

TAX FLASH NEWS

20 April 2022

The reassessment notice e-mailed on the last date is valid since it has gone out of the tax authority's control

Executive summary

Recently, the Madras High Court, in the case of Malavika Enterprises¹ (the taxpayer) observed that the reassessment notice issued under Section 148 of the Income-tax Act, 1961 (the Act)² was valid since it was e-mailed and digitally signed by the tax authority on 31 March 2021 i.e. the last day of the limitation period. If the notice is digitally signed and entered by the income tax authority in a computer resource outside its control, then that point of time would be the time of issuance of the notice.

The taxpayer could not show any evidence on record that notice under Section 148 was not issued by e-mail on 31 March 2021 and, that too, when the fact regarding the digital signature of the authority could not be disputed. In fact, the digital signature of the authority was also on 31 March 2021. Therefore, the High Court did not find any merit in the argument that the notice under Section 148 was issued on or after 1 April 2021. The requirement of provisions of Section 148 is of issuance of notice and not of the receipt of the notice.

The High Court distinguished the decision of the Allahabad High Court in the case of Daujee Abhushan Bhandar Pvt Ltd³ as the High Court, in that case, had concluded based on the date of receipt and without discussion as to when it enters a computer resource outside the control of the tax department.

Facts of the case

For assessment year (AY) 2013-2014, a reassessment notice under Section 148 was issued on 31 March 2021, i.e., on the last day of the limitation period, followed by consequential notices. The taxpayer contended that the notice was issued via e-mail at 6.42 pm on 31 March 2021, but was served on 1 April 2021 at 2 am and, therefore, the unamended provision of Section 148 would not be applicable. The taxpayer relied on the decision of the Allahabad High Court in the case of Daujee Abhushan Bhandar Pvt Ltd and contended that the notice was not valid.

High Court decision

Section 282(1) 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 was brought which provides that notice or document shall be signed and issued in paper form or communicated in electronic form.

Further, Rule 127A 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. Further, the name and the office of such income-tax authority should be printed on the e-mail if the notice or other document is sent via e-mail.

In the facts of the present case, it was not in dispute that the notice under Section 148 was an electronically generated notice issued on 31 March 2021. The taxpayer raised an issue about the receipt of notice on the day subsequent to 31 March 2021 without

¹ Malavika Enterprises v. CBDT (W.P.Nos.27997, 27998, 27999 and 28000 of 2021) – Taxsutra.com

² 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

³ Daujee Abhushan Bhandar Pvt Ltd v. Union of India and others [Writ Tax No.78 of 2022, Judgment dated 10 March 2022]

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 was more so when Rule 127A(1) provides that every notice communicated in electronic form by an income tax authority is deemed to be authenticated.

A perusal of the notice dated 31 March 2021 indicates that it was sent through e-mail and as per Rule 127A(1), it is deemed to be authenticated if the name and office of the income tax authority is printed on the e-mail body or is printed on the attachment to the e-mail. The notice in the present case indicated the name and office of the income tax authority printed on the attachment to the e-mail. The taxpayer could not show any evidence on record that notice under Section 148 was not issued by the electronic mode, i.e., by e-mail, on 31 March 2021 and, that too, when the fact regarding the digital signature of the authority could not be disputed. In fact, the digital signature of the authority was also on 31 March 2021 and therefore, the Court did not find that it was a case where notice under Section 148 was issued on or after 1 April 2021, rather it was issued prior to such date.

The Allahabad High Court, in the case of Daujee Abhushan Bhandar Pvt Ltd, held that dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator. Therefore, if the notice is digitally signed by the income tax authority and entered in computer resource outside the control, then that point of time would be the time of issuance of the notice. The Allahabad High Court further examined the definition of the words 'issue' and 'issuance of notice', which have not been defined under the Act. The dictionary meaning of both the words was thereafter taken and after considering different judgments, the Court finally came to the conclusion that mere digitally signing the notice is not issuance of notice. The impugned notice under Section 148, in that case was received on 6 April 2021 and, therefore, it was treated as time-barred.

The Madras High Court observed that in that case the notice under Section 148 was digitally signed by the tax authority on 31 March 2021 and was sent to the taxpayer through e-mail, but e-mail was received by the taxpayer on 6 April 2021 and thereby taking the date of receipt to be relevant, the decision was rendered favourable to the taxpayer. The Allahabad High Court referred to the date of issuance and not of receipt, but after discussion of all the provisions, conclusions were drawn referring to the date of receipt, without discussion as to when it enters a computer resource outside the control of the originator.

Thus, the Allahabad High Court's decision in the case of Daujee Abhushan Bhandar Pvt Ltd cannot be applied. The Court cannot change the language of the provision by changing the word 'issuance' to that of 'receipt'. Finding that the notice in question was issued on 31 March 2021, the Court did not find a case in favour of the taxpayers and, accordingly, writ petitions were dismissed.

Our comments

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

The Allahabad High Court in the case of Daujee Abhushan Bhandar Pvt. Ltd.⁴ held that mere digitally signing the notice is not the issuance of notice. Since reassessment notice under Section 148 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.

However, the Madras High Court in the present case has distinguished the decision of the Allahabad High Court and observed that if a notice is digitally signed by the income tax authority and it is entered by the income tax authority in a computer resource outside the control, then that point of time would be the time of issuance of the notice. Since the notice was issued on 31 March 2021, the High Court did not find a case in favour of the taxpayers. The notice issued was valid.

⁴ Daujee Abhushan Bhandar Pvt. Ltd v. UOI (Writ Tax No. 78 of 2022)

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