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

+ W.P.(C) 6414/2022 & C.M.No.19423/2022

MAMTA GUPTA

..... Petitioner

Through: Mr.N.P.Sahni with Mr.Naveen
Kumar, Advocates.

versus

ADDL./JOINT/DEPUTY/ASSISSTANT COMMISSIONER OF
INCOME TAX/ITO NATIONAL FACELESS ASSESSMENT
CENTRE, DELHI & ORS. Respondents

Through: Mr. Puneet Rai, Senior Standing
Counsel with Ms. Adeeba Mujahid,
Junior Standing Counsel for the
Income Tax Department.

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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 31st March, 2021 issued under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') as well as the re-assessment order dated 25th March, 2022.

2. Learned counsel for the Petitioner states that the Respondent No.3 wrongly assumed jurisdiction in issuing notice dated 31st March, 2021 under Section 148 of the Act for the Assessment Year 2013-14 after the expiry of four years without meeting the requirements of Sections 147/148 of the Act,



in particular the first proviso to Section 147 of the Act. He contends that there was no failure on the part of the Petitioner to fully and truly disclose material facts and information before the Assessing Officer during original assessment proceedings. He submits that there can be no notice under Section 147 of the Act after four years where the original assessment has been made after scrutiny, since notice in such a case is understood as one prompted by a change of opinion. In support of his submission, he relies on the decision of the Supreme Court in ***Commissioner of Income Tax, Delhi v. Kelvinator of India Ltd. (2010) 2 SCC 723.***

3. He also contends that the Principal Commissioner of Income Tax had not given his approval/sanction. In support of his contention, he relies upon page 86 of the paper book, which is a Form for recording the reasons for initiating proceedings under Sections 147/148 of the Act and for obtaining the approval of the Principal Commissioner of Income Tax. He contends that though the Income Tax Officer and the Additional Commissioner of Income Tax had signed the said Form, yet the Principal Commissioner of Income Tax had not signed the said Form.

4. Mr. Puneet Rai, learned standing counsel for the Respondents-Revenue has handed over a photocopy of the short affidavit dated 21st May, 2022 filed by the Assessing Officer with the Registry of this Court. Mr. Rai has also produced the original file of the petitioner maintained by the Assessing Officer.

5. Upon a perusal of the original file produced by the Assessing Officer, this Court finds that it contains a detailed report vis-a-vis beneficiaries of bogus LTCG/STCL pertaining to the Financial Year 2012-13 (Assessment Year 2013-14). The scrip sold by the Petitioner i.e. Mahanivesh (India) Ltd.



is a subject matter of the said report. The report concludes that Mahanivesh (India) Ltd. is a penny stock and that the share price of Mahanivesh (India) Ltd. has been manipulated and bogus profits and losses have been booked in the name of the beneficiaries by trading in the scrip. The Petitioner has been identified and enlisted in the said report along with other beneficiaries.

6. Accordingly, this Court is of the view that despite lapse of four years and a scrutiny assessment, there is fresh tangible material in the present case in the form of information of beneficiaries of bogus LTCL/STCL report prepared by the office of Deputy Director of Income Tax (Investigation) which reveals that Mahanivesh (India) Ltd. is a penny stock whose share price was manipulated in trade by way of a complex web of pre-arranged or artificial transactions to book long term/short term capital gain/loss to the beneficiaries. It is also stated in the said report that the petitioner-assessee was involved in the trade of penny stock, inasmuch as, it had sold shares of Mahanivesh (India) Ltd. in the concerned assessment year. Consequently, this Court is of the view that the present case is not a case of change of opinion. Accordingly, the judgment of the Supreme Court in ***Kelvinator of India Ltd.*** (supra) is not applicable to the present case.

7. Further, though, the Form for recording the reasons referred to by learned counsel for the petitioner does not bear either the signatures or stamp/seal of the Principal Commissioner of Income Tax, yet we find a photocopy of a note written by the PCIT, Delhi-11015 in the file which reads as under :

“...On a careful perusal of the case as submitted, the same appears to be fit case for action under Section 147 of the Income-tax Act, 1961. I agree with the findings and reasonings recorded by the AO and the Range Head...”



8. Consequently, as the file produced by the Assessing Officer has a note wherein, the Principal Commissioner of Income Tax has granted his approval/sanction and the said document has not been challenged as forged or fabricated, this Court is of the view that prior sanction is on record.

9. Keeping in view the aforesaid, this Court is of the view that the matter requires no interference in writ jurisdiction. Accordingly, the present writ petition along with pending application is dismissed.

10. However, this Court clarifies that it has not expressed any opinion on the merits of the controversy. The rights and contentions of all the parties are left open.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

MAY 25, 2022
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