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IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 1901 of 2022
………

Prakash Lal Khandelwal, S/o Late Jugal Prasad Khandelwal, resident of 301B, Ratnawali Apartment, Circular Road, Lalpur Chowk, Ranchi, P.O. G.P.O, P.S. Lalpur, District-Ranchi, 834001 (Jharkhand)
..… Petitioner

Versus

1. The Commissioner of Income Tax, Ranchi, having its office at Central Revenue Building, 5A, Mahatma Gandhi Main Road, Ranchi, Jharkhand, 834002.
2. The Income Tax Officer, Ward-2, Ranchi, having its office at 5A, Central Revenue Building, 1st Floor, Room No.108, Main Road Ranchi-834002. ..... Respondents

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CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Mr. N.K.Pasari, Adv.
Ms. Sidhi Jalan, Adv.
For the Respondents : Mr. R. N. Sahay, Adv.
Mr. Rahaul Lamba, Adv.

19/21.02.2023 Heard learned counsel for the parties.

2. Writ petitioner approached this Court with multiple reliefs:-

(A) For issuance of an appropriate writ, order, direction particularly directing upon the respondents to show cause as to:
(i) Why the order has been passed manually?
(ii) If the order has been passed manually on 31.03.2022, why was it not uploaded on the very same day, which is mandatory?
(iii) Why there is no DIN number in the order impugned?
(iv) Why DIN number was generated on 01.04.2022?
(v) Why the order was uploaded on 03.04.2022?
(vi) Why the corrigendum was issued on 11.04.2022?
(B) For issuance of an appropriate writ, order, direction holding and declaring that the service of order to an Assessee, can be carried out only in terms of Section 282 of the Income Tax Act read with Rule 127 of Income Tax Rule and any order served otherwise, is not recognized in the eyes of law and vitiates the intended proceedings:
(C) Consequent upon showing cause if any and on being satisfied that the entire proceeding having become time barred and the purported order dated 31.03.2022, which although has been passed on 03.04.2022, since antedated and since suffers from various anomalies, the entire proceedings be held to be time barred and the order impugned dated 31.03.2022 be quashed and set aside.
(D) Consequently, the respondents be directed to forthwith refund the amount of Rs.36.59/- lakhs from the bank account of the petitioner, realized during the pendency of appeal at learned ITAT, Ranchi Bench, Ranchi.

3. The brief facts of the case as enumerated in the writ application is that the petitioner is engaged in the business of trading of coal and has

been carrying out the said business for more than 15 years. For the period i.e., Assessment year 2014-15 corresponding to previous 2013-14, the petitioner filed its Income Tax Return declaring a total income of Rs. 3,68,490/-. However, the case was selected for limited scrutiny through CASS and notices were issued to the petitioner u/s 143(2) & 142(1) of the Act. In the audited balance sheet certain inadvertent error had crept in and the same was duly rectified by the petitioner much prior to initiation of any proceeding; the said revised audited balance sheet has never been rejected.

On 17.10.2016, notice under section 142 (1) of the act was issued for production of books of accounts. On 08.11.2016, the second notice under section 142(1) was issued. The claim of the petitioner in relation to the actual sundry creditors was rejected and the total credit of Rs.2,34,64,368/- was added to the income of the petitioner as unexplained investment in the business vide order dated 29.12.2016 passed u/s 143 of the Act followed by a notice of demand dated 29.12.2016 issued to the petitioner wherein a sum of Rs. 1,06,57,240/- was imposed as tax for assessment year 2014-15. Pursuant thereto, a show cause notice u/s 274 read with 271(1)(c) of the Act was also issued as to why penalty be not imposed.

Aggrieved by the aforesaid assessment order, an appeal was preferred by the Assesse before the Ld. Commissioner of Income Tax (Appeals), vide Appeal No. CIT (A), Ranchi/10410/2016-17, wherein by an ex-parte order dated 31.08.2018, the appeal of the petitioner was dismissed. Being aggrieved, the petitioner preferred 2nd appeal before the Ld. Income Tax Appellate Tribunal on 01.10.2018 vide I.T.A. No.316/RAN/2018.

During pendency of appeal before the tribunal, the petitioner was served with appeal effect order under Section 251 of the Act along with demand u/s 156 dated 15.10.2018. A notice for issuance of penalty proceedings u/s 271(c) of the Act, was also issued, fixing the date of compliance on 12.12.2018. In the penalty proceedings, a final order had been passed on 14.01.2019 fixing the date of compliance on 01.02.2019 and on the very same day, the learned assessing authority had issued a

notice u/s 226(3) of the Act for realization /recovery of the impugned demand from the petitioner's vendor and the notice for attachment of bank account were also issued and an amount of Rs. 36.59 lakh was realized from the bank accounts of the petitioner.

The appeal before the learned ITAT was finally heard and learned ITAT had allowed the appeal preferred by the petitioner vide order dated 02.03.2020 passed u/s 254(1) of the I.T Act, 1961 and remanded the matter back to the Assessing Officer to examine the entire issue afresh. On 24.06.2020, the order passed by learned ITAT u/s 254(1) of the Act was received in the office of the learned Principal Commissioner of Income Tax. After passing of order of learned ITAT, the petitioner made all compliances as and when required to be undertaken. However, no final order had been passed and in fact the appeal effect had also not been given to the petitioner, inasmuch as, the petitioner had been continuously pursuing the same before the authorities concerned and had made representations. On 08.07.2021, last communication was received from the office of Respondent No. 2, stating that after introduction of Faceless Assessment Scheme nothing remains in the hand of Respondent no. 2 in order to grant refund or appeal effect, but the entire proceedings shall be carried out in terms of the said scheme.

Aggrieved thereof, the petitioner preferred a writ petition being W.P.(T) No. 3094/2021, which was withdrawn by the petitioner vide order dated 19.04.2022 with a liberty to avail remedy available under the law. The two reasons for withdrawal of the writ petition:

(a) since a fresh assessment order had been passed and uploaded on the web portal;

(b) in terms of sec. 153 (3) the time period to commence and conclude the proceedings after remand would be governed from the end of the financial year in which order was received.

Hence, for all practical purposes the end of financial year in which the order was received would be Financial Year 2021 and the end date for concluding the proceedings, passing of final order and issuance thereof would be 31.03.2022.

4. The specific case of the petitioner is that during the pendency of the writ petition, the order of assessment dated 31.03.2022 was uploaded on the web portal of the petitioner-assesse on 03.04.2022 which was not communicated through e-mail address of the assesse. Letter dated 01.04.2022 was uploaded indicating DIN of the order impugned. In order to cover-up anomalies and defect in the order, a corrigendum was also issued on 11.04.2022. A circular has been issued by CBDT bearing No. 19/2021 dated 14.08.2019, wherein it has been made mandatory to quote DIN number with regard to every communication made-by the Revenue to the assesse.

Reference has also been made to the FAQs issued by the Income Tax Department wherein the revenue has stated that the notice/order/letter received by the Assessee would be treated as invalid and shall be *non-est* in law and the order deemed to be as if it has never been issued if it is without DIN. The petitioner has also relied on the status report procured from the Official Website of the Income Tax Department regarding communications made by the department to the Assessee which clearly shows latches on the part of department.

5. Mr. Nitin Kumar Pasari, learned counsel for the petitioner has made following submissions:-

(I) Non-mentioning of DIN in the impugned order renders it void ab-initio. The circular No.19/2019 dated 14.08.2019 is mandatory in nature and cannot be done away with, inasmuch as, the CBDT has, as a matter of rule, prescribed that every communication relating to assessment, appeal, order, statutory or otherwise exemption, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. shall be communicated to the assesse or any other person on or after the first day of October, 2019, with a computer generated document identification number allotted to it and duly quoted in the body of such communication.

The CBDT has also carved out the exceptional circumstances, where it becomes difficult to quote DIN and the communication is issued manually but in such exceptional circumstances, the reasons are to be recorded in writing in the file and the prior written approval of the Chief

Commissioner/Director General is mandatory. In fact, the communication, if issued manually without DIN, the date of written approval taken from the Chief Commissioner/ Director General has to be specifically mentioned in the file; in the absence of such modalities having been completed, any communication, are rendered invalid and shall be deemed to have never been issued.

In the case in hand, the order dated 31.03.2022, which has been impugned in the present writ petition did not bear DIN and also does not state as to under what circumstances, the order is being issued manually. A perusal of the order impugned at Annexure-15 would also show that the authority, who has passed the order has not even given the day on which the order impugned has been signed. Otherwise also, it does not state as to whether approval from the Chief Commissioner or the Director General has been taken in strict adherence to Circular No. 19/2019 dated 14.08.2019 as also the date, which is of much relevance. In fact, Annexure-16 or 17 is also silent on the strict adherence to the modality prescribed in Circular No.19/2019.

Learned counsel contended that similar issue fell for consideration before the learned ITAT, Kolkata Bench in I.T.A. No.238/KOL/2021 and the learned ITAT taking into consideration the non-issuance of DIN in the body of the order rendered the order passed by the authority as invalid and deemed to have never been issued as it failed to mention DIN.

Reference has also been made to the orders and judgments of other High Courts, where it has been held inter-alia that *'the guidelines issued by the Central Board of Direct Taxes is binding on the Administrative Officers for implementation of the Act'.* In the eventuality under the exceptions if no DIN could be generated at the time of issuing the order impugned; it was incumbent upon the authority concerned to have recorded reasons in writing in the file and with prior approval of the Chief Commissioner/Director General of Income Tax, before communicating order manually.

(II) The next limb of argument of the learned counsel for the petitioner is that absence of sanction as required in terms of CBDT

CIRCULAR NO. 19/2019 dated 14.08.2019 and non-fulfillment of modalities prescribed renders the order dated 31.03.2022 non-est in the eyes of law.

It is submitted that a perusal of the CBDT circular would show that it is binding and mandatorily to be carried out and is not procedural inasmuch as the purpose of introduction of the DIN system is to prevent any abuse by the departmental officer of pre-dating communication and ratifying actions by authorizations subsequently made out in the file.

Recently, the Hon'ble Apex Court considered this issue in the PIL (being W.P.(C) 320 of 2022), where the prayers were - the DIN number should be made mandatory, not only for central government revenue system, but also for state government revenue system. The Hon'ble Apex Court upon consideration of the aforesaid prayer, vide order dated 18.07.2022 was pleased to *inter-alia* hold as under:-

> *"6. It cannot be disputed that implementing the system for electronic (digital) generation of a Document Identification Number(DIN) for all communications sent by the State Tax Officers to taxpayers and other concerned persons would be in the larger public interest and enhance good governance. It will bring in transparency and accountability in the indirect tax administration, which are so vital to efficient governance. Even the Central Government has also taken a decision and as such implemented the DIN system of Central Board of Direct Taxes and on and from 01.10.2019, as every CBDT communication will have to have a Document Identification Number (DIN). But, as on today, only two States, namely, the States of Karnataka have implemented the system for electronic (digital) generation of a DIN in the direct tax administration, which is laudable and to be appreciated.*
>
> *7. In view of the implementation of the GST and as per Article 279A of the Constitution of India. The GST Council is empowered to make recommendations to the States on any matter relating to GST. The GST Council can also issue advisories to the respective States for implementation of the DIN system, which shall be in the larger public interest and which may bring in transparency and accountability in the indirect tax administration. Therefore, we dispose of the present writ petition by directing the Union of India/GST Council to issue advisory/ instructions/ recommendations to the respective States regarding implementation of the system of electronic (digital) generation of the DIN in the indirect tax administration, which is already being implemented by the States of Karnataka and Kerala. We impress upon the concerned States to consider to implement the system for electronic (digital) generation of a DIN for all communications sent by the State Tax Officers to taxpayers and other concerned persons so as to bring in transparency and accountability in the indirect tax administration at the earliest."*

(III) Learned counsel further contended that section 282 of the

Income Tax Act read with Rule 127 of the Income Tax Rules has to be strictly adhered to for the service of orders and no other mode of service is permissible under the Act.

Uploading the order on web portal is directly in conflict with Section 282 of Income Tax Act read with Rule 127 of the Income Tax Rules. Hence, what is relevant is the date of communication and as per Annexure-20, the intimation letter is dated 03.04.2022, which is after the cut-off date of 31.03.2022. Otherwise also from a perusal of the impugned order it would transpire that the order purported to have been passed on 31.03.2022 is on white sheet and not on the approved sheet of the Income Tax Department, as would be evident from Annexure-5, which bears the emblem of the Income Tax Department along with the address. Section 282 of the Act cannot be read in isolation, but the same has to be read with Rule 127 of the Rules.

It is wrong for the department to say that the order if passed manually it need not be uploaded on the same day. Under the Income Tax Act what is relevant is issuance & service of any communication within the date prescribed.

(IV) The last limb of the argument of the counsel for the assesse is that the entire proceeding as on 31.03.2022 has become time barred and as such is liable to be quashed and set aside as only on 03.04.2022, the purported order of assessment dated 31.03.2022 was uploaded on the web portal of the petitioner and not communicated on the email address of the assesse along with the letter dated 01.04.2022, which was also uploaded on 01.04.2022 indicating the DIN Number of the order impugned. A corrigendum was also issued on 11/04/2022, just in order to cover up the anomalies and defect in the order. Manual passing of the order and the communication dated 01.04.2022 clearly goes to show that it was antedated. If the order has been passed on 31.03.2022 within 11:59:59 pm, the same ought to have been uploaded on the same day within the same time, on the e-mail ID of the assesse.

6. Mr. Sahay and Mr. Lamba, learned counsel for the respondent submits that both Section 153(1) and 153 (2) use the word or expression “shall" for prescribing the time period for making the relevant

assessment order, while at the same place i.e., under section 153(3) legislature has used the expression "may" for prescribing the time period for making remand assessment order. Further, it is also pertinent to consider that both under Section 153(1) and Section 153(2) the words or expression are *"no order of assessment .... shall be made"* whereas section 153(3), which starts with a non obstante clause and uses the expression *".... and order of fresh assessment .... may be made ....."*.

It is clear from bare reading of the said three provisions of section 153, that section 153(1) and 153(2) are stringent and mandatory but section 153(3) is not stringent and not mandatory; rather section 153(3) is only directory. It has been submitted that the intention of the legislature from the very use of the words or expression in Section 153, categorically shows that Section 153(3), which deals with the time period for making the assessment order pursuant to remand order, is directory and not mandatory. Even assuming, though not admitting, that the time line provided under Section 153(3) is mandatory and not directory; section 153(3) only provides a time line for making the assessment order and the said provision does not provide the time line for communicating the assessment order.

In this case, it is a fact that the said assessment order in the case of the Petitioner for AY 2014-15 was made on 31.03.2022 itself. Therefore, what was required in terms of Section 153 was done within the limitation period.

As regards the other contention of the petitioner, that generation of DIN is mandatory prior to making of the said assessment order in terms of Circular No. 19/2019 dated 14.08.2019, it is submitted that such interpretation is absolutely incorrect and misconceived. It is pertinent to consider that paragraph-2 of the said Circular regulates issuance of any communication by the Income Tax authority to the Assesse in relation to the assessment order etc. Paragraph-2 of the said Circular provides that no communication shall be issued by any Income Tax Authority relating to assessment, appeals, orders..... etc. to the assesse or any other person unless a computer-generated DIN has been allotted and is duly quoted in the body of such communication. Paragraphs 3,4,5 &6 of the said

circular are all in relation to what is regulated under paragraph 2 of the said circular.

7. Having heard learned counsel for the parties and after going through the documents annexed with the respective affidavits and the averments made therein it appears that the petitioner in the present writ petition has challenged the assessment order, dated 31.03.2022, passed in the case of the petitioner for AY 2014-15. The said assessment order was passed pursuant to the order dated 02.03.2020 passed by the ITAT which had directed the assessing officer to examine the entire issue afresh. The order of the learned ITAT was received by the office of the Principal Commissioner of Income Tax on or around 24.06.2020.

According to the petitioner, as per Section 153 (3) of the Income Tax Act, 1961, the limitation period for passing and communicating the said assessment has expired on 31.03.2022. The main thrust of the argument of the petitioner is that the said assessment order, dated 31.03.2022, passed in the case of the petitioner was not communicated to the assesse and also not uploaded on the web portal on or before 31.03.2022. Therefore, it has been argued by the petitioner that the said assessment order is barred by the limitation period prescribed under Section 153(3) of the Income Tax Act, 1961. It has also been contended that the DIN (Document Identification Number) for communication of the said assessment order was generated on 01.04.2022 and the said assessment order was uploaded on the web portal on 01.04.2022. Further, the said assessment order was communicated to the Petitioner on 03.04.2022. The Petitioner has relied on the CBDT circular, bearing no. 19/2019 and dated 14.08.2019, to argue that no communication in relation of the assessment order could have been made in the absence of DIN. As in the present case, the DIN was generated after 31.03.2022 i.e., on 01.04.2022, therefore the assessment order could not have been communicated to the petitioner prior to 31.03.2022. Accordingly, the assessment order is barred by limitation as the same was communicated after 31.03.2022. The Petitioner contended that DIN is mandatory for uploading of any manual order.

8. The case of the Revenue is that the assessment order dated

31.03.2022 passed in the case of the petitioner for AY 2014-15 is not barred by the limitation period provided under Section 153(3). It is submitted that Section 153 (3) provides the time line only for making of an assessment order and not for communicating or issuing the assessment order. Accordingly, what is required under Section 153(3) is that the assessment order may be made by the given date and the same is clear from Section 153 (3) of the Act.

9. To decide the rival contentions of the parties' section 153 of the Act is quoted hereunder:

> *153. (1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable:*
>
> *Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:*
>
> *Provided further that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted:*
>
> *Provided also that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2021, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "nine months" had been substituted.*
>
> *(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served:*
>
> *Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.*
>
> *(3) <u>Notwithstanding anything contained in sub-sections (1) and (2), an order of fresh assessment in</u>*

pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner:

Provided that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted. "

10. At this stage itself it is relevant to mention that 'making of order', 'issue of order', 'uploading of order on web portal' or 'communication of order' are all different acts or things. It is to be considered that section 153 (3) regulates only making of order. There is no restriction or limitation period prescribed under Section 153 (3) for 'issue of order', 'uploading of order on web portal' or 'communication of order'. The Hon'ble Supreme Court in the case of *CIT v. Mohd. Meeran Shahul Hameed, (2022) 1 SCC 12,* while interpreting Section 263 of the Income Tax Act, 1961, which uses similar expression like Section 153 (3), has held the following:

"4.2. While deciding the aforesaid issues and question of law, Section 263(2) of the Income Tax Act, which is relevant for our consideration is required to be referred to, which reads as under:

"263. (2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed."

4.3. On a fair reading of sub-section (2) of Section 263 it can be seen that as mandated by sub-section (2) of Section 263 no order under Section 263 of the Act shall be "made" after the expiry of two years from the end of the

financial year in which the order sought to be revised was passed. Therefore the word used is "made" and not the order "received" by the assessee. Even the word "dispatch" is not mentioned in Section 263(2). Therefore, once it is established that the order under Section 263 was made/passed within the period of two years from the end of the financial year in which the order sought to be revised was passed, such an order cannot be said to be beyond the period of limitation prescribed under Section 263(2) of the Act. Receipt of the order passed under Section 263 by the assessee has no relevance for the purpose of counting the period of limitation provided under Section 263 of the Income Tax Act.

5. In the present case, the order was made/passed by the learned Commissioner on 26-3-2012 and according to the department it was dispatched on 28-3-2012. The relevant last date for the purpose of passing the order under Section 263 considering the fact that the assessment was for the Financial Year 2008-09 would be 31-3-2012 and the order might have been received as per the case of the assessee respondent herein on 29-11-2012. However as observed hereinabove, the date on which the order under Section 263 has been received by the assessee is not relevant for the purpose of calculating/considering the period of limitation provided under Section 263(2) of the Act. Therefore the High Court as such has misconstrued and has misinterpreted the provision of sub-section (2) of Section 263 of the Act. If the interpretation made by the High Court and the learned ITAT is accepted in that case it will be violating the provision of Section 263(2) of the Act and to add something which is not there in the section. As observed hereinabove, the word used is "made" and not the "receipt of the order". As per the cardinal principle of law the provision of the statute/Act is to be read as it is and nothing is to be added or taken away from the provision of the statute. Therefore, the High Court has erred in holding that the order under Section 263 of the Act passed by the learned Commissioner was barred by period of limitation, as provided under sub-section (2) of Section 263 of the Act.

6. In view of the above and for the reasons stated above the question of law framed is answered in favour of the Revenue appellant and against the assessee respondent herein and it is held that the order passed by the learned

> *Commissioner under Section 263 of the Income Tax Act was within the period of limitation prescribed under sub-section (2) of Section 263 of the Act. The present appeal is allowed accordingly. No costs."*

11. In the case at hand, the order sheet at Annexure–B to the supplementary affidavit of the revenue dated 07.12.2022, shows that the assessment order was made/generated on 31.03.2022 and the intimation letter was issued on 03.04.2022. Therefore, the contention of the petitioner, that the said assessment order, dated 31.03.2022 which was uploaded on the web portal on 01.04.2022 and communicated to the petitioner on 03.04.2022 is barred by limitation, is misconceived and not sustainable in law, inasmuch as, section 153 (3) controls only making of order. There is no restriction or limitation period prescribed under Section 153 (3) for 'issue of order', 'uploading of order on web portal' or 'communication of order.

12. Further, in the present case the assessment order, dated 31.03.2022, was uploaded on web portal on 01.04.2022, which is just the next day after 31.03.2022, and even the DIN was generated on 01.04.2022. Accordingly, the delay, if any, in uploading or DIN was just of one day.

In this factual background, it is also to be considered that specific expressions used in Section 153 (3) of the Income Tax Act, 1961 cannot be interpreted and applied as strictly as Section 153 (1) and (2), inasmuch as, the language and the expressions of Section 153 (1) and Section 153 (2) on one hand and Section 153 (3) on the other hand are substantially different. While Section 153 (1) and Section 153 (2) starts with a negative and strict expression being "No order of assessment …. shall be made", Section 153 (3) starts with a non obstante clause being "Notwithstanding anything contained in sub-sections (1) and (2)". The non-obstante clause gives Section 153 (3) an over-riding effect over the provision of Section 153 (1) and Section 153 (2).

It further appears that, both under Section 153 (1) and Section 153 (2) the language is "no order of assessment ……. shall be made" and the language in Section 153 (3) is "….order of fresh assessment …. may

be made …..". The legislature, in the same Section 153, has used the word "shall" for assessment orders in cases falling under Section 153 (1) and Section 153 (2) and has used the word "may" for assessment orders in cases falling under Section 153 (3). Accordingly, the legislature itself has given stricter time line for Section 153 (1) and Section 153 (2) and has given a liberal time line for Section 153 (3). Thus, it may not be correct to apply the time line provided under Section 153 (3) strictly or as mandatory as compared to the timeline provided under Section 153 (1) and Section 153 (2).

It is further to be taken note of that both Section 153 (1) and Section 153 (2) provide for the consequence that after the expiry of time line "no assessment order shall be passed". However, Section 153 (3) does not provide for any such consequence.

Accordingly, in the present case, the delay, if any, of just one day in uploading the assessment order or generating the DIN cannot make the assessment order unsustainable in law.

13. The Petitioner has also contended that the assessment order, dated 31.03.2022, was uploaded on the next day i.e. 01.04.2022 but the same was required in law to be uploaded on the same date and not later. However, the Petitioner has not shown any provision of law which provides that an assessment order has to be uploaded on the web portal on the same day when it is made and the assessment order will become invalid if the same is uploaded on the next day. In the absence of such legal provision, it cannot be held that the assessment order, dated 31.03.2022, which was uploaded on 01.04.2022, is invalid in law.

At the cost of repetition, the different expression used by the legislature at different places has certainly a different objective. Making of the order and communication of the order are two different things. <u>Even the circular stipulates communication of the order and not making of the order as it says every communication relating to assessment, appeal, order etc. shall have a DIN on the body of the order</u>.

14. The Petitioner has contended that impugned order is antedated. It is a purely factual issue also disputed by the revenue. As such, the petitioner has a statutory alternate remedy to challenge the assessment

order before the Commissioner of Income Tax (Appeals) where he may raise such plea.

15. Consequently, the instant writ application is dismissed. Petitioner has failed to satisfy any of grounds to invoke the writ jurisdiction of this Court by passing the statutory alternative remedy.

The petitioner is at liberty to avail the alternate remedy to challenge the impugned assessment order. He would be at liberty to raise all those points before the appellate authority. It is made clear that we have not made any comments on the merits of case of the parties.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)

Fahim/