IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3526 OF 2022

Shreenath Finstock Private Ltd. .. Petitioner

Versus

Union of India & Ors. .. Respondents

Adv. Sham V. Walve a/w Adv. Bhavik Chheda a/w Adv. Ruhi Konuri i/b India Law Alliance for the Petitioner.

Adv. Akhileshwar Sharma (thr. V.C) for the Respondents.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JULY 6, 2026

P. C.

1. Rule. Respondents waive service. With consent of parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition is filed challenging the Notice dated 31st March 2021 issued under Section 148 of the Income Tax Act, 1961 (for short "**IT Act**") and the consequent Assessment Order dated 30th March 2022 passed under Section 147, read with Section 144B, of the IT Act by Respondent No. 3. The dispute in the present Writ Petition relates to Assessment Year 2013-14. The short ground on which the aforesaid Notice

and the Assessment Order are challenged is that though the impugned Notice under Section 148 is dated 31st March 2021 and digitally signed on 31st March 2021, it was received by the Petitioner only on 1st April 2021 via e-mail dated 1st April 2021 at 5:51 a.m. If this be the case, then the re-assessment proceedings cannot continue under the unamended provisions of Section 148 of the I.T. Act and the same would have to comply with the provisions which were brought into effect by the Finance Act of 2021, which came into effect from 1st April 2021.

3. We have heard the learned counsel for both the parties and perused the papers and proceedings in the above Writ Petition. Mr. Walve, the learned counsel for the Petitioner, pointed out that the impugned Notice issued under Section 148 of the I. T. Act can be found at Page 55 of the Paper Book. He further pointed out that the impugned Notice was issued to the Petitioner via email, which can be found at Page 54. It is clear from the snapshot of the email that the Notice was received by the Petitioner only on 1st April 2021 at 5:51 a.m. He thus argues that the date of issuance of the Notice must be considered as 1st April 2021 and, consequently, the Department must comply with the procedure as introduced by the new provisions of the I.T. Act w.e.f. 1st April 2021. He submits that the ITBA Portal is entirely under the control of the Income Tax Department and any delay in

triggering the issuance of the Notice in the system would be attributable to the Department. Accordingly, he submits that the impugned Assessment Order and any consequential action thereof be set aside. To fortify this proposition, he relies on these two judgments of the High Courts:

a) Daujee Abhushan Bhandar (P.) Ltd. vs. Union of India [2022] 136 taxmann.com 246 (Allahabad) and

b) Suman Jeet Agarwal vs. Income-tax Officer [2022] 143 taxmann.com 11 (Delhi).

4. Mr. Sharma, the learned counsel for the Respondents, submits that it is an admitted position that the impugned Notice is dated 31st March 2021 and also digitally signed on 31st March 2021. The Assessing Officer had uploaded the Notice on the ITBA Portal also on 31st March 2021. The digital signature, whenever affixed, bears the real time and in the present case it bears the time of 31st March 2021 at 1:32 p.m. The ITBA system, immediately after the digital signature, in a way, ousts the Assessing Officer, who cannot make any change in the document or stop the outward transmission. Having done so, it was beyond the control of the Assessing Officer once the Notice was uploaded on the ITBA Portal and the Notice was dispatched through the

ITBA Portal and intimated to the Petitioner. He thus submitted that the Notice must be deemed to have been 'issued' the moment it left the hands of the Assessing Officer i.e. in this case, 31st March 2021 at 1:32 PM. He also submitted that the date of email should not be regarded as the date of issuance of Notice as sending an email is a measure adopted by the Assessing Officer merely out of abundant caution and the actual date of uploading the Notice on the ITBA Portal should be taken as the date to determine the date of issuance of Notice.

5. To narrow down the controversy and to seek clarification regarding the date on which the email dispatching the impugned Notice was triggered in the system of the Department, we had passed the following order (on 9th June 2025):

> *"1. In order to enable the Revenue to bring on record as to when was the e-mail dispatching the Section 148 Notice was triggered in the system of the Income Tax Department, we stand this matter over to 16th June 2025.*
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> *2. In the meanwhile, and without prejudice to the rights and contentions of the parties, the Income Tax Department shall not take any coercive action against the Petitioner pursuant to any notice issued under Section 148 and/or orders passed thereon or pursuant thereto.*
>
> *3. Stand over to 16th June 2025. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court.*

> *4. All concerned will act on production by fax or email of a digitally signed copy of this order."*

6. Thereafter, on the previous occasion when this matter was heard (on 16th June 2026), we requested Mr. Sharma to seek instructions in this regard and file an affidavit, if necessary. Pursuant to the same, Mr. Sharma, on written instructions from the Assessing Officer i.e. Deputy Commissioner of Income-tax 3(2)(1), Mumbai, who is Respondent No. 2, submits that as per the system delivery report, the 'Notice Sent' time stamp is reflected as 1st April 2021 at 05:51:42 a.m., while the 'Delivered' time stamp is reflected as 1st April 2021 at 05:51:47 a.m. Thus, there is no doubt that the email dispatching the impugned Notice itself was triggered on 1st April 2021 from the ITBA Portal and subsequently received by the Petitioner at 5:51 a.m. on 1st April 2021. In view of these circumstances and in the light of the judgments cited at the Bar, we observe that the impugned Notice would be deemed to have been issued on 1st April 2021.

7. In this context, we place reliance on the observations of the Hon'ble Delhi High Court in ***Suman Jeet Agarwal (supra)***, wherein the Hon'ble Court had carved out different categories of impugned Notices based on the actual date mentioned in the Notice, date of digital signature and date

of issuance and receipt. The ***Category - C*** in the aforesaid judgement reads as under:

> *"Category C: is in respect of writ petitions where Notice is dated 31st March, 2021 or before, digitally signed on or before 31st March, 2021, however sent and received on or after 1st April, 2021."*

8. We find that the case of the Petitioner herein would fall in 'Category C' i.e. where Notices were dated 31st March 2021 or before, digitally signed on or before 31st March 2021, however sent and received on or after 1st April 2021. The Hon'ble Court, in respect of Notices falling under 'Category C', held as under:

> *"26.22 We answer question no. (III) against the Department and hold that the time taken by the ITBA's e-mail software system in triggering the e-mail and transmitting the said e-mails from the ITBA servers is attributable to the Department and therefore for the e-mails despatched on 1st April 2021 or thereafter, the Notices are held not to have been issued on 31st March 2021.*
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> *26.23 We also take judicial notice of the fact that the Department from May, 2022, for Notices issued on or after 1st April 2021, has considered the date and time of despatch of the notices as recorded by the ITBA portal as the date of issuance and disregarded the date of generation of notice i.e. 31-3-2021. For notices despatched on or after 1st April 2021, the Department, following the Supreme Court's order in Ashish Agarwal (supra) considered the notices as issued under section 148A of the Act of 1961. This shows that the Department itself acknowledges and admits that the date of generation is distinct from date of issuance and the Department considers the*

> *despatch by ITBA Portal as the date of issue for the purpose of Section 149 of the Act of 1961.*
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> ***Finding for Notices falling under category 'C'***
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> *Since the time taken by the ITBA email software system in triggering the e-mails is attributable to the Department, the AO is directed to determine the date and time on which the emails were triggered by the ITBA system server as per the ITBA records and consider the same as the date of issuance.*
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> *Illustratively, in W.P.(C) 8994 of 2021 for the Notice dated 31st March 2021 and digitally signed on 31st March 2021 the JAO is directed to determine the date and time of despatch as recorded by ITBA portal and consider the same as the date of issuance."*

9. A similar issue came up before us in the case of ***Jose Kattadyil Joseph vs. Assistant Commissioner of Income Tax 19(1), Mumbai & Ors. [Writ Petition No. 430 of 2023 (OS)]*** wherein we observed that the impugned Notice under Section 148 of the I.T. Act, though dated 31st March 2021, was deemed to be issued on 1st April 2021 (as it was digitally signed on 1st April 2021). The only material difference between the facts of the present case and that in ***Jose (supra)*** is that in ***Jose (supra)***, the impugned Notice was deemed to have been issued on 1st April 2021 on account of being digitally signed on 1st April 2021 whereas in this case, the impugned Notice is deemed to have been issued on 1st April 2021 on account of delay in triggering the dispatch of the impugned Notice. However, the fundamental issue to be decided by us

remains the same and the further procedure to be followed by the Department in respect of the re-assessment has to be determined.

10. We find that the Hon'ble Supreme Court in ***Union of India & Ors v/s Ashish Agarwal (444 ITR 1)*** observed that Notices issued under the unamended law after 1st April 2021 shall be deemed to have been issued under Section 148A of the I.T. Act as substituted by the Finance Act, 2021 and treated to be Show Cause Notices in terms of Section 148A(b) of the Act. In this backdrop and following the directions of the Hon'ble Supreme Court in ***Ashish Agarwal (supra)*** we passed the following order in the case of ***Jose (supra)***:

> *"7. In light of this authoritative pronouncement of the Hon'ble Supreme Court, we dispose of the above Writ Petition by passing the same directions that were passed by the Hon'ble Supreme Court in Ashish Agarwal's case. These directions are as under: -*
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> *(i) The impugned Section 148 notice issued to the Petitioner under the unamended Section 148 of the I. T. Act shall be deemed to be issued under Section 148A of the I.T. Act as substituted by the Finance Act, 2021 and construed or treated to be a show cause notice in terms of Section 148A(b). The Assessing Officer shall, within thirty days from today provide to the Petitioner information and material relied upon by the Revenue, so that the Petitioner can reply to the show-cause notice within two weeks thereafter;*
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> *(ii) The requirement of conducting any enquiry, if required, with the prior approval of the specified authority under Section 148A(a) is hereby dispensed with as a one-time measure vis-à-vis the notice which have been issued under Section 148 of the unamended Act from 01.04.2021.*

(iii) The Assessing Officer shall thereafter pass an order in terms of Section 148A(d) in respect of the Petitioner. Thereafter, after following the procedure as required under Section 148A, the Assessing Officer may issue the notice under Section 148 (as substituted);

(iv) All defences which may be available to the Petitioner including those available under Section 149 of the I. T. Act, and all rights and contentions which may be available to it and the Revenue under the Finance Act, 2021, and in law, shall continue to be available.

11. We find that the present Writ Petition can also be disposed of in similar terms. In light of the aforesaid, we now pass the following order:

i. The impugned Assessment Order dated 30th March 2022, passed under Section 147 read with Section 144B, and any consequential notices / orders thereof are hereby quashed and set aside.

ii. The impugned Notice under Section 148 of the I.T. Act issued to the Petitioner under the unamended Section 148 of the I. T. Act shall be deemed to be issued under Section 148A of the I.T. Act as substituted by the Finance Act, 2021 and treated to be a Show Cause Notice in terms of Section 148A(b). The Assessing Officer shall, within thirty days from the date of uploading this order, provide to the Petitioner information and material relied upon by the Revenue, so that the Petitioner can reply to the Show Cause Notice within two weeks thereafter;

iii. The Assessing Officer shall after considering each and every objection raised in reply filed by Petitioner, pass an order in terms of Section 148A(d) of the I.T. Act on its own merits.

iv. All defences which may be available to the Petitioner, including those available under Section 149 of the I. T. Act, and all rights and contentions which may be available to it and the Revenue under the Finance Act, 2021, and in law, shall continue to be available.

12. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

13. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

Mansi shelke