

[2024] 463 ITR 560 (P&H)

[IN THE PUNJAB AND HARYANA HIGH COURT]  
MUNJAL BCU CENTRE OF INNOVATION AND ENTREPRENEURSHIP

v.

**COMMISSIONER OF INCOME-TAX (EXEMPTIONS)**

SANJEEV PRAKASH SHARMA and MRS. SUDEEPTI SHARMA JJ.

March 4, 2024.

**Section(s): Income-tax Act, 1961, ss. 12A(1)(ac)(iii), 282(1)  
; Income-tax Rules, 1962, s. 127(1)  
Favouring: Assessee, person**

NOTICE — SERVICE OF NOTICE — METHOD AND MANNER OF SERVICE OF NOTICE UNDER STATUTORY PROVISIONS — CHARITABLE PURPOSE — REGISTRATION — NOTICE BY COMMISSIONER (EXEMPTIONS) — NOTICE AND REMINDERS NOT SENT TO ASSESSEE'S E-MAIL ADDRESS OR OTHERWISE BUT ONLY REFLECTED ON E-PORTAL OF DEPARTMENT — ASSESSEE NOT ABLE TO FILE REPLY — VIOLATION OF PRINCIPLES OF NATURAL JUSTICE — NOTICE SET ASIDE — INCOME-TAX ACT, 1961, ss. 12A(1)(ac)(iii) , 282(1) — INCOME-TAX RULES, 1962, R. 127(1)

*The provisions of section 282(1) of the Income-tax Act, 1961 and rule 127(1) of the Income-tax Rules, 1962 provide for a method and manner of service of notice and orders. It is essential that before any action is taken, communication of the notice must be done in terms of these provisions. The provisions do not mention communication to be "presumed" upon the placing of the notice on the e-portal. A pragmatic view has to be adopted in these circumstances. An individual or a company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms. The principles of natural justice are inherent in the Income-tax provisions which are required to be necessarily followed.*

*A notice was issued to the assessee by the Commissioner (Exemptions) for initiating proceedings under section 12A(1)(ac)(iii) , but the notice was not sent to the assessee's e-mail address or otherwise and was only reflected on the e-portal of the Department. Thereafter, two reminders in respect of the notice were published on the e-portal of the Department. The notice and reminders were not served upon the assessee, no e-mail was sent by the Department to the assessee ; and an order was passed. On a writ petition :*

*Held, allowing the petition, that the assessee had not been given sufficient opportunity to make its submissions with regard to the proceedings under section 12A(1)(ac)(iii) since it was not served with any notice. The assessee would be entitled to file its reply and the Department would be entitled to examine it and pass a fresh order thereafter. The order was quashed and set aside. The assessee was to reply to the notice and the Department would provide an opportunity of hearing to the assessee, consider the submissions of the assessee and thereafter pass an order.*

**C. W. P. No. 21028 of 2023 (O&M).**

*Alok Mittal, Advocate, for the petitioner.*

*Amanpreet (AP) Singh, Senior Standing Counsel, for the respondent.*

**JUDGMENT**

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The judgment of the court was delivered by

Sanjeev Prakash Sharma J.—CM-3543-CWP-2024

This application is filed by the petitioner under article 226 of the Constitution of India read with section 151 of the Code of Civil Procedure, 1908 for staying the operation of the show-cause notice dated February 24, 2024 (annexure P-6) which is a subsequent development after the filing of main writ petition.

2. Learned counsel for the Revenue-respondent fairly states that instead of deciding the application, the main case itself may be taken up today for hearing.

3. In view of the above, the main writ petition, which is listed for hearing on April 18, 2024, is taken on board today itself.

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4. We have heard learned counsel for both the parties.

5. It is a case where show-cause notice dated November 10, 2022 was issued to the petitioner for initiating proceedings under section

12A(1)(ac)(iii) of the Income-tax Act, 1961 (for short "the Act of 1961") by the Commissioner of Income-tax (Exemptions), Chandigarh, but the said notice was not sent on the petitioner's e-mail or otherwise and was only reflected on the e-portal of the Department. Thereafter, two reminders dated December 13, 2022 and December 28, 2022 in respect to the afore-said show-cause notice were also published that too on the e-portal of the Department. However, it is an admitted position that the said notice and reminders were not served upon the petitioner as there is no e-mail sent by them.

6. The Department in the reply has submitted that communication of the notice electronically would also include communication of notice by placing it on e-portal. Learned counsel for the Revenue also submits that as the petitioner had submitted his form himself on the said e-portal, a presumption can be drawn that he was having knowledge of the notice/reminders which were placed on the e-portal as there was no requirement of submitting notice personally through e-mail or otherwise.

7. We are afraid that we cannot subscribe to the submissions as advanced by the learned counsel for the Revenue-respondent. The provisions of section 282(1) of the Act of 1961 and rule 127(1) of the Income-tax Rules, 1962 provides for a method and manner of service of notice and orders which read as follows :

Section 282(1) of the Income-tax Act 1961

"282. (1) Service of notice generally.—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

(b) in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons ; or

(c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000) ; or

(d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.

(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.

Explanation.—For the purposes of this section, the expressions 'electronic mail' and 'electronic mail message' shall have the meanings as assigned to them in Explanation to section 66A of the Information Technology Act, 2000 (21 of 2000)."

Rule 127(1) of the Income-tax Rules, 1962

"127. Service of notice, summons, requisition, order and other communication.—(1) For the purposes of sub-section (1) of section 282, the addresses (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or any other communication under the Act (hereafter in this rule referred to as 'communication') may be delivered or transmitted shall be as per sub-rule (2).

(2) The addresses referred to in sub-rule (1) shall be—

(a) for communications delivered or transmitted in the manner provided in clause (a) or clause (b) of sub-section (1) of section 282-

(i) the address available in the PAN database of the addressee; or

(ii) the address available in the Income-tax return to which the communication relates ; or

(iii) the address available in the last Income-tax return furnished by the addressee ; or

(iv) in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs :

Provided that the communication shall not be delivered or transmitted to the address mentioned in items (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the Income-tax authority or any person authorised by such authority issuing the communication :

Provided further that where the communication cannot be delivered or transmitted to the address mentioned in items (i) to (iv) or any other address furnished by the addressee as referred to in first proviso, the communication shall be delivered or transmitted to the following address :—

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- (i) the address of the assessee as available with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of the said Act) ; or
- (ii) the address of the assessee as available with the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898) ; or
- (iii) the address of the assessee as available with the insurer as defined in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938) ; or
- (iv) the address of the assessee as furnished in Form 61 to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation) under sub-rule (1) of rule 114D ; or
- (v) the address of the assessee as furnished in Form 61A under sub-rule (1) of rule 114E to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation) ; or
- (vi) the address of the assessee as available in the records of the Government ; or
- (vii) the address of the assessee as available in the records of a local authority as referred to in the Explanation below clause (20) of section 10 of the Act.

(b) for communications delivered or transmitted electronically—

- (i) e-mail address available in the Income-tax return furnished by the addressee to which the communication relates ; or
- (ii) the e-mail address available in the last Income-tax return furnished by the addressee ; or

(iii) in the case of addressee being a company, e-mail address of the company as available on the website of Ministry of Corporate Affairs ; or

(iv) any e-mail address made available by the addressee to the Income-tax authority or any person authorised by such Income-tax authority.

(3) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the procedure, formats and standards for ensuring secure transmission of electronic communication and shall also be responsible for formulating and

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implementing appropriate security, archival and retrieval policies in relation to such communication."

8. In view of the above, it is essential that before any action is taken, a communication of the notice must be in terms of the provisions as enumerated hereinabove. The provisions do not mention of communication to be "presumed" by placing notice on the e-portal. A pragmatic view has to be adopted always in these circumstances. An individual or a company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms, etc. The principles of natural justice are inherent in the Income-tax provisions and the same are required to be necessarily followed.

9. Having noticed as above, this court is of the firm view that the petitioner has not been given sufficient opportunity to put up its pleas with regard to the proceedings under section 12A(1)(ac)(iii) of the Act of 1961 and as it was not served with any notice. Therefore, he would be entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter.

10. In view of the above, the writ petition is allowed and the order dated January 16, 2023 (annexure P-5) is quashed and set aside. The Department would provide an opportunity of hearing to the petitioner and they will also allow the petitioner to appear personally for the purpose and pass a speaking order independent of the order passed earlier by them on January 16, 2023. The same shall be done expeditiously provided the petitioner file his reply within a period of three weeks.

11. All pending applications in this case shall stand disposed of accordingly.

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