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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6880/2022 & CM APPLs.20953-20954/2022**

RAJESH KUMAR MALHOTRA

..... Petitioner

Through: Mr.Amol Sinha, Advocate with
Mr.Ashvini Kr., Mr.Abhinav Arya,
and Mr.Rahul Kochar, Advocates.

versus

**ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-
10(1), DELHI & ANR.**

..... Respondents

Through: Mr.Shailendra Singh, Advocate.

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Date of Decision: 25th May, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the notice dated 27th March, 2022 under Section 148 of the Income Tax Act, 1961 ('the Act') for the Assessment Year 2018-19 pursuant to an order passed under Section 148A(d) of the Act on 27th March, 2022 by the Respondent No.1.
2. Learned counsel for the Petitioner states that the Petitioner was asked to comply with the Show Cause Notice dated 21st March, 2022 by 25th

March, 2022, thereby not giving him the minimum statutory prescribed time of seven days to reply to the notice.

3. He points out that the notice under Section 148A(b) of the Act was issued by the Respondent No.1 on 21st March, 2022 for the Assessment Year 2018-19 stating that the Petitioner has claimed bogus Long Term Capital Gains ('LTCG') of Rs.1,23,21,875/- on purchase and sale in the shares of M/s Achal Investments Ltd. However, he points out that the next paragraph of the notice stated that the income chargeable to tax has escaped assessment for the Assessment Year 2015-16, making the notice self-contradictory.

4. He further states that the notice mentioned that the evidence pertaining to the said information had been enclosed but the same was not served upon the Petitioner.

5. Learned Counsel for the Petitioner states that the Petitioner has not claimed any LTCGs on the shares of M/s Achal Investments Ltd. during the Assessment Year 2018-19. He states that the LTCG on shares of M/s Achal Investments Ltd. pertains to the Assessment Year 2015-16 and the same has already been assessed under Section 143(3) of the Act vide order dated 29th December, 2017 by ACIT, Circle-70(1) and thereafter, the assessee had opted for Vivad se Vishwas Act. He states that the Petitioner had not only submitted his response, but also uploaded all the relevant documentary evidences on 22nd March, 2022.

6. Learned Counsel for the Petitioner also states that the order dated 27th March, 2022 under Section 148A(d) has no factual correlation with the facts mentioned in the show-cause notice issued under Section 148A(b) of the Act dated 21st March, 2022. He states that the order passed under Section 148A(d) states that the Petitioner has received an accommodation entry of

Rs.35,50,070/- from Shri Naresh Jain and entities controlled by him. He points out that the order nowhere states the name of M/s Achal Investments Ltd. as an entity is controlled by Sh. Naresh Jain.

7. He contends that the impugned order erroneously records that the Petitioner had not furnished any response to the Show Cause notice dated 21st March, 2022.

8. On 2nd May, 2022, when this Court had heard the matter, learned counsel for the respondent on advance notice had stated that there was suppression of facts by the petitioner. Consequently, this Court had directed the respondent to file a short affidavit.

9. Today, learned counsel for the respondents has handed over a short affidavit in Court and the same is taken on record. In the short affidavit filed by the respondents, it is stated that the petitioner was issued two show cause notices under Section 148A(b) of the Act dated 23rd March, 2022 and 21st March, 2022 pertaining to Assessment Years 2015-16 and 2018-19 respectively. It is stated that the information for the Assessment Year 2015-16 pertained to the bogus LTCG on purchase and sale of shares of Achal investments Ltd. and the information for the assessment year 2018-19 related to receipt of accommodation entries from Shri Naresh Jain and entities controlled by him.

10. With regard to the reassessment proceeding for the Assessment Year 2015-16, the short affidavit states that the Petitioner's contention was found to be correct and on the basis of the information on record, it was concluded that there was no case of escapement of income made out in the Assessment Year 2015-16.

11. The Respondent in its short affidavit admits that due to technical glitches the annexure accompanying the notice dated 21st March, 2022 issued for the assessment year 2018-19 as prepared by the Assessing Officer was not served upon the petitioner and “was replaced with the annexure relating to the assessment year 2015-16”.

12. The short affidavit of the respondents specifically withdraws the allegation of suppression made before this Court on 2nd May, 2022.

13. Having heard both the parties and having perused the paperbook, this Court is of the view that the Petitioner has not been provided an adequate opportunity to put forward its defense/reply as the annexure accompanying the notice enumerating the reasons for initiating reassessment pertained to the Assessment Year 2015-16 and not 2018-19. It is pertinent to mention that the allegation mentioned in the 148A(b) and demand notice pertained to claim of bogus LTCG on purchase and sale of shares of Achal Investments Ltd. and not with regard to alleged accommodation entries provided by Shri Naresh Jain. Consequently, this Court is of the view that the principles of natural justice have been violated on the present case.

14. Accordingly, the show cause notice dated 21st March, 2022 issued under Section 148A(b), the order dated 27th March, 2022 issued under Section 148A(d) and the notice dated 27th March, 2022 issued under Section 148 of the Act for the Assessment Year 2018-19 are quashed. If the law permits the respondents/revenue to take further steps in the matter, they shall be at liberty to do so. Needless to state that if and when such steps are taken and if the petitioner has a grievance, he shall be at liberty to take his remedies in accordance with law.

15. In view thereof, the present writ petition along with pending applications stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

MAY 25, 2022
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