

# EY Tax Alert

**Delhi HC settles a batch of petitions dealing with various issues around the date of issuance of reassessment notice**

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## Executive summary

This Tax Alert summarizes a ruling of the Delhi High Court (HC), dated 27 September 2022, in a batch of cases with the lead case being Suman Jeet Agarwal<sup>1</sup>. The issue pertains to the determination of date of issuance of reassessment notice under electronic mode. In all the cases<sup>2</sup> under dispute, notices for reassessment were generated through ITBA<sup>3</sup> on 31 March 2021, but the email through which notices were sent were issued post 1 April 2021 to the taxpayers, either with or without digital signatures. Significance of determination of date of issue was that if the date of issue is held to be on or before 31 March 2021, the reassessment proceedings would be governed by unamended law and if the date of issue is on or after 01 April 2021, reassessment is to be under new reassessment regime as operative from 01 April 2021, subject to applicable limitation period.

In this respect, the HC laid down the following principles with regard to point of time of issuance of notice:

- ▶ For reassessment proceedings to be valid, what is relevant is the issuance of notice within the limitation period. The date mentioned on the notice or the date on which the notice is served on the taxpayer is irrelevant.
- ▶ Reassessment notices need not be digitally signed for being valid, as long as the notice mentions the name, designation and the jurisdiction of the relevant tax authority issuing the notice.

<sup>1</sup> [TS-752-HC-2022(DEL)]

<sup>2</sup> Involving tax years 2012-13, 2013-14, 2015-15, 2016-17

<sup>3</sup> Income Tax Business Application (ITBA) system launched by the Central Board of Direct Taxes (CBDT) to facilitate proceedings under the ITL using electronic means as an interface between the tax authority and the taxpayer

- ▶ Nonetheless, in a case where the tax authority has opted for digitally signing the notice, the date on which the digital signature is affixed may be said to be the date of the notice (irrespective of the date which is mentioned on the said notice). In such case, it may be suggested that a notice cannot be issued prior to the date of digital signature.
- ▶ For valid issuance of notice, the tax authority must make an overt act to ensure due dispatch of notice to the addressee. It is only on due dispatch, that is beyond the control of the jurisdictional tax officer (JTA), can the notice be said to have been issued. Accordingly, neither the act of generation of the notice nor the date of affixing digital signature on the notice will signify issuance of notice.
- ▶ Accordingly, in case of physical issue of notice, the date of dispatch through speed post is determined as the date of issuance of such notice. Likewise, in case of electronic mode of sending notices, such notices may be said to be dispatched (and, therefore, issued) when the email leaves the last server of the ITBA system<sup>4</sup> and enters a computer resource over which the tax authorities have no control<sup>5</sup>.
- ▶ ITBA system is a computer/server of the tax authorities and is under their control. The ITBA system and the JTA perform two inseparable and complementing functions which together results in generation and issue of the notice. Therefore, any delay arising between the generation of notice using the ITBA system and its dispatch on account of large volume of notices to be issued, as compared to the limited capacity of the ITBA system, is attributable to the JTA. The JTA, who is aware of the limitation of the ITBA system qua dispatch over email, cannot take the plea that notices were validly generated on or before 31 March 2021 by them but dispatched belatedly on or after 1 April 2021 due to the limitations of the ITBA system that are not attributable to them.
- ▶ Separately, mere uploading of reassessment notices on the taxpayer's e-filing account, in the absence of any dispatch through email, will not be considered as valid service of reassessment notice.

Accordingly, in light of the principles as laid down above, the HC grouped the various cases before it under the following five categories and ruled on the date of issuance in each scenario as under:

Category	Date of generation of Documentation Identification Number (DIN) <sup>6</sup> /notice	Date on which document was digitally signed using a Digital Signature Certificate (DSC)	Date on which e-mail containing notice was received by taxpayer	Conclusion of HC on date of issue of notice
A	On or before 31 March 2021	On or after 01 April 2021	On or after 01 April 2021	▶ Date of notice itself would be the date on which digital signature is affixed (i.e., on or after 01 April 2021). Additionally, the dispatch of notice through e-mail was also post 01 April 2021.
B	On or before 31 March 2021	Not Signed	On or after 01 April 2021	<p>▶ Notice without digital signature is valid as long as it mentions the name, designation and jurisdiction of the JTA. Therefore, the date of notice continues to be 31 March 2021.</p> <p>▶ In such cases, notices may be said to be issued when the e-mail leaves the last server of the ITBA system (to be determined by JTA).</p>
C	On or before 31 March 2021	On or before 31 March 2021	On or after 01 April 2021	▶ Similar to Category B, even in this case, the notices may be said to be issued when the e-mail leaves the last server of the ITBA system (to be determined by JTA).

<sup>4</sup> Income Tax Business Application used by the tax authority to undertake a host of proceedings under the ITL using electronic means as an interface between the taxpayer and the tax authority

<sup>5</sup> In this respect, the HC noted that such information on dispatch of email is captured by the ITBA system and records may be determined by the JTA as appropriate

<sup>6</sup> A Unique Document Identification Number to be incorporated in every communication issued by the Income Tax Authorities

Category	Date of generation of Documentation Identification Number (DIN) <sup>6</sup> /notice	Date on which document was digitally signed using a Digital Signature Certificate (DSC)	Date on which e-mail containing notice was received by taxpayer	Conclusion of HC on date of issue of notice
D	On or before 31 March 2021	On or before 31 March 2021	Notice not served on taxpayer (manually or through e-mail). Taxpayer comes to know of the notice later through its registered account on the e-filing portal of the income tax department <sup>7</sup>	► While mere upload of notice on the taxpayer's e-filing account does not constitute valid issuance since, in the facts of the case, taxpayers did ultimately become aware of the notice and the assessment in their case is still pending, the reassessment notices so issued were not quashed. Rather, the JTA was directed to determine the date on which notices were first accessed by the taxpayer on the e-filing portal, which may be considered as its date of issuance.
E	On or before 31 March 2021	Manually signed. Hence, date of signature not available.	Notice was served on taxpayer only through speed post which was dispatched on or after 01 April 2021	► The date of dispatch through speed post is determined as the date of issuance of such notice (i.e., on or after 01 April 2021).

In addition to the above, the HC also dealt with another scenario not falling within the Categories A to E above, where the notices dated 31 March 2021 were issued by the ITBA system to an unrelated e-mail address not belonging to the taxpayer. In such case, the HC expressed its surprise at such a system-generated mistake and held that it cannot be contended that there was due dispatch of the notice to result in valid issuance. However, similar to Category D referred above, since, even in such cases, notices were placed on the taxpayer's e-filing account and the taxpayer did ultimately become aware of the notice, the reassessment notices were not quashed. Rather, the JTA was directed to determine the date on which notices were first accessed by the taxpayer on the e-filing portal, which may be considered as its date of issuance.

Furthermore, the HC also held that in all cases where the notice is determined to be issued on or after 1 April 2021, the reassessment proceedings would be time-barred under the new reassessment regime, unless saved by the Supreme Court (SC) ruling in the case of Ashish Agarwal<sup>8</sup>. In such case, the notices shall be deemed to be notices issued to show cause as to why reassessment should not be taken up in the case of the taxpayer in line with the new reassessment regime introduced vide Finance Act (FA), 2021.

Also refer **Annexure** for a detailed analysis of the ruling.

<sup>7</sup> <https://www.incometax.gov.in/iec/foportal>

<sup>8</sup> Refer our Tax Alert titled "SC validates reassessment notices issued between April and June 2021 following old procedure" dated 5 May 2022

## Comments

The issue of limitation period has historically been extremely litigious and has specially become more vexed in the context of the technology mode of undertaking proceedings under tax laws. Particularly, the issue of what the date of issuance of a notice would be in a computerized environment, has been in question right from the outset, with limited jurisprudence available on the subject.

In this light, the instant ruling is a welcome development in as much as it lays down a clear guidance on determination of the date of issue in the case of tax proceedings under today's technology-enabled world. As in the case of physical issue of notice, the date of issuance of notice under electronic mode is also broadly considered at the point in time where the notice goes beyond the control of the tax authority viz., the notice, post generation and digital signature, is put in the motion of dispatch through e-mail and when the e-mail leaves the last server of the ITBA system.

While the ruling is rendered in the context of reassessment notices, the rationale of its conclusions may extend to all proceedings under the Indian Tax Laws (ITL). Accordingly, one would do well to study the import of the ruling in detail and be mindful of the consequences in respect of proceedings under the ITL.

Separately, the HC conclusion on the controversy over issuance date of reassessment notices with respect to Category D cases, as also cases where e-mails were sent to unrelated e-mail address, may be debatable. On the technical front, while the HC opined that mere uploading on e-filing account of the taxpayer without service of notice physically/through e-mail or wrong service on unrelated e-mail address will not constitute valid issue, while concluding, the HC directed the tax authority to continue reassessment proceeding on the taxpayers considering the date on which it was first viewed by the taxpayer on their e-filing account as the date of issuance of notice. If the case is akin to no issuance or issuance on wrong address of notice within the limitation period, which goes to the root of assumption of valid jurisdiction, direction to continue the reassessment proceedings may conflict its earlier conclusion.

It may be noted that in the present ruling, the HC was concerned with determination of the date of issuance of notice pre or post 01 April 2021 in the batch of appeals, with a view to determine whether proceedings will be governed by the old reassessment regime or the new reassessment regime as was introduced with effect from 01 April 2021. The HC has, hence, provided a broad guideline to determine the date of issue. Once such date gets determined, the taxpayer may be free to raise an issue of limitation period, if applicable, for validity of such notice, as the HC has kept all other arguments of the taxpayers challenging notice open.

## Annexure - Detailed Analysis of the ruling

### Legislative backdrop

- ▶ With the advent of technology, even the income tax authorities have gradually adopted the same to conduct scrutiny assessments over the years. This has manifested in the movement from e-mail-based assessment launched in 2015 by the CBDT<sup>9</sup> on a pilot basis to the e-assessment scheme introduced by the CBDT in 2019<sup>10</sup> for conducting assessments in a faceless manner. However, since the e-assessment scheme was limited to certain specified cases, in August 2020, a faceless scheme was introduced, extending the electronic mode of conducting assessments to almost all cases<sup>11</sup>.
- ▶ To facilitate this, in April 2017<sup>12</sup>, the CBDT launched the ITBA system which is an internal system to undertake a host of proceedings under the ITL (such as assessment, reassessment, penalty proceedings) using electronic means as an interface between the tax authority and the taxpayer (they would use their e-filing accounts on the income tax department's website<sup>13</sup>).
- ▶ Subsequently, in December 2021<sup>14</sup>, the CBDT launched the e-verification scheme for faceless information gathering by the tax authority under the ITL.
- ▶ Simultaneously, various other amendments have also been made to the process, as well as to provisions of the ITL, to effectively administer and conduct proceedings under the ITL in a faceless manner. These included:
  - Introduction of a computer-generated Document Identification Number (DIN) to be incorporated in every communication issued by the income tax authorities, without which any communication issued by the tax authorities is invalid - to maintain a proper audit trail thereof.
  - Amendment to provisions of the ITL to enable service of notice for proceedings under the ITL electronically through e-mail and in accordance with the Information Technology Act, 2000 (IT Act, 2000).
    - In this regard, the IT Act, 2000 provides that the dispatch of an electronic record, unless otherwise agreed upon between the parties, takes place when the electronic record enters a computer/server outside the control of the sender.
  - Hitherto, the relevant provision of the ITL required the tax authority to sign and issue a document in paper form. Such provision is now amended to relax the

requirement of signature on a notice or other document issued by the tax authorities, whereby a document is deemed to be authenticated if it specifies the name, designation and jurisdiction of the designated tax authority.

- However, it may be noted that the ITL, with regard to issue of notice for faceless assessment proceedings and for e-verification proceedings, clearly requires authentication of electronic notices through affixation of digital signature.

### Background and facts

- ▶ Prior to 1 April 2021, the tax authority could reopen past assessments if there was a reason to believe that income has escaped assessment (old reassessment regime). In this regard, such reopening was contingent upon the reassessment notice being "*issued*" within five or seven or seventeen years from the end of the tax year (TY), as the case may be.
- ▶ Furthermore, in view of The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (Relaxation Act), the due dates for various compliances, including issuance of various notices, which stood to expire on 31 March 2020 and 31 March 2021, were extended to 30 June 2021.
- ▶ Vide FA 2021, the new reassessment regime was introduced effective from 1 April 2021 whereby, amongst other changes, a detailed mechanism was laid down for pre-notice enquiry (viz., a separate mechanism to be followed prior to issue of notice for reassessment).
- ▶ The new reassessment regime provides for a curtailed time limit for issue of notice for reassessment from the erstwhile five years to four years from the end of the TY in normal circumstances and an extended time limit of 11 years from the end of the TY if escaped income exceeds INR5m and certain additional conditions are fulfilled.
- ▶ Considering that the new regime of reassessment was to operate with effect from 1 April 2021 with a shorter limitation period and, in order to avail the longer limitation period under the unamended provisions (as further extended under the Relaxation Act) for general cases, the tax authorities, in a number of cases, generated reassessment notices for TYs 2012-13, 2013-14, 2014-15 and 2016-17 dated 31 March 2021.

<sup>9</sup> Central Board of Direct Taxes - the apex authority for administration of direct taxes in India

<sup>10</sup> Refer our Tax Alert, "CBDT notifies E-assessment Scheme 2019 for conducting faceless assessment" dated 16 September 2019

<sup>11</sup> Except cases assigned to Central and International Tax Charges. Refer our Tax Alerts, "Prime Minister of India unveils "Transparent Taxation - Honouring the Honest" platform" dated 13 August 2020 and "Prime

Minister of India unveils "Transparent Taxation - Honouring the Honest" platform (Part II)" dated 14 August 2020

<sup>12</sup> Notification No. 2 of 2017 dated 3 April 2017 (read with Instruction No. 1 of 2017 of even date)

<sup>13</sup> <https://www.incometax.gov.in/iec/foportal>

<sup>14</sup> Notification No. 137/221 dated 13 December 2021

- ▶ Such notices were generated using the ITBA system of the income tax authorities created for this purpose.
- ▶ While the notices so generated were dated 31 March 2021, in many cases, such notices were digitally signed and/or dispatched to the respective taxpayers (either physically through post or electronically through e-mail) only on or after 1 April 2021. These notices are the subject matter of challenge before the HC in the instant batch of writs by different taxpayers.
- ▶ The significance of the issue is that if notices are held to be “issued” on or after 1 April 2021, these may be covered by new reassessment

regime and will be governed by SC ratio in the case of Ashish Agarwal (*supra*), wherein the SC has directed the tax authority to consider the reassessment notices issued as notices of show cause why reassessment should not be taken up in the case of the taxpayer in line with the new reassessment regime introduced vide Finance Act (FA) 2021. If, however, notices are held to have been ‘issued’ on 31<sup>st</sup> March 2021, reassessment proceedings will be carried out under old regime.

- ▶ In light of the above, HC grouped various cases under the following five categories to deal with the issues as hereunder:

Category	Date of generation of DIN/ Notice of Reassessment	Date on which document was digitally signed using a Digital Signature Certificate (DSC)	Date on which e-mail containing notice was received by assesses
A	On or before 31 March 2021	On or after 1 April 2021	On or after 1 April 2021
B	On or before 31 March 2021	Not Signed	On or after 1 April 2021
C	On or before 31 March 2021	On or before 31 March 2021	On or after 1 April 2021
D	On or before 31 March 2021	On or before 31 March 2021	Notice not served on taxpayer (manually or through e-mail). taxpayer comes to know of notice later through its registered account on the e-filing portal of the income tax department
E	On or before 31 March 2021	Manually signed, hence, date of signature not available	Notice was served on taxpayer only through speed post which was dispatched on or after 1 April 2021

In addition to the above, in some cases, the notices dated 31 March 2021 were issued by the ITBA system to an unrelated e-mail address not belonging to the taxpayer.

## Issues

In light of the above, the issue before the HC pertained to determination of the date of Issuance of the reassessment notices in all the above scenarios so as to be able to determine whether the proceedings are covered by the old reassessment regime or the new regime.

Towards this end, the HC enumerated the various issues before it, as given below:

- ▶ **Question No. 1:** What is the scope of the term “issued” used in reassessment provisions of the ITL? Whether dispatch of reassessment notice is essential for valid issue?
- ▶ **Question No. 2:** Whether “despatch” as referred to in the IT Act, 2000 is essential for issuance of reassessment notice when the notice is issued through e-mail?
- ▶ **Question No. 3:** Whether time lag involved in delivery of reassessment notice to the taxpayer

through system-generated mail shall be ignored for determining date of issuance of notice?

- ▶ **Question No. 4:** Whether digital signature of JTA on system-generated reassessment notice is a prerequisite for valid issue of notice under the ITL?
- ▶ **Question No. 5:** Whether mere upload of reassessment notice on taxpayer’s e-filing account, without service of notice physically/through e-mail, constitutes valid transmission under the ITL?
- ▶ **Question No. 6:** Whether reassessment notice issued by the ITBA system to unrelated e-mail address constitutes valid issuance?

## Technical procedure for issuance of reassessment notices on the ITBA system

At the outset, before venturing into the HC’s analysis and conclusions, it may be relevant to understand the technical procedure for issuance of reassessment

notices, as explained by the tax authorities to the HC, as below:

- ▶ Tax authorities use the internal ITBA system to generate and issue notices.
- ▶ For generating the notice using this software, two options<sup>15</sup> are available to the JTA:
  - Option I: Generation of reassessment notice, allotment of DIN and subsequent digital signature on such notice.
  - Option II - Mere generation of notice and allotment of DIN (without option to digitally sign it)

#### Option I - Generation of notice, allotment of DIN and subsequent digital signature

- ▶ In Option I, the notice accompanied by DIN is generated in an uneditable PDF format with 15 days being available to the tax authority to affix their digital signature using a DSC on the notice.
- ▶ The JTA will have no control over the notice and cannot alter, amend or delete the same once the notice is generated post allotment of DIN<sup>16</sup>.
- ▶ On affixation of the digital signature, the ITBA system automatically carries out the following:
  - Trigger of e-mail to the taxpayer with the authenticated notice as an attachment.
  - Sharing of the notice with the taxpayer's e-filing account for upload and access by the taxpayer for subsequent viewing.
- ▶ Even in cases where the tax authority omits to affix their digital signature to the notice within 15 days from its generation, the notice (without such digital signature) will be automatically triggered by the ITBA system, whereby an e-mail is sent to the taxpayer and upload on the e-filing account takes place automatically at the end of the 15 days.

#### Option II - Mere generation of notice and allotment of DIN (without subsequent digital signature)

- ▶ In Option II, notice accompanied by DIN is generated in an uneditable PDF format. Similar to Option I, once generated, the notice cannot be altered, amended or deleted by the JTA.
- ▶ Upon such generation itself, similar to the discussion in Option I, the notice (without such digital signature) will be automatically triggered by the ITBA system, whereby an e-mail is sent to the taxpayer and upload onto the e-filing account takes place automatically and immediately.

#### Transmission of communication through e-mail

- ▶ The tax authorities use an e-mail service based on a chain of servers to transmit the e-mail from the ITBA system to the taxpayer.
- ▶ The ITBA system's e-mail triggering system is programmed in such a manner that e-mails are triggered in a batch mode, in a controlled manner i.e., at the rate of 400 documents per two minutes so as to avoid getting the ITBA system's IPs blacklisted by e-mail service providers like Yahoo or Google.
- ▶ Once an email is triggered by the system, the e-mail service of the ITBA system transmits it to the ITBA's dedicated server from the JTA's computer.
- ▶ The ITBA's dedicated server then identifies the relevant taxpayer's e-mail address to which the e-mail is to be sent, whereafter the e-mail is transferred through a chain of servers to the server of the taxpayer's e-mail service (such as Gmail, Outlook etc.)<sup>17</sup> to reach the taxpayer.

#### **HC's Decision:**

On Question No. 1- What is the scope of term "issued" used in reassessment provisions of the ITL? Whether dispatch of reassessment notice is essential for valid issue?

*Basis the following reasons, the HC held that the notice can be said to be "issued" on the date of its due dispatch and not on the date the notice is generated using the ITBA system. Hence, the HC held that notices dated 31 March 2021, but dispatched on or after 1 April 2021, may be said to be issued only on the date of dispatch.*

- ▶ For reassessment proceedings to be valid, what is relevant is issuance of the notice within the limitation period. The date on which the notice is served on the taxpayer in this respect is irrelevant.
- ▶ It is a well-settled principle<sup>18</sup> that dispatch is an essential condition to complete the act of issuance of reassessment notice. Mere generation and/or signing of the notice without its dispatch would not amount to its issuance.
- ▶ The above proposition has also been upheld by various HCs<sup>19</sup> in respect of notices sent by e-mail to the addressee, wherein the date of triggering of the e-mail was held to be the date of issue of the notice.
- ▶ From the above, it is evident that courts have consistently held that the expression "issue", in its common parlance and its legal interpretation, means that the issuer of the notice must, after drawing up the notice and signing the notice,

<sup>15</sup> It appears that these options are placed in the system for selection by the tax authority depending on the nature of proceedings and the mandate that the ITL may have provided for specific adaption of the options. For instance, in case of faceless assessment proceedings under the ITL, the tax authority is mandated to issue notice duly digitally signed

<sup>16</sup> The ITBA portal allows the JTA to create a draft notice which can be cancelled. However, this is a step prior to generation of the notice itself

<sup>17</sup> Referred to as the Simple Mail Transfer Protocol (SMTP)

<sup>18</sup> Delhi Development Authority v. H.C. Khurana [(1993) 3 SCC 196 (SC)]; Kanubhai M. Patel (HUF) v. Hiren Bhatt [(2011) 334 ITR 25 (Guj)]

<sup>19</sup> Smt. Parveen Amin Bhathara v. the Income Tax Officer [Writ Appeal No. 1795 of 2021 (Madras)]; Yuvraj v. Income Tax Officer & Ors. in W.P.(C) No. 28293 of 2021 order dated 3rd March 2022 (MP); Daujee Abhushan Bhandar v. UOI [(2022) 136 taxmann.com 246 (Allahabad)]; Santosh Krishna HUF v. UOI [Writ Tax No. 211 of 2022 (Allahabad HC)]; Mohan Lal Santwani v. UOI [Writ Tax No. 569 of 2022 (Allahabad HC)]

make an overt act to ensure due dispatch of the notice to the addressee. It is only on such dispatch that the notice can be said to have been issued.

- ▶ Illustratively, therefore, for cases time barring on 31 March 2021, if issued in paper form, notices must be dispatched by post on or before 31 March 2021. Illustratively, where the notice was booked for dispatch through speed post on 10 June 2021, the notice can be said to have been issued only on such latter date of 10 June 2021.
- ▶ Setting up of the digital platform of the ITBA system and the e-filing portal is for facilitating issue of notice and completion of assessment proceedings electronically which, in no manner, mitigates or dispenses with the legal requirement of the department to ensure due dispatch of the notice.
  - For that matter, even the date on which digital signature is affixed on the notice may only be said to be the date of the notice itself and not its dispatch. It is trite to argue that a notice can be dispatched (and, therefore, issued) only after such date of the notice<sup>20</sup>. Therefore, even though the notice is dated 31 March 2021, where the notice was actually digitally signed on 1 April 2021, the latter may be considered as the date of the impugned notice. Accordingly, such notice can be considered to be issued only on or after 1 April 2021.
- ▶ Even the instructions<sup>21</sup> issued by the tax authorities to effectively administer proceedings carried out through the ITBA system under the ITL uses the terms “generation” and “issuance” distinctively. After generation of the notice, instructions require the JTA to take overt steps for issuing the said notice to the taxpayer. Therefore, the instructions do not support the tax authority’s argument that generation of the notice is tantamount to its issuance.
- ▶ Furthermore, DIN was introduced to maintain a proper audit trail of communications issued by the tax authority and does not constitute issuance of notice. The circular<sup>22</sup> issued by the CBDT (which introduced the requirement to allot DIN to communications from the tax authority) also does not support the argument of the tax authority that generation of DIN would automatically constitute issuance of notice.
- ▶ Therefore, while the notice may be dated 31 March 2021, where it is sent and delivered through the ITBA portal on 15 April 2021, it may be said to be issued on 15 April 2021 only.

On Question No. 2 - Whether “despatch” as referred in IT Act, 2000 is essential for issuance of reassessment notice when the notice is issued through e-mail?

and

On Question No. 3 - Whether time lag involved in delivery of reassessment notice to the taxpayer through system-generated mail shall be ignored for determining date of issuance of notice?

*The HC, for the following reasons, held that dispatch is essential for “issue” and thereby rejected the tax authority’s contention that delay in dispatch of notices by the ITBA system is not attributable to the JTA i.e., in other words such period is not to be ignored for determining date of issuance of notice.*

- ▶ The HC observes that, in the present case, as per IT Act, 2000, the sender of the notice over e-mail is indisputably the income tax department and the JTA is only the tax authority designated by the department to generate and authenticate the notice.
- ▶ The ITBA system is a computer/server of the department and under its control. Hence, the JTA and the ITBA system perform two inseparable and complementing functions which together result in generation and issue of the notice.
- ▶ The HC endorsed the view of various judicial precedents<sup>23</sup> and held that under the IT Act, 2000, dispatch of an electronic record occurs when it enters a computer resource outside the control of the sender (viz., the department). That is, when the e-mail from the system is triggered, the taxpayer’s e-mail is identified, and the e-mail leaves the last server of the ITBA system.
- ▶ Separately, the HC also noted the tax authority’s argument that on 31 March 2021, due to huge volume of documents, the average time taken for triggering the e-mail process under the batch mechanism of the ITBA system, on generation of the notice, was approximately six hours and such time should not be attributable to the JTA. However, the HC rejected such contention and held that the delay in dispatch of e-mail on 31 March 2021 due to large volume of notices was not due to any technical glitch and that the fact of programming of dispatch of notices in a controlled manner and in batch mode was a pre-existing fact and to the knowledge of the JTA and the JTA ought to have factored in the same while initiating proceedings.
- ▶ The HC also noted that such information is readily available on the ITBA system of the income tax department, which is accessible only by the JTA who considers this fact. Accordingly, for Category C notices, the JTA was directed to determine the date and time on which e-mails

<sup>20</sup> In this regard, the Internal ITBA User Manual [Instruction No. 2 (F.No. System/ITBA/Instruction/Assessment/16-17/177) dated 1 August 2016] itself clearly highlights that the tax authority must be careful in exercising the option of affixing the digital signature on the notice later as this would result in delaying the actual date of the document.

<sup>21</sup> The ITBA Assessment Instruction No. 2 (F.No. System/ITBA/Instruction/Assessment/16-17/177 dated 1 August 2016)

<sup>22</sup> Circular No. 19/2019 (F. No. 225/95/2019-ITA.II) dated 14 August 2019

<sup>23</sup> *Daujee Abhushan Bhandar Vs. UOI* [2022] 136 taxmann.com 246 (Allahabad); *Yuvraj v. Income Tax Officer & Ors.* in W.P.(C) No. 28293 of 2021 order dated 3rd March 2022 (MP); *Advance Infradevelopers (P) Ltd. v. Adjudicating Authority* (2021) 127 taxmann.com 197 (Madras); *Santosh Krishna HUF v. UOI* [Writ Tax No. 211 of 2022] (Allahabad HC)



were triggered from the ITBA system and consider the same as date of issuance.

On Question No. 4 - Whether digital signature of JTA on system-generated reassessment notice is a prerequisite for valid issue of notice under the ITL?

*The HC held that affixing digital signature while issuing reassessment notices is not mandatory due to the following reasons:*

- ▶ At the outset, the HC noted that such situation can arise in two circumstances: (i.) The JTA selected the option to generate notice with digital signature but failed to affix the same within 15 days. (ii.) The JTA selected option to generate notice without digital signature.
- ▶ The HC contrasted the issue of reassessment notices with cases covered by faceless assessment scheme or e-verification scheme, whereby there exist specific provisions requiring affixation of digital signature of the tax authority.
- ▶ However, in the absence of any such specific requirement in respect of reassessment notices, the HC relied on a general provision of the ITL, which specifically provides that notices issued with the name, designation and jurisdiction of the tax authority written thereon is deemed to be authenticated and validly issued.
- ▶ Furthermore, the HC also relied on the note at the end of the notice, which mentions that the affixation of a digital signature is optional and the same is also supported by the way in which the ITBA system is developed.

On Question No. 5 - Whether mere upload of reassessment notice on taxpayer's e-filing account, without service of notice physically/through e-mail, constitutes valid transmission under the ITL?

*The HC held that mere uploading of reassessment notice on the taxpayer's e-filing account will not be considered as valid service of reassessment notice.*

- ▶ In this regard, the HC noted that while the provisions of the ITL were amended to incorporate service of notice in line with the IT Act, 2000, such amendment prescribed only e-mail as a mode of service of notices.
- ▶ The HC also noted that it was only vide the e-assessment scheme of 2019 that the possibility of service via uploading onto the e-filing account of the taxpayer was first provided for. However, even in doing so, such e-assessment scheme clearly required a real-time update (through an email and/or SMS) to be given to the taxpayer regarding such upload<sup>24</sup>.
- ▶ Furthermore, the HC also relied on the faceless assessment scheme which, vide an amendment to the ITL itself, included a requirement for mandatory real-time alerts for notices uploaded on the e-filing account as a prerequisite.

<sup>24</sup> In this respect, while the HC noted that such requirement for real-time alerts under the e-assessment scheme was only discretionary, in the

- ▶ Basis the above, the HC held that mere uploading of reassessment notices on taxpayers' e-filing account, without further sending an e-mail, is not valid service of notice.

- ▶ Furthermore, the HC noted the procedure for generation of notice and observed that even the ITBA system itself is programmed such that an e-mail is generated in all cases. Considering such automatic generation of e-mail, the HC expressed wonder as to how for cases covered by Category D, the e-mail never reached the taxpayer.

- ▶ In light of the above, the HC held that in the absence of an e-mail, Category D notices cannot be said to be validly issued.

- ▶ However, considering that taxpayers in the present case became aware of the notices later through their e-filing accounts and the assessment proceedings in their cases were still pending, the HC did not quash the notices but, instead, held that since the ITBA system can track when the taxpayer first viewed reassessment notice over E-filing portal, such date be considered as the date of issuance of notices.

On Question No. 6 - Whether reassessment notice issued by the ITBA system to unrelated e-mail address constitutes valid issuance?

*The HC held that dispatching reassessment notice to unrelated e-mail address cannot be said to be validly issued on the taxpayer.*

- ▶ The HC observed that under the ITL, the tax authority is directed to dispatch notices to e-mail addresses of taxpayers communicated through return of income furnished and/or available on the website of the Ministry of Corporate Affairs.

- ▶ Referring to the settled position of law<sup>25</sup>, the HC held that reassessment notice must be served to the taxpayer in accordance with the procedure of law.

- ▶ Consequently, the HC held that the notice served on the wrong e-mail address that is completely unrelated to the taxpayer, does not constitute valid dispatch.

- ▶ However, like in other cases, as taxpayers in this category also became aware of the notices later through their e-filing accounts, the HC did not quash the notices. Instead, it held that since the ITBA system can track when the taxpayer first viewed the reassessment notice over the e-filing portal, such date be considered as the date of issuance of notices.

absence of any clarity on why the requirement for real-time alerts was optional, it treated the same as mandatory.

<sup>25</sup> Chetan Gupta [(2016) 382 ITR 613]

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