

# TAX FLASH NEWS

23 March 2022

## Reassessment notice issued by an e-mail after the expiration of the limitation period is time-barred

### Executive summary

Recently, the Allahabad High Court in the case of *Daujee Abhushan Bhandar Pvt. Ltd*<sup>1</sup> (the taxpayer) dealt with the validity of reassessment notice which was digitally signed by the Assessing Officer (AO) on the last day of the limitation period but issued to the taxpayer after the expiration of such limitation period. The High Court held that mere digitally signing the notice is not the issuance of notice. Since reassessment notice under Section 148 of the Income-tax Act, 1961 (the Act)<sup>2</sup> was issued to the taxpayer by e-mail after the expiration of the limitation period, such notice was time-barred. Accordingly, the High Court quashed the reassessment notice issued by the AO.

### Facts of the case

The taxpayer filed a tax return for the Assessment Year (AY) 2013-14 on 29 September 2013. The AO completed the assessment of the taxpayer. Subsequently, the AO initiated reassessment proceedings under Section 148. Consequently, a reassessment notice was digitally signed by the AO on 31 March 2021, and it was sent to the taxpayer through an e-mail. However, the e-mail was received by the taxpayer on his registered e-mail ID on 6 April 2021. The limitation for issuing reassessment notice under Section 148 read with Section 149 was upto 31 March 2021 for the AY 2013-14.

The taxpayer filed objections before the AO contending that the notice was time-barred and thus without jurisdiction; it was issued on 6 April 2021, whereas the limitation for issuing notice under Section 148 read with Section 149 expired on 31 March 2021. The objection filed by the taxpayer was rejected by the AO holding that since the notice was digitally signed on 31 March 2021, it shall be deemed to have been issued within time i.e., on 31 March 2021.

Aggrieved, the taxpayer filed a writ petition demanding to quash the reassessment notice and the connected proceedings.

### High Court decision

Section 149(1) starts with a prohibitory word that no notice under Section 148 shall be issued for the relevant AY after the expiry of the specified period. The High Court observed that the notice must be issued by the AO within the period of limitation as provided in Section 149. Further, Section 282A(1) 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, the signing of notice and issuance or the communication thereof have been recognised as different acts.

As per Rule 127A(1) of the Income-tax Rules, 1962 (the Rules), the issuance of notice and other documents would take place when an e-mail is issued from the designated e-mail address of the concerned income tax authority.

Section 13(1) of the Information Technology Act, 2000 (the IT Act) provides that dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

<sup>1</sup> *Daujee Abhushan Bhandar Pvt. Ltd v. UOI* (Writ Tax No. 78 of 2022) – Taxsutra.com

<sup>2</sup> The Finance Act, 2021 introduced a new regime for reassessment (Section 148A) for cases of income escaping assessment. Under the new regime, the time limit for re-opening of an assessment has been reduced from 4/6 years to 3 years from the end of the relevant assessment year. In specific cases where income escaping assessment (represented in the form of an asset) is exceeding / likely to exceed Rs. 50 lakhs or more, time-limit of 3 years has been enhanced to 10 years

The words 'issue' or 'issuance of notice' have not been defined under the Act. However, the point of time of issuance of notice may be gathered from the relevant provisions of the Act, the Rules and the IT Act, as discussed above. Similar would be the position if the meaning of the word 'issue' may be gathered in common parlance or as per dictionary meaning.

In Chamber's Twentieth Century Dictionary, the relevant meanings given to the word 'issue' are act of sending out; to put forth; to put into circulation; to publish; to give out for use. In the New Illustrated Dictionary, the relevant meaning attributed to the word 'issue' is come out; be published; send forth; publish; put into circulation.

The Supreme Court in the case of H.C. Khurana<sup>3</sup> held that the meaning of the word 'issued', has to be gathered from the context in which it is used. In the case of CH. Gandhi<sup>4</sup>, the Supreme Court explained the meaning of word 'issue' in the context of a service matter and reiterated its earlier judgment in the case of H.C. Khurana.

Thus, considering the provisions of Section 282 and 282A of the Act and the provisions of Section 13 of the IT Act and meaning of the word 'issue', it was observed that firstly notice is to be signed by the assessing authority and then it has to be issued either in paper form or to be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by modes provided in Section 282 which includes transmitting in the form of an electronic record.

Thus, the point of time when a digitally signed notice in the form of electronic record is entered in computer resources outside the control of the originator, that shall be the date and time of issuance of reassessment notice under Section 148 read with Section 149.

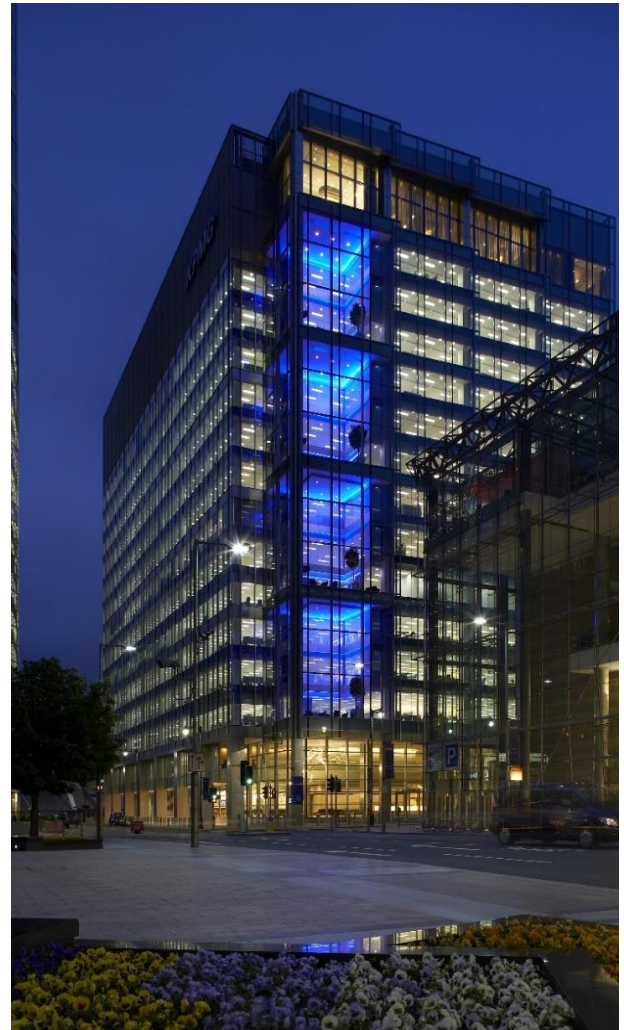
Mere digitally signing the notice is not the issuance of notice. In the instant case, the reassessment notice under Section 148 was issued to the taxpayer after the expiration of the limitation period through an e-mail, therefore, such notice was time-barred. Consequently, the impugned notice was quashed.

## Our comments

In many cases where taxpayers have been receiving reassessment notice by an e-mail after the end of the limitation period, the tax department has been arguing that the notice is valid.

One such case reached the Allahabad High Court and while quashing the reassessment notice under Section 148 the Court has observed that mere digitally signing the notice before the limitation period does not amount to 'issuance of notice'. The notice under Section 148 should be issued to the taxpayer before the expiration of the limitation period.

The High Court's decision provides clarity on this issue and it will help such taxpayers.



<sup>3</sup> Delhi Development Authority v. H.C. Khurana (1993) 3 SCC 3  
<sup>4</sup> Andhra Pradesh and others v. CH. Gandhi (2013) 5 SCC 111

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