

|| Shree ||

|| Om Sai ||

Validity of Digital Service under the Income-tax Act: Whether Mere Portal Upload or ITBA Generation Constitutes ‘Issuance’ of Notice? – Hon’ble Delhi High Court holds that mere generation or portal upload without valid dispatch does not amount to ‘issuance’ and renders notices time-barred

(Suman Jeet Agarwal v. ITO [2022] 143 taxmann.com 11 (Delhi H.C.))

1. Foundational Issue before the Hon’ble Court

The entire controversy before the Hon’ble Court revolved around a seemingly simple yet legally profound question, namely - When can a notice be said to be “issued” within the meaning of the Income-tax Act, 1961?

This question assumed critical importance in the peculiar factual background where the department had:

- *Generated reassessment notices on 31.03.2021 on the ITBA system / Income Tax Account of the assessee on the portal*
- *However, caused their actual transmission only on or after 01.04.2021 i.e. email containing notice was sent on or after 01.04.2021*

The department sought to contend that generation on ITBA coupled with DIN creation should be treated as issuance, whereas the assessee’s contended that issuance is complete only upon actual dispatch. The Hon’ble Court, after an exhaustive examination of statutory provisions, judicial precedents and the technological framework of ITBA, answered this issue decisively in favour of the assessee.

2. Interpretation of the Expression “Issued” – A Substantive Requirement

The Hon’ble Court reaffirmed that the expression “issued” is not a mere procedural formality but a substantive jurisdictional requirement, particularly in the context of limitation u/s. 149. It was held that a notice is said to be “issued” only when the authority, after preparing and signing the notice, performs an overt act of putting it into transmission so as to leave its control. Thus, the Court clearly distinguished between:

- *Preparation of notice (drafting, generation, signing)*
- *Issuance of notice (actual dispatch)*

The former was held to be an incomplete internal act, whereas the latter constitutes the legally relevant event. To summarise,

Stage	Legal Status
Drafting / generation of notice on ITBA Portal	- Internal act of dept.
Digital signing of Notice	- Incomplete act by dept.
Dispatch of notice through email / real time alert	- Completion of issuance of notice

3. Rejection of the “ITBA Generation is equal to Issuance” Theory

A major plank of the department’s argument was that once a notice is generated on ITBA and a DIN is allotted, the process becomes irreversible and therefore must be treated as issuance. This argument was categorically rejected. The Court observed that:

- *ITBA is merely an internal facilitation system*
- *Generation on ITBA does not result in communication to the assessee*
- *DIN is only for audit trail purposes, not for determining issuance*

It was therefore held that mere generation of notice on ITBA screen, even with DIN, does not constitute issuance in law. To illustrate,

- AO generates notice u/s 148 on 31.03.2021 at 6:00 PM
- Notice exists in ITBA system
- But email is sent on 01.04.2021 at 10:30 AM

Notice is issued on 01.04.2021, not 31.03.2021, hence time-barred.

4. Dispatch as the Essence of Issuance

The Court reiterated and reinforced a settled principle of law that dispatch is the sine qua non for issuance of notice. In doing so, the Court relied upon long-standing jurisprudence to hold that:

- *Issuance is complete upon dispatch of notice, not upon receipt of the same*
- *Service is not necessary for issuance of notice*
- *However, absence of dispatch renders issuance of notice as incomplete*

This distinction becomes extremely important in litigation, as even if the assessee ultimately receives the notice, absence of timely dispatch can still invalidate proceedings on limitation grounds.

5. Application of the Information Technology Framework

A significant contribution of this judgment lies in its detailed application of the provisions of the Information Technology Act, 2000 to income-tax proceedings. The Court held that in case of electronic communication, dispatch occurs only when the electronic record leaves the computer resource under the control of the originator. Applying this to ITBA, it was held that:

- *The department (through ITBA) is the originator*
- *Dispatch of notice occurs only when email leaves ITBA servers*
- *Internal processing, drafting or queuing of emails does not amount to dispatch*

Thus, the legally relevant moment is the “triggering of email from the server”, not the generation of notice within the system. So even if the notice is validly uploaded on ITBA portal before 31.03.2021 but if the email is containing such notice is dispatched on or after 01.04.2021 then the date of such dispatch of email is relevant for calculation of limitation period and not 31.03.2021.

6. System Delay and Departmental Responsibility

The department attempted to justify delayed dispatch of email on account of:

- *Batch processing of emails*
- *System load and programming constraints*

The Court dealt with this argument firmly and held that any delay caused by the ITBA system is attributable to the department itself and cannot prejudice the assessee. It was observed that:

- *The system is designed and controlled by the department*
- *Its limitations are known to the department*
- *Therefore, consequences of delay must be borne by the department*

This principle is extremely powerful in litigation, as it prevents the department from taking shelter under its own technological inefficiencies. It would not be incorrect to say that the Department cannot take advantage of its own technological inefficiency.

7. Portal Upload without Real-Time Alert – Invalid Communication

One of the most significant aspects of the judgment relates to cases where notices were:

- *Merely uploaded in the e-filing portal*
- *Without any email or SMS alert*

The Court held that such passive uploading does not amount to valid transmission or service of notice. The reasoning is rooted in principles of natural justice:

- *Communication must be effective and real*
- *Assessee must be put to actual notice*
- *Mere availability on portal does not ensure awareness*

It was further observed that where the statute contemplates such mode, it is accompanied by safeguards such as real-time alerts, which were absent in such cases. To illustrate,

- Notice is generated on **31.03.2021**
- Uploaded on ITBA portal
- No email / SMS alert to assessee is sent
- Assessee logs in on **20.04.2021** and sees notice

No valid dispatch on 31.03.2021. Issuance of notice is treated as 20.04.2021 (date of knowledge to the assessee)

8. Service on Incorrect Email Address – Legal Consequence

The Court also dealt with cases where notices were sent to *incorrect or unrelated email addresses*. It was held that dispatch to an incorrect email address does not constitute valid issuance. This is because:

- *Dispatch must be to a legally recognised address*
- *Otherwise, it is equivalent to no dispatch at all*

However, where the assessee later becomes aware through the portal, the Court permitted determination of issuance based on date of first knowledge, subject to facts. To illustrate,

- Notice sent to: abc@gmail.com
- Assessee's correct email: xyz@gmail.com

- Assessee later checks portal on 25.04.2021

No valid dispatch. Issuance of notice is deemed to be on 25.04.2021 (first knowledge to the assessee)

9. Digital Signature – Clarification of Legal Position

The judgment also clarifies the role of digital signatures:

9.1 Date of Digital Signature: Where the notice itself specifies that date of digital signature shall be treated as the date of document then such date becomes relevant for determining issuance.

9.2 Absence of Digital Signature: The Court held that absence of DSC is not fatal, provided:

- *Notice is issued from official email*
- *Identity of issuing authority is clear*
- Thus, this aspect somewhat favours the department and must be handled carefully while framing arguments. To illustrate,
 - Notice shows date as 31.03.2021
 - Digital signature affixed on 01.04.2021
 - Email to assessee is sent on 01.04.2021

Date of notice is considered to be 01.04.2021. Entire notice falls in new regime and thus, invalid under old limitation

10. Determination of Relevant Date for Limitation

The Court laid down a clear hierarchy:

- Date of notice → Not decisive
- Date of generation → Irrelevant
- Date of signing → Relevant in limited cases
- Date of dispatch → Decisive

Thus, for purposes of limitation u/s. 149, the date of dispatch alone is determinative.

11. Classification of Defective Notices – A Practical Framework

The Court classified the notices into five categories (A to E), each dealing with a different factual defect such as:

- *Post-dated signatures*
- *Absence of signature*
- *Delayed dispatch*
- *Portal-only communication*
- *Manual dispatch beyond limitation*

This classification is of immense practical value as it:

- *Provides a structured approach to litigation*
- *Helps in categorising cases factually*
- *Assists in framing precise legal grounds*

12. Broader Legal Doctrine Emerging from the Judgment

On a holistic reading, the judgment lays down a broader doctrine governing digital tax administration:

- *Issuance of notice is a jurisdictional requirement and not a mere procedural formality;*
- *Dispatch alone constitutes issuance — mere generation, digital signing or portal upload is insufficient;*
- *Digital systems such as ITBA are subservient to statutory mandates and cannot override the law;*
- *Passive availability of notice (without real-time communication) does not amount to valid issuance; and*
- *The burden lies on the Department to establish valid and timely dispatch of notice.*

It equips the assessee with strong jurisdictional grounds to challenge proceedings where digital communication is defective.

13. Concluding Observations

The Hon'ble Delhi High Court, through the present decision, has reaffirmed that the concept of "issuance" under the Income-tax Act is a substantive jurisdictional requirement, and not a mere procedural formality capable of being satisfied through system-generated actions. In an era of faceless and technology-driven tax administration, the ruling assumes critical significance in drawing a clear distinction between:

- *internal system processes, and*
- *legally valid acts of communication*

The Court has thus ensured that digitisation does not dilute statutory safeguards, and that the Department remains bound by the fundamental requirement of valid and timely dispatch of notices. The decision, therefore, serves as a crucial reminder that: in law, communication must not only exist — it must be validly and effectively made.

- ***Chinmayy Suhas Pathak, C.A.***