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

+ **W.P.(C) 11676/2022 and CM APPL. Nos. 34738-39/2022**

SAROJ CHANDNA

..... Petitioner

Through: Mr.C.S.Aggarwal,Senior
Advocate with Mr. Ravi Pratap
Mall, Mr. Uma Shankar and
Mr. Mahir Aggarwal,
Advocates.

versus

INCOME TAX OFFICER WARD 70 (1)

NEW DELHI AND ORS

..... Respondents

Through: Mr. Ruchir Bhatia, Senior
Standing Counsel for the
Revenue along with Ms.
Mansie Jain, Advocate.

Reserved on: 17th August, 2022

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Date of Decision: 30th August, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

CM APPL. 34739/2022 (for exemption)

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

**W.P.(C) 11676/2022 and CM APPL. 34738/2022 (for ad-interim
ex-parte relief)**



1. The present writ petition has been filed *inter alia* praying as under :

b) That this Hon'ble High Court be pleased to quash the impugned order dated 22.07.2022 passed u/s 148A(d) for the A.Y. 2013-14 wherein the objections against the reassessment proceedings have been disposed-off and consequently notice dated 22.07.2022 u/s 148 of the Income Tax Act, 1961 was issued against the Petitioner for the A.Y. 2013-14;

c) That this Hon'ble High Court be pleased to pass a writ of and/or order and/or direction in the nature of prohibition commanding Respondents to forbear from giving effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the said purported notice under section 148 of the Income Tax Act 1961 and/or in any proceedings initiated thereunder for the A.Y 2013-14;

d) That this Hon'ble High Court be pleased to hold that the CBDT Instruction No. 01/2022, dated 11.5.2022 authorizing the revenue to initiate the reassessment proceedings for the A.Y. 2013-14 is ultra-virus/bad in law, to the First Proviso to substituted/new section 149 of the Income Tax Act, 1961;

2. Learned Senior Counsel for the petitioner stated that the petitioner was served with a notice dated 19th April, 2021, under Section 148 of the Income Tax Act, 1961 ('the Act') seeking to initiate reassessment proceedings with respect to Assessment Year ('AY') 2013-14. He stated that the petitioner herein sought from the Assessing Officer ('AO') i.e. the respondent No. 1, the 'reasons to believe' for issuing the notice dated 19th April, 2021. In the information furnished to the petitioner, the basis of forming 'reasons to believe' was set-out as under :



“Reasons for reopening of the assessment u/s 147 of the Income Tax Act, 1961.

4. Enquiries made by the AO as sequel to information collected/received: Necessary verification was made from the entire details available on records and database of ITBA and ITD and it has been observed that the assessee has entered into significant financial transactions i.e. CASH DEPOSITS AGGREGATING TO LARGE AMOUNT IMMEDIATELY WITHDRAWN IN CASH FROM ATM to the tune of Rs. 5000000 during the year under consideration i.e, F.Y. 2012-13 relevant to A.Y. 2013-14 but same is not commensurate with the information therefore, I have reason to believe that after due application of all the facts and mind the said amount i.e. Rs. 5000000 has escaped income.”

3. He stated that since the notice dated 19th April, 2021 had been issued without following the mandatory procedure prescribed under Section 148A of the Act, the petitioner approached this court in writ proceedings in W.P.(C) No. 323/2022 and the notice dated 19th April, 2021 was quashed by this court following the judgment in ***Mon Mohan Kohli vs. Assistant Commissioner of Income Tax & Anr. (2022) 441 ITR 207.***

4. He stated that however, in pursuance to the judgment of the Supreme Court in the case of ***Union of India & Ors. vs. Ashish Agarwal*** reported in ***[2022] 444 ITR 1***, the petitioner herein was served with a notice dated 17th May, 2022, furnishing the information and material relied upon by the AO for issuance of the notice dated 19th April, 2021. The contents of the information provided therein read as under:



“The relevant information/material in your case’ is as under:-

1. As per information provided by the Directorate of Investigation through Income tax Insight Portal, during the financial year 2012-13 relevant to assessment year 2013-14, you have entered into financial transactions i.e. deposited cash amount to RS.50,00,000/- in current account and immediately withdrawn in cash from ATM.”

5. He stated that the petitioner promptly replied to the notice dated 17th May, 2022 by filing a detailed reply dated 24th May, 2022 along with all the relevant documents. The reply clarified that the material set-out in the notice dated 17th May, 2022 did not pertain to the petitioner herein since during the relevant Financial Year (‘FY’) the petitioner had not carried-out any financial transactions relating to deposit of cash in her current account. The petitioner further categorically denied that she had withdrawn any such cash by using the ATM. In this regard, it was stated that the petitioner does not possess any Debit Card and therefore, she is not in a position to use an ATM as alleged. The petitioner to substantiate the aforesaid stand duly annexed her Bank Statement and a Certificate from her banker to the effect that no Debit Card has been issued, with the reply. It is the contention of the petitioner that after submission of reply dated 24th May, 2022, the AO had time until 30th June, 2022 to pass the orders under Section 148A(d) of the Act.

6. He contended that the AO however, instead of passing the order, issued a further notice dated 23rd June, 2022 setting-out therein, entirely new facts for justifying the issuance of the previous notices. The explanation provided in this notice dated 23rd June, 2022 reads as



under:

“Sir/Madam/M/s,

Subject: Letter/Order u/s 148A in view of any direction of Hon’ble Courts-Letter

This is in continuation of proceedings u/s 148A(d) of the Act and your submission dated 23.05.2022. Vide your submission you have requested to provide such material and information and, not merely vague assertion for rebuttal by the assessee.

In this case, cash is deposited in the account of Sh. Raj Kumar Singh maintained with Indusind Bank Kankurgachhi branch Kolkata. Perusal of bank statement of Shri Raj Kumar Singh, on investigation, found that the accounts get credited with high value of cash deposited during the F.Y. 2012-13 and the proceeds were immediately withdrawn in cash from ATMs, cheque issuance, fund transfer and RTGS. The amount credited in the account of Shri Raj Kumar were immediately transferred to shell entities namely Mis Subhijay Properties advisory Pvt Ltd., M/s Sensex Distributor Pvt Ltd., M/s Rainbow Plant and Machinery Traders Pvt. Ltd. and M/s Subshree Financial Management Pvt. Ltd. for layering of fund and then ultimately to the bank accounts of the concerned beneficiaries.

It is established beyond doubt that the assessee i.e., Saroj Chandna is one of the beneficiaries of the entries routed between the account of Shri Raj Kumar Singh and the above shell companies. The beneficiary companies have brought back their unaccounted income into the regular books of account in the guise of in the case of bogus share capital, share premium, unsecured loan etc. There was no other financial rationale behind the setransaction. Saroj Chandna has received an amount of Rs.50,00,000/- from Mis Subshree Financial Management Pvt. Ltd during the F.Y. 2012-13.

You are therefore requested to explain the nature of transaction entered with the above company and also as to why the said



transaction i.e. receipts of Rs.50,00,000/- in your bank account should not treated as accommodation entry from unaccounted funds.”

(Emphasis supplied)

7. He stated that AO could not have issued the aforesaid notice under Section 148A(b) of the Act, after 17th May, 2022. He stated that contents of notice dated 23rd June, 2022 is distinct from the ‘reasons to believe’ dated 27th March, 2021 and the contents of the notice dated 17th May, 2022.

8. In the notice dated 23rd June 2022, the AO sought an explanation from the petitioner for receipt on an amount of Rs.50,00,000/- (Rupees Fifty Lacs) from an entity namely M/s Subhshree Financial Management Pvt. Ltd. during the relevant Financial Year. The petitioner replied to the aforesaid notice *vide* her reply dated 28th June, 2022 and responded to the said allegations specifically as under :

*“15. The assessee further submits that even today no material whatsoever had been furnished in support of your allegation as contained in your notice dated 23.06.2022 and purported to be **"Letter/Order u/s 148A in view of any direction of Hon'ble Courts - Letter"**. It is submitted the aforesaid facts clearly shows a complete non-application of mind and the proceedings have been initiated against the assessee for the purpose of making any roving and fishing enquiry without existence of any material. It is respectfully additionally submitted and without prejudice to the aforesaid submission, that even in your notice dated 23.06.2022, it had been stated that 'it is established beyond doubt that the assessee is one of the beneficiaries of the entries routed between the account of Shri Raj Kumar Singh and the above shell companies'. It is submitted in response to the same that no date*



of receipt of any sum has been stated other than stating that the assessee had received an amount of Rs.50,00,000/-from M/s Subhshree Financial Management Pvt. Ltd. during the FY 2012-13. No specific date has been provided in the notice nor any material has been furnished in support of the allegation. In the absence thereof it is obvious the assessee is unable to furnish any such rebuttal to the allegation.”

(Emphasis supplied)

9. He stated that the petitioner has now been served on 22nd July, 2022 with the impugned order under Section 148A(d) of the Act which solely relies upon the information which was contained in the notice dated 23rd June, 2022 and on that basis, the AO has concluded that a transaction amounting to Rs.50,00,000/- (Rupees Fifty Lacs) has escaped assessment.

10. The learned Senior Counsel for the petitioner contended that the impugned order dated 23rd July, 2022 is barred by limitation under section 148A(d) of the Act. He stated the last date available to the AO for passing the impugned order under Section 148A(d) of the Act was 30th June, 2022, since the petitioner had filed her reply on 24th May, 2022.

11. He further contended that without prejudice to his aforesaid submissions, the contents of the order dated 22nd July, 2022 do not satisfy the test of Section 149(1)(b) of the Act, inasmuch as, the AO does not have in his possession any books of accounts of the petitioner and the allegation pertaining to credit of Rs.50,00,000/- (Rupees Fifty Lacs) received from M/s Subhshree Financial Management Pvt. Ltd. is not an ‘asset’ within the meaning of Section 149(1)(b) of the Act. In



this regard, he relied upon the judgments in (i) **41 ITR 191 (SC) Calcutta discount Co. Ltd. vs. ITO**; (ii) **338 ITR 563 (DEL) Commissioner of Income Tax, Delhi Vs. MS. Mayawati**; (iii) **141 ITR 67 (Bom) Commissioner of Income Tax, Poona Vs. Bhaichand H. Gandhi**.

12. He thus, summarized his submissions as below :

12.1. No notice under Section 148A(b) of the Act could have been issued to the petitioner for the relevant assessment year beyond 30th June, 2021. The procedure adopted by AO by issuing notice dated 23rd June, 2022 is contrary to the directions contained in the judgment of the Supreme Court in **Ashish Agarwal** (supra);

12.2. The contents of the notice dated 23rd June, 2022 are materially different from the contents of the notice dated 17th May, 2022. It therefore, necessarily gives rise to the conclusion that no information was available with the AO on 27th March, 2021 when the initial notice dated 19th April, 2021 was issued and on 17th May, 2022. He stated that it is impermissible for the AO to set-up a new case by issuing a notice dated 23rd June, 2022 and the petitioner had been denied any meaningful opportunity to respond to the contents of the notice dated 23rd June, 2022.

13. Issue notice.

14. Mr. Ruchir Bhatia, learned Senior standing counsel accepted notice and submitted that notice dated 23rd June, 2022 was issued by the AO in continuation of the material and information provided to the petitioner on 17th May, 2022. He submitted that the petitioner herself had requested for better particulars in her reply dated 24th May, 2022



and therefore, the AO provided these particulars as per the request of the petitioner. He submitted that as per the information available with the Income Tax Department, M/s Subhshree Financial Management Pvt. Ltd. is an *accommodation entry* provider. In this regard, he submitted that the Bank Statement furnished by the petitioner duly reflects the transaction between the petitioner and M/s Subhshree Financial Management Pvt. Ltd. He submitted that in the reply dated 28th June, 2022, the petitioner despite being confronted with the transaction has not offered any explanation with respect to the nature of transaction between the petitioner and M/s Subhshree Financial Management Pvt. Ltd. and in fact, the reply is willfully evasive.

15. He stated that since the value of transaction is Rs.50,00,000/- (Rupees Fifty Lacs) it would be saved under Section 149(1)(b) of the Act and is not barred by limitation. He relied upon the Explanation of the phrase 'asset' in the said section and submitted that 'asset' specifically includes the deposit in the assessee's Bank Account. He therefore submitted that the credit of Rs.50,00,000/- (Rupees Fifty Lacs) received by the petitioner from M/s Subhshree Financial Management Pvt. Ltd. is duly covered by this provision.

16. In rejoinder, the learned counsel for the petitioner stated that as is evident from petitioner's Bank Statement, there were multiple entries with M/s Subhshree Financial Management Pvt. Ltd. during the relevant Financial Year and in the absence of any specific Entry being identified in the notice dated 23rd June, 2022, it was impossible for the petitioner to explain the said entry. He submitted that in the writ petition, the petitioner has now set-out at Ground 'N' and Ground



‘O’ that the said transaction was a loan transaction between the petitioner and M/s Subhshree Financial Management Pvt. Ltd., which sum has since been returned.

17. Learned counsel for the petitioner in rejoinder contended that the ‘limited issue’ on which he seeks to maintain the writ petition was whether the AO could have furnished particulars on 23rd June, 2022 or was such an option foreclosed to the AO. It is his contention that after the exchange of the notice dated 17th May, 2022 and assessee’s reply dated 24th May, 2022, the AO, in exercise of his jurisdiction under Sections 148A(c) and 149A(d) of the Act could have only proceeded to pass a final order and it was impermissible for him to have issued notice dated 22nd June, 2022.

18. The petitioner did not address any arguments on the challenge to the CBDT Instruction No. 01/2022, dated 11th May, 2022 and the same has not been examined by us.

19. We have heard learned counsel for the parties. We are therefore in this writ concerned only with the validity of the AO’s action in issuing the notice dated 23rd June 2022. We are unable to accept the contention of learned counsel for the petitioner that the AO was precluded from providing the information set out in the notice dated 23rd June, 2022. In the impugned order, the AO has noted that information contained in the notice dated 23rd June, 2022 was provided to the petitioner upon her request for further material as per her reply dated 23rd May, 2022. The impugned order specifically identifies that the transaction of the petitioner with M/s Subhshree Financial Management Pvt. Ltd. dated 10th August, 2012 is subject matter of



notices.

20. This Court has consistently observed that to give effect to the objective of the scheme of Section 148A of the Act, the AO must provide specific material and information to the assessee at the stage of Section 148A(b) of the Act so that the assessee can provide a meaningful response at the stage of inquiry under Section 148A proceedings. The following observation of this Court in its decision of *Divya Capital One Private Limited v. ACIT & Ors.* Cited at 2022 SCC OnLine Del 1461, while dealing with proceedings under Section 148A of the Act are apposite:

“11. This Court further finds that the information/material stated in the impugned show cause notice dated 17th March, 2022 issued under Section 148A(b) of the Act have not been shared with the Petitioner, despite specific request made by the Petitioner vide letter dated 24th March, 2022, thereby denying the Petitioner an effective opportunity to file a response/reply. The non-sharing of the information is violative of the rationale behind the judgment of this Court in Sabh Infrastructure Ltd. vs. Asst. CIT, MANU/DE/2989/2017 : 398 ITR 198 (Del).”

21. In the facts of the present case as well, the petitioner in her reply dated 24th May, 2022, had while highlighting that the assertions of the AO in the notice dated 17th May, 2022 were vague had specifically sought better material and information from AO to enable a rebuttal. In these circumstances the issuance of notice dated 23rd June, 2022 furnishing specific details of the transaction, which as per AO is subject matter of the notice dated 17th May, 2022 cannot be faulted. A perusal of the notice dated 23rd June, 2022 and impugned



order dated 22nd July, 2022 shows that as per the AO the details of the transaction which form the basis of the notices dated 19th April, 2021 and 23rd June, 2021 are same. It is the case of the respondent that the said material was available on record and the said form the basis of the inquiry, when the initial notice dated 19th April, 2021 was issued.

22. Pertinently, the petitioner has not offered any explanation for the transaction(s) entered with M/s Subhshree Financial Management Pvt. Ltd. Limited in the relevant financial year in her reply dated 27th June, 2022. In the absence of any explanation offered in her reply, we do not find any error in the impugned order issued by the AO.

23. We also do not agree with the contention of the petitioner that she was denied an opportunity to respond to the allegations made in the notice dated 23rd June, 2022. The petitioner filed a detailed reply on 28th June, 2022 but elected not to explain or substantiate the transaction between the petitioner and M/s Subhshree Financial Management Pvt. Ltd. The petitioner having elected to not furnish the said information cannot contend that she was denied an opportunity of hearing.

24. The petitioner does not dispute that there were transactions between petitioner and M/s Subhshree Financial Management Pvt. Ltd. in the relevant Financial Year. With respect to the petitioner's contention in the writ petition that this transaction was a loan transaction and it stood repaid, the same is a bare averment, unsubstantiated and it is neither evident from the record nor can this fact be determined in these proceedings, when the allegation of the Department is that it was an *accommodation entry*. The said



submission of the petitioner will be examined by the AO in the assessment proceedings after perusing the material furnished by the petitioner. The reply dated 27th June, 2022 offered no such explanation, much less the above explanation for the transaction.

25. Consequently, at this stage, this Court finds no infirmity in the impugned order passed by the Assessing Officer. Accordingly, the present writ petition and application are dismissed.

26. We make it clear that we have not expressed any opinion on the merits of the controversy and all rights and contentions of the petitioner are left open.

MANMEET PRITAM SINGH ARORA, J



MANMOHAN, J

AUGUST 30, 2022

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