IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: F : NEW DELHI

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
MS MADHUMITA ROY, JUDICIAL MEMBER

ITA No.4696/Del/2024
Assessment Year: 2021-22

Ramesh Gandhi, 67-68, Sector-25, Pocket-2, Rohini, New Delhi – 110 085. PAN: AETPG9908E	Vs	DCIT, New Delhi.

ITA No.4701/Del/2024
Assessment Year: 2021-22

Rajesh Gandhi, 67-68, Sector-25, Pocket-2, Rohini, New Delhi – 110 085. PAN: AZFPG7938P	DCIT, New Delhi.

(Appellant)		(Respondent)
Assessee by	:	Shri Vinod Bindal, CA Shri Anmol Jha, Advocate & Ms Rinky Sharma, ITP
Revenue by	:	Ms Harpreet Kaur Hansra, Sr. DR
Date of Hearing	:	02.04.2025
Date of Pronouncement	:	09.04.2025

ORDER

PER ANNAPURNA GUPTA, AM:

Both the appeals pertain to different assessees and arise against different orders of the Commissioner of Income Tax(Appeals)- 29, New Delhi (in short

referred to as" CIT(A)") passed u/s 250(6) of the Income Tax Act,1961 (hereinafter referred to as "Act") both dated 08-07-2024 and pertaining to Assessment Year 2021-22.

2. At the outside itself it was stated that the issue arising in both the appeals was identical relating to the levy of penalty for non compliance of notices issued during assessment proceedings in terms of the provisions of section 272A(1)(d) of the Act. It was pointed out that both the assessees were subjected to assessment proceedings u/s 153 C of the act on account of search action undertaken u/s 132 of the Act on one Shri Manoj Kumar Singh and related entities. The contention of the Ld. Counsel for the assessee was that simultaneously, on the same date notices were issued to both the assessee and the notices allegedly found to be not complied with therefore were similarly dated . That his arguments against the levy of penalty in both the cases was also the same.

3. Ld. DR fairly agreed with the same.

4. In the light of the same both the appeals were taken up together for hearing and are being disposed off by this common consolidated order

5. We shall be dealing with the appeal in ITA No. 4696/ D/ 24 in the case of Ramesh Gandhi and our decision rendered therein will apply *pari passu* to the other appeal in ITA No. 4701/ D/24 in the case of Rajesh Gandhi .

ITA No. 4696/ D/ 24 Ramesh Gandhi - A.Y 21-22

6. The grounds raised by the assessee read as under:-

> *"1. The CIT(A) erred in law and on facts in confirming a penalty of Rs.70,000/- u/s 272A(l)(d) of the Act though the complete details were on the record of the AO, and the impugned proceedings were illegal ab initio as no cause of action existed to assume jurisdiction to pass the impugned assessment order in respect of which the impugned penalty has been levied. The same must be deleted.*
>
> *2. The impugned penalty order is otherwise also void ab initio and illegal because the impugned compliance desired by the AO, itself was in an illegal reassessment proceedings-initiated u/s 153C of the Act, without jurisdiction as no incriminating material for this assessment year was found in an income-tax search conducted on some other assessee. This has also been confirmed by the same CIT(A) in the quantum appellate order dated 27/09/2024 in the case of the appellant itself by quashing the assessment order as illegal ab initio. Thus, the entire proceedings were illegal and could result into any legal penalty, needs to be quashed.*
>
> *The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing."*

7. We have heard both the parties.

8. The notices which have remained uncomplied with by the assessee are seven in number issued on 27-05-2022,27-05-2022, 12-09-2022 ,10-10-2022,29-11-2022,13-12-2022 and 23-12-2022. For each default a penalty of Rs.10,000/- has been levied resulting in a total penalty of Rs.70,000/- being levied.

9. A perusal of the order of the Ld. CIT(A) reveals that the assessee had contended before him that these notices were neither digitally signed nor manually signed and were therefore illegal and inoperative. Several decisions of

Courts in this regard were also referred to. Para 4 of the order of the Ld. CIT(A) reproduces the said submission of the assessee as under:

7. Very interestingly, it is also stated that no notice issued to the assessee was ever either digitally or manually signed by the AO. In fact, even the impugned penalty order dated 23/05/2023 is also not signed through any mode, making the same nullity in entirety, rather mockery of the income-tax assessment proceedings by the AO who had started thinking herself above the law. In respect of the same the assessee relies upon the under noted authorities mentioned below:

(i) **Panjos Builders (P.) Ltd. [2024] 161 taxmann.com 573 (Karnataka)**
Learned counsel for the petitioner is correct in his submissions that the impugned notice dated 21-3-2022 having not been digitally/physically signed, the same is illegal, invalid and inoperative as held by this Court in the case of **Begur Sinappa Venkatesh v. ITO [W.P.No.20807 of 2023]**, wherein it is held as under: "The petitioner has impugned the notice dated 17-3-2022 [Annexure-A] issued by the first respondent under section 148A(b) of the Income-tax Act, 1961 [for short, the 'IT Act'], the subsequent adjudication order dated 30-3-2022 under section 148A(d) of the IT Act [Annexure-A1], the notice dated 31-3-2022 under section 148 of the IT Act [Annexure- A2], the assessment order dated 24-2-2023 under section 147 read with Section 144 of the IT Act [Annexure-A3] and the consequential penalty orders and demand notices dated 24-8-2022 and 7-7-2023 [Annexures-A4, A5 and A6]. 2. The petitioner's primary grievance is with the notice under section 148A(b) of the IT Act and based on this grievance, it is contended that all further proceedings must fail. Sri Ravishankar S V, the learned counsel for the petitioner, canvasses that the first respondent has caused the aforesaid notice under section 148A(b) of the IT Act without digital signature and in view of the decision of the High Court of Bombay in **Prakash Krishnavtar Bhardwaj v. Income-tax Officer, reported in [2023] 451 ITR 27 [Bombay]**, all further proceedings must fail. 3. Sri Ravishankar S V, also submits that during the financial year relevant to the assessment year 2015-16, the petitioner was employed with M/s Varshitha Enterprises, Kunigal; that the proprietor of this enterprise was not keeping good health and therefore had issued necessary mandate to the petitioner to operate the concern's bank account maintained with the Indian Overseas Bank; that the petitioner, bona fide and not intending to disturb the proprietor who was not keeping good health, credited the cash received from the sale of currency to recharge mobiles and utilized the deposits to disburse the same to the Telecom operator, M/s Idea Cellular. 4. Sri Ravishankar S V further submits that the details of these cash deposits and

the disbursement to M/s Idea Cellular are reflected in the Income-tax returns filed on behalf of the proprietary concern in PAN AJGPV 3120P; that during the subsequent assessment year, the petitioner commenced his own business under the name and style 'M/s Gagan Enterprises' selling currency for mobile recharge; that the cash deposits even during this subsequent assessment year is treated as business income; the petitioner's income is determined at the rate of 3% of the gross turn over; that the petitioner would not be liable for any income tax for the relevant assessment year and even otherwise if cash deposits are treated as gross business turn over, the petitioner's liability will be below Rs. 3,00,000/- at the rate of 3% and hence, the first respondent cannot assume jurisdiction to initiate proceedings. 5. Sri Ravishankar S V, relying upon the aforesaid circumstances, submits that for these reasons and in view of the indisputable fact that the notice under section 148A(b) is not digitally signed, the proceedings must fail. Sri M. Dilip submits that he cannot contest the assertion that 148A(b) notice is not digitally signed especially when the adjudication order under section 148A(d) and the subsequent proceedings are digitally signed or that in very similar circumstances, the High Court of Bombay in Prakash Krishnavtar Bharadwaj v. Income-tax Officer (supra) has held that because the notice is not signed either digitally or manually, the same would be invalid and because such notice is invalid, no jurisdiction would vest with the first respondent to continue the proceedings pursuant to such notice. 6. However, Sri M. Dilip, submits that the authorities must be reserved with liberty to issue fresh notice if it could be permissible given the provisions of Section 149 of the IT Act. In rejoinder, Sri Ravishankar S V, submits that in the event the writ petition is being disposed of on this limited ground, this Court may observe that any further proceedings shall be initiated in the light of the defence that is canvassed in this petition. 7. The rival submissions are considered and this Court must opine that with the authorities being unable to dispute that the notice under section 148A(b) of the IT Act is not either digitally or manually signed and with the proposition enunciated by the High Court of Bombay in the aforesaid decision being applicable on all fours to this case, the petition must be disposed of on the ground that the first respondent could not have continued the proceedings based on 148A(b) notice dated 17-3-2022. However, the authorities must be reserved with liberty, subject to all just exceptions in law, to initiate further proceedings. Hence, the following ORDER The petition is allowed and the impugned notice dated 17-3-2022 issued by the first respondent under section 148A(b) of the Income-tax Act, 1961 [Annexure-A], the subsequent adjudication order dated 30 3-2022 under section 148A(d) [Annexure-A1] of the IT Act, the notice dated 31-3-2022 under section 148 of the IT Act [Annexure-A2], the assessment order dated 24-2-2023 under section 147 read with Section 144 of the IT Act [Annexure-A3] and the consequential penalty orders and demand notices dated 24-8-2022 and 7-7-2023 [Annexures-A4, A5 and A6] are quashed." 6. **As can be seen from the order, this Court has come to the categorical conclusion that the notice under section 148A(b) of the IT Act, is not signed either physically**

or digitally and the same is illegal, invalid and inoperative and further proceedings pursuant thereto including the order under section 148A(d) of the IT Act, penalty notices, orders, etc., deserve to the quashed.

(ii) **Vinni Sharma, Bhilai vs ITO 2024-ITA No. 273/RPR/2023 ITAT [DoD: 07-03-2024]**

I shall now deal with the contention of the Ld. AR that as the notice issued by the A.O u/s. 148 of the Act, dated 27.03.2018 does not bear digital signature or manual signature of the A.O, therefore, the same, being violative of Section 282A(1) of the Act is non-est in the eyes of law. The Ld. AR in support of his aforesaid contention had relied on the following judicial pronouncements: 1. Prakash Krishnavtar Bhardwaj Vs. ITO (2023) 451 ITR 27 (Bom.) 2. Vikas Gupta and others Vs. UOI (2022) 448 ITR 1 (All) 3. B.K Gooyee Vs. CIT (1966) 62 ITR 109 (Cal) The Ld. AR by drawing support from the aforesaid judicial pronouncements submitted that the Hon'ble High Courts had held that signing of the notice or other document by that authority is a mandatory requirement and it is not a ministerial act or an empty formality which can be dispensed with. The Ld. AR backed by his aforesaid contention had taken me through the copy of the notice u/s. 148 of the Act dated 27.03.2018 which is stated by him to have been downloaded from thee-filing portal. As the Ld. AR had assailed the validity of the jurisdiction assumed by the A.O for the reason that proceedings leading to the framing of assessment were based on an unsigned notice issued u/s. 148 of the Act, dated 27.03.2018, which had no existence in the eyes of law, therefore, in order to dispel all doubts and Vinni Sharma Vs. ITO-1(1), Bhilai verify the factual position to the hilt, the Ld. DR was directed to produce the assessment records. 21. On a perusal of the assessment records, I find that as stated by the Ld. AR, and rightly so, notice u/s. 148 of the Act dated 27.03.2018 is neither digitally signed or manually signed. For the sake of clarity, the notice issued u/s. 148 of the Act dated 27.03.2018 (available in the assessment folder, Page 3) is culled out as under: Although at the first blush the absence of the manual/digital signature of the A.O in the copy of the notice dated 27.03.2018 appeared to be saved by the provisions of Section 292B of the Act but as pointed out by the Ld. AR, and rightly so, the absence of the signature affixed on the aforesaid notice, digitally or manually, therein, rendered the same as invalid and divested the A.O of any further jurisdiction to proceed and assess the income of the assessee. My aforesaid conviction is fortified by the judgement of the Hon'ble High Court of Bombay in the case of Prakash Krishnavtar Bhardwaj Vs. ITO (2023) 451 ITR 27 (Bom.), wherein involving identical facts, the Hon'ble High Court had observed that as the notice u/s. 148 dated 02.04.2022 as was there before them did not have the signature affixed on it digitally or manually, the same was invalid and would not vest the A.O with any further jurisdiction to proceed to reassess the income of the assessee. For the sake of clarity, the observations of the Hon'ble High Court of Bombay are culled out as under: "21. We are, therefore, of the considered opinion that in the present case, the notice u/s.148

dated 02.04.2022 having no signature affixed on it, digitally or manually, the same is invalid and would not vest the Assessing Officer with any further jurisdiction to proceed to reassess the income of the petitioner. Consequently, the notice dated 02.04.2022 u/s.148 of the Act issued to the petitioner being invalid and sought to be issued after three years from the end of the relevant assessment year 2015-16 with which we are concerned in this petition, any steps taken by the respondents in furtherance of notice dated 21.03.2022 issued under clause (b) of section 148A of the Act and order dated 02.04.2022 issued under clause (d) of section 148A of the Act, would be without jurisdiction, and therefore, arbitrary and contrary to Article 14 of the Constitution of India. Consequently, we quash and set aside the notice dated 02.04.2022 issued by the respondents u/s.148 of the Act, order dated 02.04.2022 under clause (b) of section 148A of the Act and notice dated 21.03.2022 issued under clause (b) of section 148A of the Act. Also, the Hon'ble High Court of Allahabad in the case of **Vikas Gupta and others Vs. UOI (2022) 448 ITR 1 (All)**, had held that the expression "shall be signed" used in Section 282A(1) of the Act makes the signing of the notice or other document by that authority a mandatory requirement. It was further observed by the Hon'ble High Court that signing of the notice was not a ministerial act or an empty formality which can be dispensed with. Elaborating on the term "signed", it was observed that that same was to be construed as giving one's name to signify assent or adhesion to by signing one's name; to attest by signing or when a person is unable to write his name then affixation of "mark" by such person. For the sake of clarity, the observation of the Hon'ble High Court are culled out as under: "27. The first and foremost condition under sub-Section (1) of Section 282A is that notice or other document to be issued by any Income Tax Authority shall be signed by that authority. The word "and" has been used in sub-Section (1), in conjunctive sense, meaning thereby that such notice or other document has first to be signed by the authority and thereafter it may be issued either in paper form or may be communicated in electronic form by that authority. In the present set of facts, it is the admitted case of the respondents that the PCIT has not recorded satisfaction under his signature prior to the issuance of notice by the Assessing Officer under Section 148 of the Act, 1961. 28. Section 282A (1) of the Act, 1961 specifically provides that a notice or other documents issued by any Income Tax Authority shall be signed by that authority in accordance with such procedure as may be prescribed. Section 151 of the Act, 1961 specifically provides recording of satisfaction by the Prescribed Authority, on the reasons recorded by the Assessing Officer that it is a fit case for the issue of notice under section 148 of the Act, 1961. Unless such satisfaction is recorded, the Assessing Officer could not get jurisdiction to issue notice under section 148. A satisfaction, to be a valid satisfaction under section 151 of the Act, 1961, has to be recorded by the Prescribed Authority under his signature on application mind and not mechanically, as also held by the **Hon'ble Supreme Court in Vinni Sharma Vs. ITO-1(1), Bhilai the case of Chhugamal Rajpal (supra)**. Unless the

Prescribed Authority under section 151 of the Act, 1961 records his satisfaction on application of mind and under his signature, there cannot be a valid satisfaction empowering the Assessing Officer to assume jurisdiction to issue notice under section 148 of the Act, 1961. In other words, an Assessing Officer may issue jurisdictional notice under Section 148 only after the Prescribed Authority under section 151 of the Act records his satisfaction that it is fit case for issue of notice under section 148. 29. In the present set of facts there was no valid satisfaction recorded by the by the Prescribed Authority under section 151 of the Act, 1961 when the Assessing Officer issued notice to the assessees under section 148 of the Act, 1961. At the time when the notice under section 148 of the Act, 1961 was issued by the Assessing Officer to the petitioner there was no valid satisfaction recorded by the Prescribed Authority i.e. the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Indian Kanoon - Commissioner. Subsequent to issuance of the notice under section 148 of the Act, 1961 by the Assessing Officer, the satisfaction under section 151 was digitally signed by the Prescribed Authority. Therefore, the point of time when the Assessing Officer issued notices under section 148, he was having no jurisdiction to issue the impugned notices under section 148 of the Act, 1961. Consequently, the impugned notices issued by the Assessing Officer under section 148 of the Act, 1961 were without jurisdiction. The questions no. (a) and (b) are answered accordingly." 23. Also, the affixation of signature on the notice for initiating proceedings u/s. 147 of the Act as a sine-qua-non for valid assumption of jurisdiction by the A.O for framing consequential assessment can be traced in the judgment of the Hon'ble High Court of Calcutta in the case of **B.K Gooyee Vs. CIT, WB (1966) 62 ITR 109 (Cal)**. In the case before the Hon'ble High Court, the notice u/s. 34 of the Income Tax Act, 1922 (para-materia with notice u/s. 148 of the Income Tax Act, 1961) was held to be bad in law in as much as did not bear signature of the Income tax officer. It was held by the Hon'ble High Court that for a proper notice u/s.34 of the Income Tax Act, 1922 the signature of the Income tax officer is a condition precedent in the exercise of jurisdiction by him. On a reference before the Hon'ble High Court u/s. 66(1) of the Income Tax Act, 1922, the Hon'ble High Court had observed that though non-signing in the notice might be a case of inadvertent omission, but the same is not a mere irregularity that can be cured. For the sake of clarity, the relevant observations of the Hon'ble High Court are culled out as under: "The notice under section 34 of the Act is not an executive document, directing something to be done or not to be done. It might be true that everybody understood the notice alright. One might be struck also by the facts that prior sanction of the Commissioner of Income-tax was obtained and that the assessee was not misled by the notice; and the non-signing might be a case of inadvertent omission. Still in my view, it is not a mere irregularity that can be cured. Non-signing of a notice under section 34 of the Income-tax Act does not come within the formula of an obvious clerical mistake. As the finality of the assessment is one of the main principles to be followed in tax

cases and as the re-opening of the assessment under section 34 is a matter of public policy (though I am not unmindful that it is not a case of fundamental right) and as a right under section 34 is not intended to be conferred only for the benefit of the assessee (though it might dominate and condition the right of the assessee), i.e., it is not a private right, meant merely for individual benefit, there is a prima facie difficulty in my way to hold that there can be waiver of the notice under section 34 of the Income-tax Act. The subsequent conduct of the assessee is also of no moment." 24. **Considering aforesaid factual position, i.e. absence of affixation of signature of the A.O, manually or digitally on the notice u/s. 148, dated 27.03.2018, which is discernible from the assessment records and had not been rebutted by the Ld. DR, I am afraid that the very basis for assumption of jurisdiction by the A.O for framing of assessment vide his order u/s. 144 r.w.s. 147 of the Act dated 20.11.2018 as per the aforesaid settled position of law as had been laid down by the Hon'ble High Courts, falls to ground.** Accordingly, the impugned assessment order so passed by the A.O u/s. 144 r.w.s. 147 of the Act, dated 20.11.2018 cannot be sustained for want of valid assumption of jurisdiction and is liable to be struck down on the said count itself

(iii) **Vijay Corporation [2012] 18 taxmann.com 88 (Mum.) IN THE ITAT MUMBAI BENCH 'F'** --- IT : Assessment order without signature of Assessing Officer is invalid

(iv) **Reuters Asia Pacific Ltd. [2023] 157 taxmann.com 705 (Mumbai - Trib.) [26-12-2023**

The first Notification that has been referred is dated 3-2-2016. Ostensibly, this notification was issued by the CBDT when the department was in the process of migration from manual mode to e-assessment procedure. To mitigate immediate problem of the Assessing Officers to digitally sign the assessment order before uploading on ITBA portal, the Assessing Officer were allowed to sign the notice under section 143(2)/143(1) and the assessment order manually and thereafter upload PDF format of the same before the order is served on to the assessee though e-mail in accordance with section 282. [Para 8]

■ The assessee has also placed on record Instruction No. 1/2018, dated 12-2-2018 with respect to conduct of assessment proceedings in scrutiny cases through 'e-proceedings'. Therein apart from other procedural aspects, the Board once again specifically mentioned the requirement of digital signatures by the Assessing Officer on orders/notices/communications before they are issued to the assessee. [Para 10]

■ Signing of an assessment order by the Assessing Officer is a mandatory requirement and not merely a procedural formality. Unless, the order is signed it cannot be said to be complete. Once the order is signed digitially or manually, as required, the order is complete and the date of signature on the

order shall be the date of passing of the order. The provisions from the Code of Civil Procedure, 1908 (CPC) explaining the requirement of signing the judgments. Order-XX Rule-3 of CPC mandates that the judgment shall be dated and signed by the Judge at the time of pronouncing it and when once signed, shall not afterwards be altered. The signing of an order is thus, not a mere formality, it is a mandatory requirement. It is not a curable procedural defect that can be fixed by signing the order after service of the same on the assessee. If an unsigned order or notice is served on the assessee, the same is invalid. [Para 14]

- The framing of an assessment is a quasi-judicial function. The assessment order passed by the Assessing Officer is subject to judicial scrutiny by higher Appellate Authorities. Therefore, the said order has to be in conformity with the provisions of the Act in every respect, be it limitation, the jurisdiction of the officer passing the said order or signing and service of the order. [Para 15]

- The revenue referred to the provisions of rule 127A i.e. the rule framed in pursuance to the provisions of section 282(2) for service of notice, summons, requisition order and other communications. The revenue has pointed that since the assessment order communicated to the assessee originated from the designated E-mail ID of the Assessing Officer, therefore, in terms of rule 127A, the said document shall be deemed to be authenticated. The said argument is desultory and not in unison with the provisions of section 282A.

- The aforesaid section is with respect to authentication of notices and other documents i.e. orders/summons/requisitions/communications etc. Sub-section (1) makes it obligatory that where any notice or other document is required to be issued under the provisions of the Act, the same shall be signed and issued by the competent authority in accordance with the procedure prescribed. The section is unambiguous, specifies signing of notice or other documents mandatory and the manner of signing procedural. Therefore, the Board has issued instructions from time to time laying down the procedures inter alia for signing of the notices and the assessment orders. Sub-section (2) of section 282A of the Act explains the connotation of expression 'authentication'. Thus, signing of document and authentication of document carry different meaning. Signing of document denotes committing to the document, whereas, authentication of document relates to genuineness of origin of document. If signing and authentication would mean the same, then there was no need for the Legislature to lay down the requirement of signing the documents viz., notices, orders etc. in sub-section (1) and explain the purpose of authentication in sub-section (2) of section 282A. If argument of the revenue is accepted, then the provisions of sub-section (1) to section 282A would become redundant. [Para 16]

■ Lastly, the revenue has tried to take shelter under section 292B. The said section cures the procedural defects or omissions. The section does not grant immunity from non-compliance of statutory provisions. Non-signing of an assessment order is not a procedural flaw that can be cured subsequently. The order is complete only when it is signed and released. The date on which the order is signed by the Assessing Officer is the date of order. If revenue's contention is accepted and the Assessing Officer is allowed to sign the assessment order now considering it to be procedural deficiency, still the order would suffer from the defect of limitation and would be without jurisdiction. [Para 17]

■ **In facts of the case and documents on record, it is held that the unsigned impugned assessment order served on the assessee invalid and quash the same.** [Para 19]

(v) **Vikas Gupta Vs Union [2022] 142 taxmann.com 253 (Allahabad)**

The first and foremost condition under sub-section (1) of section 282A is that notice or other document to be issued by any Income-tax Authority shall be signed by that authority. The word "and" has been used in sub-section (1), in conjunctive sense, meaning thereby that such notice or other document has first to be signed by the authority and thereafter it may be issued either in paper form or may be communicated in electronic form by that authority. In the present set of facts, it is the admitted case of the respondents that the Principal Commissioner has not recorded satisfaction under his signature prior to the issuance of notice by the Assessing Officer under section 148. [Para 27]

(vi) **Taureg Properties & Security Services Ltd. ITA.No.733/Del./2016- Date of Pronouncement : 04.03.2020**

After considering the rival submissions, we do not find any merit in the Departmental Appeal. Copy of the notice under section 148 Dated 26.03.2007 is available at page-1 of the paper book. **It is unsigned** as well as did not mention any assessment year. Since unsigned notice have been sent to the assessee, therefore, it vitiates the entire re assessment proceedings because it was the jurisdictional notice to initiate proceedings under section 147 of the I.T. Act, 1961. Since the notice itself was illegal and bad in Law, therefore, entire re-assessment proceedings have been vitiated and as such A.O. could not have assume the jurisdiction under section 148 of the I.T. Act, 1961 to frame the assessment against the assessee. The Ld. CIT(A) was justified in holding the assessment order to be null and void. The Departmental Appeal has no merit and the same is accordingly dismissed.

(vii) **YESHODA ELECTRICALS 2021-TIOL-584-ITAT-BANG**

38. A perusal of the above notice in all the cases show that the said notice issued u/s. 148 of the Act was typed on a plain paper, it was not signed by the Assessing Officer who issued the same and remained unsigned which is not

in dispute before us. The contention of the ld. DR is that the office copy of the said notice was duly signed by the AO. This notice issued u/s. 148 is a manual notice and not a digital document. The digital document only does not require signature. A manual notice u/s. 148 is required to be dated and duly signed by the Officer who is issuing the same. **A notice or an order without having signature of the person who issued such notice loses its relevance and importance and is to be treated as invalid. An order or notice without signature is not an order for execution or implementation. In all these cases, there was no signature of the AO who issued notice u/s. 148 of the Act. Therefore, it has to be construed that no notice was issued by the AO to the assessee and the assessee was continuously objecting for the same. It is also a fact that from the assessment order it is found that it is an ex parte order u/s. 144 r.w.s 147 of the Act without participation of the assessee and the provisions of section 292BB of the Act is of no help to the assessee, which suggests that if the assessee cooperated in the proceedings of assessment, the assessee** cannot raise objections in further proceedings. Further, in our opinion, service of valid notice is a pre-condition to assume jurisdiction by the AO. Non-signing of a notice is not a clerical mistake and there cannot be any waiver by the assessee of an irregularity of an unsigned notice. In our view, section 282 of the Act provides that a notice under the Act may be served on the person's name therein as if it were a summons issued by a court under the Code of Civil Procedure, 1908. Sub-rule (3) of Rule 1 of Order 5, CPC, provides that every summons shall be signed by the judge or such officer, as he appoints. In view of this provision, the notice issued u/s. 148 should have been signed by the AO and omission to do so invalidated the notice. Further, the provisions of section 292B of the Act intended to ensure that an inconsequential technicality does not defeat justice. But, **the signing of a notice under section 148 of the Act is not merely an inconsequential technicality. It is a requirement of the provisions of Order 5, Rule 1(3) of CPC, which are applicable by virtue of Section 282 of the Act**. Under the circumstances, the provisions of section 292B of the Act would not be attracted so as to make it as a valid notice in the eye of law. Therefore, the requirement of the signature of the AO is a legal requirement. The omission to sign the notice u/s. 148 cannot be cured by relying on the provisions of section 292B of the Act. The notice issued by the AO without affixing signature, in our view, cannot be said to be an omission, which was sought to be covered by the provisions of section 292B of the Act. If such a course is permitted to be followed, then that would amount to miscarriage of justice. An unsigned notice of reopening of assessment cannot be said to be in substance and effect in conformity with or according to the intent and purpose of the Act. Further, as rightly pointed out by the ld. AR, in the case of M/s. Taureg Properties & Security Services Ltd. (supra) in similar circumstances the assessment was framed on the basis of unsigned notice issued u/s. 148. In that case, the Tribunal quashed the assessment order by observing as follows:

(viii) ***B.K. Gooyee* v. *CIT* [1966] 62 ITR 109 (Cal.)**

If the designation "Income-tax Officer" is without the signature it cannot be said that the notice was by the Income-tax Officer. The designation by itself means nothing. It may refer to any Income-tax Officer. If the district is mentioned it may not be possible to identify the Income-tax Officer. If the district is mentioned along with the date it may be possible to identify the Income-tax Officer. Even then there is however the possibility that the Income-tax Officer may disown the responsibility of having given the notice or issued the notice or served the notice on the assessee. Hence, in my opinion, again, on this reasoning, it is incumbent upon the Income-tax Officer to place his signature on the notice.....A notice under section 22(2) which initiates the assessment proceeding requires a signature.....Hence, even though the form in the *Income-tax Manual* is not helpful to an assessee, the reasons mentioned before make the signature of the Income-tax Officer on the notice under section 34 an essential and/or integral and/or inseparable vital part or requirement of such a notice and, consequently, the notice under section 34 must be signed by the Income-tax Officer and it must bear the signature of the Income-tax Officer when it is served as if it were a summons. In my opinion, if this conclusion is correct, as it is, it necessarily follows that the notice sent by post must likewise be signed and bear the signature of the Income-tax Officer.

(ix) **CIT Vs Aparna Agency (P.) Ltd. [2004] 267 ITR 50 (Calcutta)**

The service of a valid notice, as already noticed, is a condition precedent to the assumption of jurisdiction by the Assessing Officer. The existence of a valid notice is, therefore, a jurisdictional fact. The question, therefore, is not to be looked at from the perspective that the decision to issue notice was by an authority competent in that behalf under the Act and, therefore, submitting to his jurisdiction without objection, the inference of waiver arises. The question being one of jurisdiction, to be more specific the condition precedent to the assumption of jurisdiction what has to be seen is that the person that purported to exercise the jurisdiction vested in him had in fact exercised that jurisdiction and signed the said notice. The said test has not been satisfied in the case on hand. Unlike the judgment of this court in *Anand & Co.'s* case (*supra*) relied upon by the Revenue the case on hand is not one where the authenticity of the show-cause notice is in question. In the case on hand as held by the fact-finding authority the show-cause notice has not been signed by any person and the place intended for signature was kept blank.

(x) **ACIT Vs Layer Exports (P.) Ltd. [2017] 88 taxmann.com 620 (Mumbai)**

Needless to say, that in law no document or paper can have any validity or enforceability until the same bears signature of concerned parties. Signature is the soul and any paper, notice or document is a body. Body without a soul is of no use, value or consequence. What is the significance and importance of a signature on any document can be found in the judgment of Hon'ble Calcutta High Court in the case of B.K Gooyee v. CIT [1966] 62 ITR 109. In

10. But the Ld.CIT(A) has rejected the same saying that the assessee does not deny the receipt of the notice and therefore since he was aware of the proceedings pending before the AO no prejudice has been caused to him. His findings in this regard are recorded at page 18 of his order as under:

> *"....However, it is seen that no submissions/compliance with the notices has been made by the appellant and the proceedings have been completed in an exparte manner by the AO. No reasonable cause within the meaning of section 273B of the Act for failure to comply with the notices issued u/s 142(1) has been brought to my notice during the course of appellate proceedings. Appellant had also not denied the receipt of the notices but had only contested that the notices were not properly signed digitally. But since the appellant was aware of the proceedings pending before AO by way of receipt of multiple notices u/s 142(1) no prejudice has been caused to him. No cause for non-compliance on account of any personal constraint has been brought to my notice. Under these circumstances, I am constrained to agree with the order of AO imposing penalty for non-compliance with the notices u/s 142(1)."*

11. We are not in agreement with the Ld. CIT(A) in this regard. The learned CIT (A) having not disputed the fact of the notices not being digitally/ manually signed there is no iota of doubt at all that the said notices were illegal, invalid and inoperative. They were no notices at all in the eyes of law. Such notices cannot vest the issuing authority with any jurisdiction at all to proceed with the assessment.The reliance placed by the Ld.Counsel for the assessee to various decisions of Hon'ble High Courts & ITAT is apt wherein it has been categorically held that unsigned notices are illegal , invalid and inoperative. For this reason alone we hold that the assessee in the present case has been wrongly charged with the default of non compliance of notices, which admittedly were

invalid and illegal being unsigned. The penalty therefore levied u/s 272A(1)(d) of the Act, we hold, is not sustainable.

12. Further in the light of various judicial decisions cited before the Ld.CIT(A) by the assessee holding unsigned notices to be illegal and invalid , the reasoning of the Ld.CIT(A) rejecting this contention of the assessee merits no consideration. It is plain and simple . An unsigned notice is illegal and invalid. It therefore tantamounts to no notice issued. And there can be no question of non compliance of such notice at all therefore. The fact of the assessee being aware of the pending proceedings and no prejudice being caused to the assessee is of no consequence at all and in no way gives validity to an invalid notice.

13. We therefore hold that in the facts and circumstances of the case the assessee could not have been charged with the default of non compliance of notices, which admittedly were unsigned.The levy of penalty therefore for this default u/s 272A(1)(d) of the Act is totally unwarranted.

14. The order of the Ld. CIT (A) confirming the levy of penalty u/s 272A(1)(d) of the Act of Rs.70,000/- is accordingly set aside.

15. Appeal of the assessee is allowed in above terms.

16. In effect both the appeals in ITA No.4696/D/24 & ITA No.4701/D/24 are allowed .

Order pronounced in the open court on 09.04.2025.

Sd/-	Sd/-
(MADHUMITA ROY) JUDICIAL MEMBER	(ANNAPURNA GUPTA) ACCOUNTANT MEMBER

Dated: 09th April, 2025.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi