filing portal.

6. The Department in their counter affidavit, stated that, on 31st March, 2021 the ITBA portal was experiencing some technical issues and not functioning properly, owing to which the AO was not able to affix his DSC. AO thereafter signed the Notice bearing DIN & Notice No: ITBA/AST/S/148/2020-21/1032022972(1) manually and sent it through speed post on 31st March, 2021. The Department has placed the speed post booking receipt dated 31st March 2021 on record, which displays the petitioner's name at serial no. 6.

7. The Department has further stated that there is no dispute that the notice was generated on 31st March, 2021 as after generation of DIN, the AO was not capable of taking it back at any future point of time and therefore it is the contention of the Department that the notice was issued when the DIN was generated by the AO.

8. The Department has also submitted that the Section 148 and 149 of the Act of 1961 refers to 'issue' of notice and not the 'service' thereof. [**R.K. Upadhyaya v. Shanabhai P. Patel, (1987) 166 ITR 163 (SC); Mayawati v. CIT (Central-1) & Ors. [(2010) 321 ITR 349 (Del)]**]. Further that, "to issue" means to send out for service, therefore, it was contended by the Department that any notice under Section 148 shall be construed as issued when it is duly authored and approved by the assessing officer for the

purpose of sending the same to the concerned assessee. This process, as per the Department, is concluded when the DIN is generated on the ITBA portal.

9. *The petitioner found this counter affidavit filed by the ITO to be false and misleading and the Application No. 26039 of 2022 under Section 340 of Criminal Procedure Code, 1973, was filed before this court. The said application has been disposed of vide this order. The issue of notices bearing distinct DIN has been dealt with while disposing of the aforementioned application.*

10. *We have heard the learned counsel for both the parties and perused the paper book. This Court finds that there is a disputed question of fact, while the petitioner has produced record indicating that the impugned notice was sent for despatch through speed post on the 2nd of April, 2022, the Department has produced record wherein it is indicated that the notice was sent for despatch through speed post on the 31st of March 2021 itself. Therefore, the matter is disposed of with the direction to the Assessing Officer to verify the records produced by both the parties and determine the date of issuance on the basis of the law laid down in RK Upadhyay (supra).*

10.1. *There is no dispute that the assessment order dated 26th March, 2022, was passed in contravention of the interim order dated 24th March, 2022. Further, the said order has been passed without providing any opportunity to the petitioner to respond to the alleged information against it, in accordance with the judgment of GKN Driveshafts (supra). Therefore, the said assessment order dated 26th March, 2022, is held to be null and void and is hereby set aside.*

10.2. *The AO is directed to provide a copy of the STR relied upon in its order dated 26th March, 2022 within one week. The Assessee shall furnish its reply to the transactions reported in the STR within a period of two weeks thereafter.*

11. *However, if the AO upon verification finds that the notice under Section 148 was handed over to the postal office on 31st of March, 2021, for despatch, then the reassessment proceedings would be initiated under the old regime of Section 148 proceedings, i.e., as it stood before the amendment of Finance Act, 2021. Accordingly, the AO is directed to*

determine the aforesaid date of despatch within four (04) weeks and if such date of issuance is determined to be 31st March 2021, thereafter, complete the reassessment proceedings within twelve (12) weeks as per the procedure as it existed prior to the amendment.

12. *However, if upon verification, it is determined by the AO that the impugned notice was handed over to the postal office on or after 1st of April, 2021, for despatch, the said notice will be construed as notice under Section 148A(b) and the directions of the Honorable Supreme Court in the matter of **Union of India v. Ashish Aggarwal**, [2022] 138 taxmann.com 64 (SC), would apply mutatis mutandis.*

13. *Accordingly, the present petition along with the pending applications is disposed of with the aforesaid directions.*

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

SEPTEMBER 27, 2022/msh/tb”

8. With the aforesaid directions, the judgment dated 27th September, 2022, stands modified and the Review Petition is disposed of.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

NOVEMBER 09, 2022
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