



Tax alert: Reassessment notice dispatched on last day but delivered the following day, not time barred

27 March 2024

The Madras High Court has rendered its decision that once a reassessment notice is signed and delivered for being dispatched whether through post or through e-mail, it is deemed to have been issued for the purpose of section 149 of the Income-tax Act, 1961 (ITA). Communication and delivery of such communication can be on a date after it is issued.

In a nutshell



The expression used in section 149 of the ITA is 'issued'. Issuance of notice under section 148 of the ITA is therefore, deemed to be complete once notice is ready for being delivered or being dispatched.



It is not the actual communication of the notice that is relevant; it is issuance of the notice. Notice can be issued on the last date. All that is required is that it should be dispatched.



Scroll down to read the detailed alert

Background:

- The taxpayer¹, an individual, had sold an ancestral property during 2014.
- In the return of income for the Financial Year (FY) 2013-14, corresponding to Assessment Year (AY) 2014-15, the taxpayer had not declared income from sale of the property on the grounds that it was an income from sale of an agricultural property and therefore, agricultural income. Hence, the said income was not liable to capital gains tax.
- The Assessing Officer (AO) issued reassessment notice dated 31 March 2021 (Reassessment Notice) to the taxpayer under section 148 of the Income-tax Act, 1961 (ITA) [relating to issue of notice where income has escaped assessment], as it stood prior to the substitution with new set of provisions with effect from (w.e.f.) 1 April 2021. The said notice was issued on the grounds that the taxpayer had not declared income from the sale of the said property in the return filed for the AY 2014-15.
- Aggrieved by the notice, the taxpayer filed a writ petition before the Madras High Court (HC).

The key contentions of the taxpayer were as follows:

- The Reassessment Notice was digitally signed on 31 March 2021 and dispatched through e-mail and was received by the taxpayer only on the following day i.e. 1 April 2021 and therefore, was beyond the prescribed period of limitation under section 149 of the ITA as it stood till 31 March 2021.

The Reassessment Notice was physically delivered after 7 April 2021. Hence, it was time barred and reassessment at best could be only under the new provisions as in force w.e.f. 1 April 2021 in terms of earlier Supreme Court (SC) ruling².

- Despite the enforcement of FA 2021 w.e.f. 1 April 2021 which was inserted as a substitution to section 148 of the ITA, the Revenue had issued the Reassessment Notice under the old provisions of section 148 of the ITA and therefore, the Reassessment Notice was bad in law.

Decision of the HC:

The HC noted /observed the following:

- The last date for issuance of notice under section 148 of the ITA for AY 2014-15 to the taxpayer was on 31 March 2021 under the old regime prior to 1 April 2021.
- The amendment to the reassessment provisions of the ITA w.e.f. 1 April 2021 by FA 2021, was of no relevance to the facts of the case as the notice was digitally signed and issued on 31 March 2021. The changes brought to the ITA by FA 2021 w.e.f. 1 April 2021 were substantive in nature and therefore, could not be applied to proceedings that were validly initiated prior to coming into force of amendment, as admittedly the notice was digitally signed on 31 March 2021 and put in the system before the limitation expired.
- The expression used in section 149 of the ITA [relating to time limit for notice under section 148 of the ITA] is 'issued'. Issuance of notice under section 148 of the ITA was therefore, deemed to be complete once notice was ready for being delivered or being dispatched. The fact that the notice was digitally signed on 31 March 2021 made it clear that the notice was issued under the old provision. Reference was made to section 3 and section 4 of the Indian Contract Act, 1872 [relating to communication of proposals] in this regard.
- Further, section 282 of the ITA [relating to service of notice] and Rule 127A of the Income-tax Rules, 1962 [relating to authentication of notices and other documents] were also noted.

¹ Subramaniam Rohini vs ITO [2024] 158 taxmann.com 180 (Madras HC)

² Union of India and others v. Ashish Agarwal [2022] 138 taxmann.com 64/444 ITR 1 (SC)

Section 282 of the ITA:

“(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 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...

...(c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or...

...(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.”

Rule 127A of the Income-tax Rules, 1962:

“(1) Every notice or other document communicated in electronic form by an income-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 e-mail 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.”

- Once the notice was signed and delivered for being dispatched whether through post or through e-mail it was deemed to have been issued for the purpose of section 149 of the ITA. Communication and delivery of such communication can be on a date after it is issued.

It was not the actual communication of the notice that was relevant, it was issuance of the notice. Notice could be issued on the last date. All that was required was that it should be dispatched. Once the notice was dispatched either electronically or through post on the last date prescribed under section 149 of the ITA, the proceeding could not be questioned as time barred.

The earlier SC ruling³ which was in the context of delay under Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance Act, 2020 would not come to the rescue of the taxpayer.

- Therefore, it could not be said that either the Reassessment Notice issued to the taxpayer on 31 March 2021 was time barred or that the assessment had to be completed under the amended provisions of the ITA w.e.f. 1 April 2021.

In view of the above, the HC dismissed the writ petition.

³ Union of India and others v. Ashish Agarwal [2022] 138 taxmann.com 64/444 ITR 1 (SC)

Comments:

This ruling, while holding that the once the Reassessment Notice is signed and delivered for being dispatched whether through post or through e-mail, it is deemed to have been issued for the purpose of section 149 of the ITA; ruling has held / upheld the following:

- The expression used in section 149 of the ITA is 'issued'. Issuance of notice under section 148 of the ITA is therefore, deemed to be complete once notice is ready for being delivered or being dispatched.
- It is not the actual communication of the notice that is relevant; it is issuance of the notice. Notice can be issued on the last date. All that is required is that it should be dispatched.
- Communication and delivery of such communication can be on a date after it is issued.

Taxpayers may want to evaluate the impact of this ruling to the specific facts of their cases.

Deloitte.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see <http://www.deloitte.com/about> to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which is a separate and independent legal entity, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Bengaluru, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Mumbai, New Delhi, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

This communication contains general information only, and none of DTTL, its global network of member firms or their related entities is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication.