

\$~58

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

% *Decision delivered on: 02.05.2023*

+ **W.P.(C) 5655/2023 & CM APPL. 22149/2023**

INDERPAL SINGH SAYAN

..... Petitioner

Through: Ms Prem Lata Bansal, Sr. Adv. &
and Mr Shivang Bansal.

versus

ASSESSMENT UNIT INCOME TAX DEPARTMENT & ORS.

..... Respondents

Through: Mr Gaurav Gupta, Sr Standing
Counsel with Mr Puneett Singhal and
Mr Shivendra Singh, Jr Standing
Counsels.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. Issue notice.
 - 1.1 Mr Gaurav Gupta, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.
2. In view of the directions that we propose to pass, Mr Gupta says that he does not wish to file a counter-affidavit in the matter and he will argue the matter based on the record, as is presently available with the court. Therefore, with the consent of the learned counsels for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.
3. This writ petition concerns Assessment Year (AY) 2018-19.

4. This writ petition is directed against the assessment order dated 03.03.2023 passed under Section 147, read with section 144B of the Income Tax Act, 1961 [in short, “Act”].

4.1 Besides this, challenge is also laid to the notice dated 17.03.2022 issued under Section 148A(b) and the order dated 31.03.2022 passed under Section 148A(d) of the Act.

4.2 In addition thereto, challenge is also laid to the consequential notice dated 31.03.2022 issued under Section 148 of the Act.

5. The principal allegation against the petitioner is that he has failed to disclose the entire sale consideration concerning the subject properties. The allegation levelled against the petitioner, as noted in the notice issued under Section 148A(b) of the Act, is captured in the following paragraphs of the annexure appended to the said notice. For the sake of convenience, the same are extracted hereafter:

“2. An information has been received from ADIT (Inv.), Jalandhar that during the action of Enforcement Directorate on Sh. Bhupinder ,S/o Late Sh. Satnam Singh, R/o AdarshNgar , Jalandhar, a red colour diary was seized from the residential premise of Bhupinder Singh . The said diary was shared with department along with other documents related to violation of income Tax. During the in depth analysis of the said page, it was seen that against each transaction of Rs. 70,50,000/- a payment of Rs.1,21,50,000/- has been mentioned as Kacha in said dairy. An amount of Rs.70,500/- has been mentioned as TDS.

3. Further, details of property having 50% stake of Smt. Gurjeet Kaur W/o Bhupinder Singh situated at 591, Model Town, Jalandhar, revealed that in the year 2017-18, following facts were revealed that are presented in tabulated form:-

S. No.	Seller	Buyer	Vasika No. and portion measurement	Consideration amount paid Rs.
<i>1</i>	<i>Sh. Inderpal Singh S/o. Shg.</i>	<i>Smt. Gurjit Kaur W/o.</i>	<i>Vasika No. 12389 dated</i>	<i>70,50,000/-</i>

	<i>Kuldeep Singh, R/o. C-112, Mansarovar Garden, Delhi, PAN: ABMPS7036B</i>	<i>Bhupinder Singh</i>	<i>21.02.2018; 7 Marla 34.5 sq. ft.</i>	
2.	<i>Sh. Inderpal Singh S/o. Sh. Kuldeep Singh R/o. C-112, Mansarovar Garden, Delhi, PAN: ABMPS7036B</i>	<i>Smt. Kuldip Kaur W/o. Harpreet Singh</i>	<i>Vasika No. 70,50,000/- 12390 dated 21.02.2018; 7 Marla 34.5 sq. ft.</i>	

4. In this regard, profiling of Sh. Inderpal Singh, S/o Sh. Kuldeep Singh having PANABMPS7036B was done and following facts were revealed in relation to capital gain: -

A.Y.	Full Value Consideration	Deduction u/s 48	Deduction u/s 54	LTCG
2018-19	1,41,00,000/- (70,50,000/- plus 70,50,000/-	89,26,134/-	51,73,866/-	—

5. **It is clear from the above that the full value of sale consideration that were shown at Rs. 1,41,00,000/- which is as per registered deed of the property whereas the actual sale consideration of the property comes to Rs. 2,42,50,000/- thus there is a shortfall of Rs.1,01,50,000/- which needs to be added back to the actual sale consideration and the capital gain has been calculated accordingly.**

[Emphasis is ours]

6. Admittedly, the petitioner filed a reply *qua* the notice issued under Section 148A(b) of the Act, which is dated 25.03.2022.

7. The Assessing Officer (AO), thereafter, passed an order dated 31.03.2022 under Section 148A(d) of the Act. The essence of the AO's rationale is recorded in the following paragraphs of the said order:

“6. After due analysis of the relevant information and verification from the Department’s database, it is observed that the income corresponding to the above tabulated financial transactions has escaped assessment for the year under consideration.

7. Thereafter, following due procedure as provided by Section 148A of the Act, a showcause notice u/s 148A (b) was issued on 17.03.2022 and served upon the assessee after obtaining prior approval of the competent authority. The assessee was given opportunity of being heard by serving upon him a notice to show-cause within eight days, as to why a notice under section 148 of the Act should not be issued on the basis of information discussed above which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year.

8. However, assessee has submitted his reply on 25/03/2022 and submitted point wise reply to the show issued to him and **also submitted that the LTCG on sale of property is disclosed by the assessee in his return filed no proof related to the same was attached by the assessee** therefore, the reply of the assessee is not acceptable.

9. The information and material available on record has been analyzed and the following observations are made:

a. The assessee has been involved in the above mentioned high value transactions to the tune of Rs. 1,01,50,000/- for year under consideration.

10. Therefore, I have reasons to believe that income chargeable to tax has escaped assessment for the assessment year under consideration.”

[Emphasis is ours]

8. It is evident on reading the notice, along with the order, that the AO was of the view that there was a cash component in the sale of the subject properties effected by the petitioner in favour of Mrs Gurjit Kaur and Mrs Kuldip Kaur.

9. The diary which was seized by the Enforcement Directorate from the husband of one of the purchasers, was suggestive of the fact that there was a cash component.

9.1 The diary was seized in the course of the search action carried out

against Mr Bhupinder Singh, who is, concededly, the husband of Mrs Gurjit Kaur.

10. It is in this backdrop that the AO concluded that the income chargeable to tax has escaped assessment.

11. Ms Prem Lata Bansal, learned senior counsel, who appears on behalf of the petitioner, however, says that the petitioner needed to explain as to why there was no cash component involved, as alleged or at all.

11.1 Ms Bansal says that the petitioner was not granted enough opportunity to furnish an explanation in defence of the charge levelled against him.

11.2 In this context, Ms Bansal has drawn our attention to Annexure-P appended on page 123 of the case file. A perusal of the said Annexure shows that a show cause notice was issued on 17.02.2023, which required a response to be filed by 23.02.2023.

11.3 The petitioner, evidently, made a request for accommodation on 23.02.2023 to seek time up until 07.03.2023. We are told that the reason given for seeking accommodation was that the petitioner had to gather the material relevant for his defence.

12. It appears that without dealing with the request for accommodation, the AO passed the impugned assessment order dated 03.03.2023.

13. Clearly, the petitioner was not heard in support of his stand. There is, therefore, if nothing else, a breach of principles of natural justice, as the AO, without dealing with the request for accommodation, proceeded to pass the impugned assessment order dated 03.03.2023.

14. Therefore, on this singular ground, we are inclined to set aside the impugned assessment order dated 03.03.2023 and the order dated 31.03.2022 passed under Section 148A(d) of the Act. It is ordered

accordingly.

14.1 Needless to state, the consequential notice dated 31.03.2022 issued under Section 148 of the Act shall also collapse.

14.2 The AO, however, will be at liberty to take steps, as per law, from the stage of the issuance of notice under Section 148A(b) of the Act dated 17.03.2022.

14.3 The petitioner will file a reply to the notice dated 17.02.2023 within the next four (4) weeks.

14.4 The AO will consider the same and, after granting personal hearing to the petitioner and/or his authorized representative, pass a fresh order.

15. The writ petition is disposed of in the aforesaid terms. Consequently, the pending application shall stand closed.

16. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 2, 2023

aj