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Hindi



English



Short



[2017] 390 ITR 10 (SC)

[IN THE SUPREME COURT OF INDIA]

JEANS KNIT PRIVATE LTD.

v.

DEPUTY COMMISSIONER OF INCOME-TAX AND OTHERS

A. K. SIKRI and ABHAY MANOHAR SAPRE JJ.

December 8, 2016.

Playlist: 148, Writ

148: Issue of notice where income has escaped assessment

**WHETHER WRIT CAN BE DISMISSED ONLY ON THE GROUND OF
AVAILABILITY OF ALTERNATIVE REMEDY?**

1. The writ petitions were dismissed by the High Courts as not maintainable on the ground of availability of alternative remedy.
2. Writ petitions were filed by assessee to challenge the notices u/s 148 and the reasons recorded by the A.O.
3. S.C was of the view that the view taken by the High Courts were contrary to the law laid down by the SC in Calcutta Discount Co. Ltd. v. ITO (1961) 41 ITR 191 (SC)
4. SC stayed the proceeding u/s 148 till the disposal of writ petitions by the respective High Courts.
5. S.C said that court is conscious of the fact that High Courts has referred to the Judgment of this Court in CIT v. Chhabil Dass Agarwal [2013] 357 ITR 357.
6. SC said that the principal laid down in the case of CIT v Chhabil Dass Agarwal [2013] 357 ITR 357 does not apply to these cases.

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7. The SC in *Calcutta Discount Co. Ltd. v. ITO* [1961] 41 ITR 191 (SC) held that the existence of alternative remedy is not always sufficient reason for refusing a party quick relief by a writ or prohibiting an authority acting without Jurisdiction from continuing such action. The Supreme declared that the High Courts have power to issue a writ in a fit case, prohibiting an executive authority from acting without Jurisdiction as it would otherwise result in a person being subjected to lengthy proceedings and unnecessary litigation.

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2023 : HHC : 7137-DB

[2023] 458 ITR 54 (HP)

[IN THE HIMACHAL PRADESH HIGH COURT]

ASHOK KUMAR SHARMA

v.

PRINCIPAL COMMISSIONER OF INCOME-TAX AND OTHERS

M. S. RAMACHANDRA RAO C. J. and AJAY MOHAN GOEL J.

June 22, 2023.

Playlist: 127, 148, Writ

127: Power of transfer cases.

148: Issue of notice where income has escaped assessment

A.Y. 15-16 | Assessee

WHETHER NOTICE U/S 148 CAN BE ISSUED BY A.O. AFTER TRANSFER ORDER U/S 127(2)?

1. The order u/s 127(2) was passed to assess the assessee, from A.O. Shimla to A.O. New Delhi on 15/03/2022 which mentioned order will come into effect from 12.03.2022.
2. Therefore the jurisdiction of ITO at Shimla to make an assessment u/s 148 of the Act, qua the assessee, got extinguished .
3. Notice u/s 148A(b) was issued on 22.03.2022.
4. ITO Shimla got the information as to transfer of jurisdiction u/s 127 on 30.03.2022 i.e. after issue of notice u/s 148A(b).

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5. Department contended that PAN of assessee was still not transferred to A.O of Delhi and that notice can only be issued online by A.O. under whose jurisdiction the PAN lies.
6. The Department cannot take advantage of his own wrong and justify his action in issuing the impugned notice.
7. Assessee intimated about transfer of jurisdiction on 29/03/2022 on income-tax portal.
8. 148 notice issued on 01/04/2022.

9. Court allowed the writ by saying that plea of the respondent that according to section 127(4), the transfer of the case can be made at any stage of proceeding will also not work:

Case in favor of writ:

Calcutta Discount Co. Ltd. v. ITO [1961] 41 ITR 191 SC

Jeans Knit Pvt Ltd. v. Dy. CIT [2017] 390 ITR 10 SC.

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2023 : GUJHC : 17910-DB
[2023] 457 ITR 526 (Guj)

[IN THE GUJARAT HIGH
COURT]

**JAIN CHAIN AND
ANOTHER**

v.

INCOME-TAX OFFICER

N. V. ANJARIA and NIRAL R. MEHTA JJ.

March 31, 2023

Playlist: 148

148: Issue of notice where income has escaped assessment

A.Y: 2013-14/2014-15/Assessee

**FATE OF NOTICES U/S 148 FOR A.Y 2013-14 & A.Y 2014-15 ISSUED
BETWEEN 01.04.2021 TO 30.06.2021**

1. Effect of amendment by finance act, 2021.
2. First proviso to section 149(1).
3. Notices issued under old Act to be treated as show cause notice u/s 148A(b) of the Act as per S.C. in UOI V. Ashish Agarwal [2022] 444 ITR 1(SC)
4. TOLA extended time limits up to 30.06.2021.
5. SC held in Ashish Agarwal case that all defences which may be available u/s 149 and all rights and contentions which may be available to the concerned assessee and revenue under the financial Act,2021 and in law shall continue to be available.

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6. Crux of Proviso to section 149(1) is that notice u/s 148 can be issued on or after 01.04.2021 only if the limitation for issuing such notice under old regime of re-opening has not expired prior to Finance Act, 2021.
7. Gujrat High Court held all notice u/s 148 for A.Y 13-14 & 14-15 issued between 01.04.2021 to 30.06.2021 time barred.
8. Gujrat High Court in its own judgement i.e. Keenara Industries Pvt. Ltd. V. ITO [2023] 453 ITR 51 dated 07/02/2023 held that the provisions in TOLA was not permissible device whereby the time limit could be legitimately extended for the purpose of issuing notices u/s 148 which were otherwise barred in terms of section 149 as its exists in old Regime.
9. Gujrat High Court followed:
Rajeev Bansal V. Union Of India [2023] 453 ITR 153 dated 22/02/2023.
10. The above judgments are practically overruled by Supreme Court in the case Salil Gulati v. Assistant Commissioner of Income Tax & Others (2023) 455 ITR 29 dated 11/04/2023. It was for A.Y. 2013-14 and for Rs.50 Lakhs and above.

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[2023] 457 ITR 791 (Guj)

[IN THE GUJARAT HIGH COURT]

VIJAY RAMANLAL SANGHVI

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

N. V. ANJARIA and BHARGAV D. KARIA JJ.

December 16, 2022

Playlist: 148, writ

A.Y: 2011-12/Assessee

Section 148: Issue of notice where income has escaped assessment

WHETHER A.O CAN ISSUE NOTICE U/S 148 JUST ON THE BASIS OF INFORMATION RECEIVED FROM VARIOUS SOURCES:?

1. Notice for A.Y 2011-12 was issued on 27-03-2018.
2. In this case a return on income was filed for the year under consideration but no scrutiny assessment u/s 143(3) was done.
3. A.O. issued notice u/s 148 on the basis of information received from CC – 2(2), Mumbai, that three entries of 70 lakh each totalling to Rs. 2.1 crore received on 02.02.2011 by the assessee was alleged unaccounted money routed through accommodation entries in the bank account.
4. The returned income of assessee of Rs 19.03 lakh only which consists of Rs 12 lakh salary income, Rs 7.66 lakh from other sources which included bank interest also.
5. The A.O. alleged that the returned income of the assessee did not commensurate with the said transaction and therefore there was

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escapement on income and further alleged that assessee did not mention bank A/C details in the return on income.

6. Assessee pleaded that assessee having received funds from a particular person cannot be a ground to have reason to belief that the same represents the income of assessee.
7. It is submitted that each and every receipt need not be income of assessee.
8. It was submitted that the A.O. has not pointed out how much funds can be said to be income of the assessee and unless it is stated that the underlying transaction has resulted into income which has escaped assessment, the reassessment proceedings cannot be initiated.
9. The allegation of A.O. is not correct in holding that bank A/C details are not mentioned in return of income.
10. Assessee pleaded that the assessee repaid the fund within a period of 2 months and had it been the case the assessee has availed accommodation entries, the assessee would not have repaid the same.
11. It was submitted that a person may receive funds temporarily from any person and repay it later and therefore, whatever may be the magnitude of such transaction, the Act does not provide that receipt of funds should be commensurate with the income.
12. Court held that under the guise of re-opening the assessment, the A.O. wants to have a roving enquiry.
13. Since notice u/s 148 was issued beyond a period of 4 years, the two conditions to issue notice are
 - (i) Assessee has not filed return of income
 - (ii) There is failure on the part of assessee to disclose fully and truly all material facts necessary for that A.Y.
14. It was submitted that A.O. himself must be satisfied that some income chargeable to tax has escaped assessment and such satisfaction must be of A.O. himself.
15. The A.O. has simply relied on information and has not applied his mind independently so as to reach a conclusion that income has escaped assessment.
16. Assessee pleaded that assessment has been re-opened merely based on borrowed satisfaction as against statutory requirement of independence satisfaction.

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17. Court held that in the absence of any satisfaction recorded by A.O. by merely relying on information from DCIT 2(2), the notice u/s 148 is not as per mandate of law.

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[2023] 108 ITR(Trib) 351 (ITAT MUM) B BENCH

DEPUTY COMMISSIONER OF INCOME-TAX

V.

BHAWNA COMPUTERS P. LTD.

PRASHANT MAHARISHI (ACCOUNTANT MEMBER)

AND RAHUL CHOUDHARY (JUDICIAL MEMBER)

14.09.2023

Playlist: 153C, 148, 170

153C: Assessment of income of any other person

148: Issue of notice where income has escaped assessment

170: Succession to business otherwise than on death

A.Y: 2009-10/Assessee

**WHETHER ASSESSMENT IN THE NAME OF COMPANY IS VALID
AFTER CONVERSION INTO LLP ?**

1. Company converted into LLP in 2015-16 P.Y.
2. No incriminating material found in search of another person, section 153C not applicable.
3. Assessing Officer in possession of tangible material can assume jurisdiction u/s 147.
4. Assessment of predecessor permissible in hands of successor only up to the date of succession and year earlier which were in the assessee's case the assessment year 2016-17 and A.Y 2015-16.

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5. Hence, A.O. lack jurisdiction to re-open the case of the predecessor company for A.Y 2009-10.
6. That on conversion into a limited liability partnership the erstwhile company was deemed to be dissolved and removed from the records of ROC, that too from the date of registration itself.

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[2023]: BHC – OS: 5656 – DB

[2023] 457 ITR 41 (Bombay)

KAI BALKRISHNA R. GAWADE MANDAI VYAPARI

PREMISES SAHAKARI SANSTHA MARYADIT

V.

INCOME-TAX OFFICER AND OTHERS

27.06.2023

Playlist: 148, PAN

148: Issue of notice where income has escaped assessment

A.Y: 2019-20/Assessee

WHETHER NOTICE U/S 148 CAN BE ISSUED IN OLD PAN WHEN ASSESSEE HAS INTIMATED ITS SURRENDER?

1. The assessee applied for new PAN by mistake in status of trust
2. Assessee applied for new PAN in status of AOP & surrendered old PAN in name of trust.
3. Assessee intimated fact to assessing authority
4. Notice u/s 148A(b) issued to assessee in old PAN.
5. Assessee intimated to A.O about cancellation of old PAN and returns filed under new PAN.
6. A.O. did not examine and verified the contentions of the assessee and issued notice u/s 148 & order u/s 148A(d).
7. On writ High Court held that order u/s 148A(d) and notice u/s 148 were not valid
8. Obiter: The income tax authorities ought to prominently display the steps for cancellation of PAN on their website apart from sending a link for cancellation in the covering letter when a PAN is provided to assessee.

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[2023] 456 ITR 374 (Bom)

[IN THE BOMBAY HIGH COURT]

SHAILESH SHAH

(Legal heir of late Shri Ramniklal Harilal Shah)

v.

INCOME-TAX OFFICER AND OTHERS

DHIRAJ SINGH THAKUR and VALMIKI SA MENEZES JJ.

September 23, 2022.

Playlist: 148, Dead Person

A.Y. 2014-15 | Petitioner

WHETHER NOTICE U/S 148 IN NAME OF DEAD PERSON IS VALID EVEN IF INFORMED AFTER ISSUE OF NOTICE?

1. A.O. issued notice u/s 148 for A.Y. 2014-15 dated 30.03.2021
2. The legal heir of assessee received the notice.
3. Legal heir informed A.O. that death of assessee happened on 03.02.2016 & hence notice is not valid in name of dead person.
4. A.O. rejected the objections of legal heir by saying that Department was not informed about death of assessee before or at the time of issue of notice.
5. Hence A.O. proceeded with assessment and passed an order of assessment dated 31.03.2022 against the deceased assessee.
6. Bombay High Court held that the assessment order dated 31.03.2022 was unsustainable as the entire reassessment proceedings u/s 147 were initiated against a dead person which made the order invalid and non-est.
7. The order of assessment and the notice of demand u/s 156 were set aside.

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[2023] 107 ITR (Trib) 241 ITAT (Jodh) – Bench

Kuldeep Kumar

V.

Income Tax Officer

Pavan Kumar Gadale (Judicial Member)

And Dipak P. Ripote (Accountant Member)

10th August 2023

Playlist: Affidavit , 148

A.Y: 2010-11/Assessee

WHETHER DEPARTMENT CAN REJECT AFFIDAVIT WITHOUT PROVING THE CONTENT OF AFFIDAVIT NOT TRUE ?

1. Assessee deposited Rs. 5,00,000/- in bank account.
2. Assessee explained source of deposits was gifts received from grandmother.
3. Assessee filing affidavit of grand mother
4. Source of cash deposits explained and onus shifted on department.
5. Department did not bring on record any evidence to establish facts mentioned in affidavits were not true.
6. CIT (A) confirmed the additions.
7. ITAT deleted the addition.

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[2023] 456 ITR 84 (Del)

[IN THE DELHI HIGH COURT]

PRINCIPAL COMMISSIONER OF INCOME-TAX

v.

PRABHU DAYAL AGGARWAL

RAJIV SHAKDHER and MS. TARA VITASTA GANJU JJ.

December 9, 2022.

Section 148

Assessment Year: 2009-10

Favouring: Assessee

148: Issue of notice where income has escaped assessment

WHETHER IS IT NECESSARY TO MENTION IN NOTICE AND ORDER U/S148 THAT EARLIER ASSESSMENT WAS U/S 143(3)

1. Assessee's original assessment was completed u/s 143(3) for A.Y. 2009-10
2. Reopening was done beyond 4 years u/s 148 on the basis of statement of assessee's share broker
3. So, the proviso to section 147 is applicable
4. No mention in the notice u/s 148 that original assessment was completed
5. in section 143(3) & there was failure to disclose material facts necessary for assessment
6. There was also no mention in order u/s 147 that original assessment was completed u/s 143(3)
7. Opportunity was also not given to cross examine the person on the basis of whose statement notice u/s 148 was issued
8. ITAT set aside the assessment order which was upheld by High Court
9. Cases referred to :

CIT v. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC) (para 19)

CIT v. Suren International Pvt. Ltd. [2013] 357 ITR 24 (Delhi) (para 19)

Wel Intertrade Pvt. Ltd. v. ITO [2009] 308 ITR 22 (Delhi) (para 19)

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[2023] 457 ITR 644 (BOM)

Equitable Financial Consultancy Services Pvt. Ltd

V.

Income Tax Officer and others

K.R. Shriram and N.R Borkar JJ

April 27,2022

Playlist : 148, 151 , writ

148: Issue of notice where income has escaped assessment

151: Sanction for Issue of notice

A.Y :2015-16 / Assessee

Whether TOLA extending time limit to issue notice u/s 148 would amend section 151 provision also?

1. Notice for A.Y 2015-16 was issued vide notice dated 31.03.21
2. Notice was issued with the approval of Additional Commissioner.
3. The approval ought to have been given by the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner.
4. Six years limitation for the A.Y 2015-16 was expiring on 31.03.2022
5. Extension of time limit under provisions of Taxation and Other Laws (relaxation of certain provisions) Act,2020 applicable to cases limitation expiring on 31-3-2020
6. Even if, the time to issue notice was considered to have been extended, that would not amount to amending the provisions of section 151 of the Act.

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[2023] 455 ITR 539 (Jhar)

[IN THE JHARKHAND HIGH
COURT]

NAVEEN KUMAR JAISWAL

v.

INCOME-TAX DEPARTMENT AND OTHERS

(through its National Faceless Assessment Centre)

APARESH KUMAR SINGH and DEEPAK ROSHAN JJ.

March 22, 2022.

Play list. 148

Assessment Year: 2017-18

Favouring: Assessee

148: Issue of Notice where income has escaped assessment

Whether notice u/s 148 is valid if reasons recorded as purchase of property instead of sale ?

1. Reassessment u/s 147 is to be adjudicated on the basis of reason to believe disclosed to the assessee
2. There reasons cannot supplemented by the Department as the reasons have to speak for themselves
3. The reasons are required to be read as they were recorded by the A.O

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4. No substitutions or deletions is permissible & no additions can be made to those reasons
5. No inference can be allowed to be drawn based on reasons not recorded
6. The reasons recorded by A.O. should be clear & unambiguous and not vague
7. The reasons recorded cannot be supplement by filing affidavit or making oral submissions
8. A.O issued notice to assessee u/s 148 for non-disclosure of purchase of property
9. Assessee filed objections which were rejected so writ was filed
10. Writ was allowed on the pretext that assessee has not purchased the property but have sold the property along with co-share in ancestral property
11. The Department had admitted in counter affidavit that due to typographical error or over sight the sale of land has been typed as purchase of land
12. The court had that this was not permissible in the eyes of the law & hence notice issued u/s 148 is unsustainable with liberty to re-open if time permits

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[2023] 455 ITR 399 (Bom)

[IN THE BOMBAY HIGH
COURT]

LOK DEVELOPERS

v.

DEPUTY COMMISSIONER OF INCOME-TAX AND OTHERS

(and connected petitions)

DHIRAJ SINGH THAKUR and KAMAL R. KHATA JJ.

February 15, 2023.

Play list. 282, 282A, rule 127, rule 127A

Assessment Year: 2015-16 to 2017-18

Favouring: Assessee

Whether notice sent to secondary email is valid if not sent to primary e-mail u/s 148?

282: Service of notice generally

282A: Authentication of notices and other documents

Notice u/s 148 should be in accordance with sections 282,282A, read with rules 127 & 127A of the income tax rules, 1962 read with notification issued by CBDT

Rule 127(2)(a) says that service of notice, summons, requisition, order and other communication should be sent in the following hierarchy

- (i) E-mail address available in the income-tax return, furnished by the assessee to which the communication relates; or
- (ii) The email address available in the last income-tax return furnished by the addressee; or

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- (iii) In the case of address being a company, email address of the company as available on the website of MCA; or
- (iv) Any email address made available by the addressee to the income tax authority or any person authorised by such income-tax authority
- (v) In case of non-delivery of email on the primary e-mail address, the notices shall be sent to other e-mail address of the assessee available with the Department as mention in rule 127(2)

The petitioner contended that notice was issued on the secondary e-mail id as per Pan Card and not on registered primary e-mail id.

The petitioner contended that the Department ought not to have issued notice u/s 148 on the email id mentioned in ROI of A.Y 13-14 but on the last return of Income filed by the petitioner

A.O. passed order u/s 147 read with section 144 for best Judgement assessment since assessee did not participated in assessment proceedings

The assessee filed writ and court quashed the notice & assessment by giving liberty to issue fresh notice if law permits

The court held that A.O clearly erred in issuing a notice on the secondary email address when there was a primary email address given by the petitioner

It is a common knowledge that a secondary email address has to be used as an alternative or in such circumstances when the authority is unable to effect service of any communication on the primary address

The A.O. should have sent the notice on both primary and secondary e-mail id to pre-empt a Jurisdictional error on account of valid notice

Court held that there was neither any cost to it or any prejudice to any party for sending it on more than one e-mail in a given circumstance as in the present case

Court held that we see no wrong with the petitioner's refusal to participate in a proceeding vitiated by valid service of notice

The court held that the court in the case of Mrs Chitra Supekar v. ITO [2023] 453 ITR 530 has held that it was imperative for the A.O. to have checked if there was a change of address before initiating a proceeding and that a valid service of notice u/s 148 is a condition precedent lest it would be a Jurisdictional error

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[2022] 442 ITR 376 (Mad)

[IN THE MADRAS HIGH COURT(VIDEO
CONFERENCEING)]

R. PANNERSELVAM

v.

**PRINCIPAL COMMISSIONER OF INCOME-TAX
AND ANOTHER**

C. SARAVANAN J. November 23, 2021.

Play List: Section(s) 148

**WHETHER FAILURE TO ISSUE NOTICE U/S148 CAN BE TO
PREJUDICE OF ASSESSEE ESPECIALLY WHEN REFUND IS DUE**

Assessment Year: 2011-12

Favouring: Matter remanded/remitted

1. Failure to file returns within time , notice of reassessment must be issued
2. Procedure laid down in Income Tax Act must be followed by Income Tax Authorities.
3. Assessee, had failed to file returns in time.
4. Jurisdictional assessing officer ought to have issued notice under section 148

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[2023] 451 ITR 27 (Bom)

[IN THE BOMBAY HIGH COURT]

PRAKASH KRISHNAVATAR BHARDWAJ

v.

INCOME-TAX OFFICER AND OTHERS

DHIRAJ SINGH THAKUR and VALMIKI SA MENEZES JJ.

January 9, 2023.

Play list. 148, writ, Signature

Assessment Year: 2015-16

Favouring: Assessee, person

**WHETHER NOTICE ISSUED U/S 148 WITHOUT SIGNATURE
WHETHER DIGITALLY OR MANUALLY IS A VALID NOTICE?**

Order u/s 148A(d) was not received by assessee in mail & it was received by speed post on 06.04.2022

Notice received by assessee u/s 148 was not signed manually or digitally and received by speed post

Case in favour of assessee:

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1 CIT v. Aparna Agency (P) Ltd [2004] 267 ITR 50 Calcutta division bench:- the provisions of section 292B of the Act do not provide for a cure when the notice under the Act is invalid by virtue of it not having a signature affixed as is required under the relevant provisions

2 B.K. Gooyee v. CIT [1966] 62 ITR 109 (Calcutta High Court)

3 Madhya Pradesh High Court in Umashankar Mishra v. CIT [1982] 136 ITR 330

In above two cases it was held that a notice without signature is an invalid notice in the eyes of law and such an infirmity amounts to no notice at all

It was held that a notice without signature is such a irregularity which cannot be waived and the question of its validity can be taken at any stage of proceedings.

Section 292B was incorporated subsequent to the Judgement in B.K. Gooyee's case

The purpose of section 292B is to ensure that an inconsequential technicality does not defeat Justice

Department Relied on two Judgements:

1. Sky Light Hospitality LLP Asst. CIT [2018] 405 ITR 296 Delhi

In this case, the address of the assessee was partly correct

2. CIT v Anand & Co. (1994) 207 ITR 418 (Cal)

It was not the case, where there was no signature at all on the case, where there was no signature at all on the notice, but in view of the fact that the only challenge was to the doubtful authenticity of the Curved line purporting to be his signature

- A notice without signature is a notice with a body but without a soul
- A notice is therefore not a procedural requirement

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- A notice without a signature is invalid notice and consequently equivalent to no notice
- Section 282 of the Act provides that a notice under the Act may be served on the person named there in as if it were a summons issued by a court under the code of civil procedure, 1908
- Sub- rule (3) of rule 1 of order 5, code of civil procedure provides that every summons shall be signed by the Judge or such officer, as he appoints

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Hindi



English



Short



[2018] 405 ITR 296 (Del)

[IN THE DELHI HIGH COURT]

SKY LIGHT HOSPITALITY LLP

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

SANJIV KHANNA and CHANDER SHEKHAR JJ.

February 2, 2018.

Play list 148, 292B

Assessment Year: 2010-11

Favouring: Department/Department of State/Union Government, and/or the State/ Union/ Financial Corporations/Institutions of State/Union

Whether mistake in name of assessee will render notice invalid?

1. Absolute certainty is not required at the time of issue of notice and at the same time reasons to believe must not be based on mere suspicion, gossip or rumor (Notice was issued on the basis of tax evasion report and specific details were available with department)
2. Human error and mistakes cannot and should not nullify proceedings which are otherwise valid and no prejudice has been caused. This is the effect and mandate of section 292B of the Act
3. SHPL was converted into SHLP (Company was converted into LLP)
4. Notice was issued in the name SHPL Company with PAN of Company There was substantial and affirmative material and evidence on record to show that issue of notice in the name of SHPL was a mistake

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5. Notice was meant for the assessee and no one else
6. Appellant received the notice
7. Appellant objected to the notice being issued in the name of company which had ceased to exist
8. The letter submitted by assessee indicated that it had understood and was aware that notice was for it.
9. The fact that notice was addressed to SHPL, a company which had been dissolved, was an error and technical lapse on the part of the respondent
10. Conversion of Pvt Ltd into LLP was noticed in tax evasion report, the reasons to belief recorded, approval obtained from principal commissioner & order u/s 127 Pan No. of LLP was also mentioned in some documents

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Hindi



English



Short



[1994] 207 ITR 418 (Cal)

[IN THE CALCUTTA HIGH COURT]

COMMISSIONER OF INCOME-TAX

v.

ANAND AND CO.

AJIT K. SENGUPTA and SHYAMAL KUMAR SEN *JJ.*

September 21, 1992.

Play list 292B, 254, 148

Assessment Year: 1979-80

Favouring: Department/Department of State/Union Government, and/or the State/ Union/ Financial Corporations/Institutions of State/Union.

Whether notice u/s 148 can be held invalid simply because signature is in the form of curved line?

Assessee was in Appeal before CIT(A) against order u/s 147 on two grounds

- (i) Notice issued u/s 148 & consequent reassessment was mere a change of opinion
- (ii) Notice u/s 148 was invalid as it did not contain distinct signature of ITO and it is only curved line

CIT (A) gave the relief on 1st ground without adjudicating second issue

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Department filed Appeal in ITAT on 1st issue & assessee did not file any cross objections

ITAT decided appeal in favour assessee

Assessee filed MA in ITAT on second issue

ITAT held second issue also in favour of assessee

Department filed appeal in high court against MA

High court held that Tribunal not justified in entertaining MA as this was not the subject matter of appeal before tribunal

What was the utmost importance was whether the person issuing the notice was identified because assessee filed the return in response to notice

It might have been that ITO by the curved line drawn in the notice only set out his initials which was also there on order sheet also.

Court held that the officer might have left a defect but such defect should not be fatal

Revenue cited the case of Sethani Chhoti Debi v. Union of India [1964] 51 ITR 473, where the court permitted a signature to be rubber stamped, such stamp of signature being considered sufficient

The Judiciary in this country has never gone on technical triviality

There must be some reasonable amount of elasticity in the sphere of procedure involving the collection of the revenue and securing due relief to tax payers

In our view, the Revenue authorities, even if not genial and concession-oriented, must act uninfluenced by procedural technicalities in guarding the Public exchequer as well as the taxpayer against undue jeopardy by inflexible interpretation of the procedural laws except where the law puts absolute fetters without leaving any scope for relaxation

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Hindi



English



Short



[2023] 451 ITR 117 (Mad)

[IN THE MADRAS HIGH COURT]

AMEC FOSTER WHEELER IBERIA SLU - INDIA PROJECT OFFICE

v.

**DEPUTY COMMISSIONER OF INCOME-TAX
(INTERNATIONAL TAXATION) AND ANOTHER**

DR. MS. ANITA SUMANTH J.

November 16, 2022.

Play list 143(2), 148

Section 143: Assessment

Section 148: Issue of notice when income has escaped assessment

Assessment Year: 2016-17

Favouring: Assessee, person

**WHETHER TIME LIMIT TO ISSUE NOTICE U/S 143(2) WOULD
APPLY IN CASE OF ASSESSMENT U/S 148?**

1. The proviso to section 143(2) of the Act, fixes a timeline of 6 months from the end of the financial year in which return was furnished for the issue of notice u/s 143(2)
2. Procedure for re-assessment is same as that for regular assessment
3. The consequence of a notice issued beyond six months and one not issued at all, even beyond six months, is one and the same
4. Notice u/s 148 issued on 12.12.2019

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5. Return u/s 148 filed on 07.01.2020
6. Reasons sought on 08.01.2020
7. Reasons supplied 10.01.2020
8. Assessee filed objections on 04.03.2020
9. Objections disposed off on 23.07.2021 (after a period of 1 year & 4 months)
10. Reference to transfer pricing officer on 24.11.2020

11. There was nothing that prevented the A.O to have called for objections, assigning a time limit to the assessee to file them, and dispose of the objections expeditiously
12. Notice u/s 148 dated 12.12 .2019, reference to TPO on 24.11.2020 & order disposing objections on 23.07.2021 stood vitiated by non-issue of notice u/s 143(2) of the Act
13. In the present case notice u/s 143(2) to be issued upto 30.09.2020 since return was filed u/s 148 on 07.01.2020. TOLA extended the time limit upto 31.03.2021 but notice was not issued u/s 143(2) till the date of filing the writ petition i.e. 22.09.2021
14. The Jurisdiction by an officer commences with, & is triggered by the issuance of a notice u/s 143(2) & failure to do so would compromise the proceedings fatally
15. The provision of section 148 also uses the expression so far as may be apply accordingly as if such return were a return required to be furnished u/s 139
16. Alpine electronics Asia Pvt Ltd 260 ITR 341 Delhi high court held that in respect of returns filed pursuant to notice u/s 148 after 01.10.2005, it is mandatory to serve notice u/s 143(2), with in the stipulated time
17. Revenue carried the same issued in SLP against the high court decision in Indus towers v Dy. CIT [2017] 82 taxmann.com 430 (Delhi), which was dismissed by order dated 21.01.2019 in Diary no 34285 of 2018
18. CBDT instruction no. 3 of 2003 reinforces the position that officer assumes Jurisdiction u/s 120 by issuance of Notice u/s 143(2)