**‘ISSUED' IN I-T PROCEEDINGS**

Issue of a legally valid notice is the foundation for proper conduct and conclusion of proceedings under the Income-Tax Act, 1961 (Act). For proceedings to be valid, notices are to be issued within the prescribed time limits. Failure to do so vitiates the proceedings and orders passed by the Assessing Officers (AOs) get reversed at the appellate stages.

Section 147 of the Act authorises the AOs that if they have reason to believe that any incomes chargeable to tax have escaped assessment, they may assess/reassess such incomes on the satisfaction of the requisite conditions. Such notices u/s 148 of the Act have to be issued and served on the assessee within the time limit prescribed u/s 149 of the Act which are:

Upto 4 years from the end of the relevant assessment year whatever may be the amount of the escaped income;

Beyond four years but upto six years if the escaped income is Rs 1 lakh or more.

Section 148 provides for ‘issue' of notice for assessment or ‘reassessment' which has to be in writing and has to be issued within the limitation period (mentioned before).

Earlier, there was controversy whether notice must be ‘issued' as well as ‘served' within the limitation period. However, the Supreme Court in the case of R.K. Upadhya (1987) 166 ITR 163(SC) clarified that ‘issue' of notice within the limitation period is necessary – not its service to give jurisdiction to the AO for assessing escaped income.

**Meaning**

There have been differences in opinion on the word ‘issue'. The IT Department took the position that once the notice is signed within the limitation period (which is generally March 31) the requirement of issue gets satisfied and it is immaterial when the notice is sent for service and served. The legal position in this regard has been clarified by the Gujarat HC in the case of Kanubhai M. Patel v. Hiren Bhatt 334 ITR 25 in disposing of writ petitions filed before it.

The facts are that initially, the assessees were assessed for the AY 2003-04 u/s 143(3). Later, the AO issued notices u/s 148 dated March 31, 2010, which were sent for service by speed post on April 7, 2010 and delivered on April 8, 2010 when the limitation date was March 31, 2010. On these facts the Court has decided that notice was not issued in time.

**LIMITATION PERIOD**

Taking into account the dictionary meanings of the word ‘issue' in Black's Law Dictionary, Century Dictionary, P. Ramanathan's Law Lexicon and as given by some jurists, the High Court has ruled that the word ‘issue' does not imply mere signing of notices within the limitation period, but implies a process of making out these and placing these in the hands of the proper persons to serve these and with a bona fide intent to have these served.

Thus merely signing the notices and keeping these with oneself will not amount to issue of notices.

In the facts of the case (supra), the High Court has observed that the date of ‘issue' would be the date on which the notices were actually handed over to the post office for the purpose of effective service on the petitioners. Till the point of time the envelopes are properly stamped with adequate value of postal stamps, it cannot be stated that the process of issue is complete.

In the facts of the case, the impugned notices having been sent for booking to the speed post centre only on April 7, 2010 , the date of the issue of the said notices would be April 7, 2010 and not March 31, 2010 as was contended on behalf of the I-T Department. In the circumstances, the impugned notice under section 148 in relation to AY 2003-04 having been issued on April 7, 2010 is clearly beyond the period of six years from the end of the relevant assessment year are clearly barred by limitation and as such cannot be sustained. The HC, it is said with utmost respect, has most justly and pragmatically decided the issue and its decision should end all controversies in the matter.

***Source: The Hindu Businessline***