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

+ W.P.(C) 11340/2022 & CM APPL. 33401/2022 & CM APPL. 33402/2022

SOUTH ASIAN STOCKS LIMITED

..... Petitioner

Through: Dr. Rakesh Gupta, Dr. Rakesh Kumar, Mr. Somil Agarwal and Mr. Anshul Mittal, Advocates.

versus

**ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 22(2)
DELHI & ANR.**

..... Respondents

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel for Revenue with Ms. Mansie Jain, Advocate.
Mr. Rajnish Kumar Gaiind, SPC for R-3/UOI.

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Date of Decision: 2nd August, 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):

CM APPL. 33402/2022

Exemption allowed, subject to all just exceptions.

Accordingly, present application stands disposed of.

W.P.(C) 11340/2022 & CM APPL. 33401/2022

1. Present writ petition has been filed challenging the show cause notice dated 22nd March, 2022 issued under Section 148A(b) of the Income Tax



Act, 1961 [‘the Act’] as well as the order passed under Section 148A(d) of the Act and notice issued under Section 148 of the Act both dated 06th April, 2022 for the Assessment Year 2018-19.

2. Learned counsel for the Petitioner states that a notice was issued to the Petitioner under Section 148A(b) dated 22nd March, 2022 stating that in the the assessment proceedings of Vishesht Financial Services Private Limited (VFSPL), it was found that VFSPL had made transaction of Rs.7,32,76,643/- in shares through the petitioner-broker during Financial Year 2017-18 for which VFSPL could not provide the PAN/GSTIN of the entities in whose scrips it traded. It was further alleged in the said notice that as the information regarding the scrips was not provided during the assessment of VFSPL, *prima facie* all the transactions belonged to the Petitioner. It was also stated that since no details regarding these transactions were found to be declared in the Petitioner’s ITR, the above transactions *prima facie* had resulted in the escapement of income.

3. Learned counsel for the Petitioner states that the Petitioner-Assessee is a SEBI registered broker providing trading platform online to the clients as per SEBI/NSE/BSE Exchanges Rules & Regulation and charging brokerage only. He further states that the Petitioner has no involvement, whatsoever, with the transactions done by its clients online and therefore, on the basis of alleged assessment in the case of VFSPL, the issuing of notice under Section 148 of the Act to the Petitioner is totally illegal.

4. Learned counsel for the Petitioner further states that the case of VFSPL was picked up for scrutiny and after examination of all the submissions, an assessment order dated 8th April, 2021 under Section 143(3) read with Section 144B of the Act was passed without making any addition



and accepting the returned income of the VFSPL.

5. Learned counsel for the Petitioner states that the impugned order under Section 148A(d) of the Act has been passed by the authorities without considering the detailed reply of the Petitioner filed in response to the impugned show cause notice dated 22nd March, 2022. He states that through its reply to the show case notice dated 22nd March, 2022, the Petitioner had requested the authorities to provide the Petitioner with the information on the basis of which the assessment was sought to be reopened, however the same was not provided to the Petitioner. Learned counsel for the Petitioner also states that it is not understood as to how the non-mentioning of the PAN/GSTIN of the entities in whose scrips VFSPL traded could lead to escapement of income.

6. Issue notice. Mr. Ruchir Bhatia, learned Senior Standing Counsel for Revenue accepts notice.

7. He admits that the impugned order under Section 148A(d) and notice under Section 148 of the Act were issued on the basis that the assessment of VFSPL was not complete. He states that the fact that scrutiny assessment proceedings had been completed in the case of VFSPL was not brought to the notice of the Assessing Officer and the said fact throws an entirely different light on the proceedings.

8. Having heard the learned counsel for the parties, this Court finds that if the averments in the writ petition are true and correct, then the scrutiny assessment of VSFPL had concluded even prior to the issuance of the notice under Section 148A(d) of the Act to the Petitioner. It is strange that the said information was not reported by the VFSPL's Assessing Officer to the Petitioner's Assessing Officer.



9. In any event, to cut the controversy short, the impugned order passed under Section 148A(d) and the notice issued under Section 148 of the Act, both dated 6th April 2022 are set aside and the Assessing Officer is directed to pass a fresh order within four weeks under Section 148A(d) after considering the averments & documents placed on record in the present writ petition and the scrutiny assessment order passed in the case of VFSPL as well as the fact that VFSPL had furnished the PAN/GSTIN details in response to the notice issued under Section 142(1) of the Act.

10. With the aforesaid direction, the present writ petition along with pending application stands disposed of. The rights and contentions of the parties are left open.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 02, 2022

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