$~**S-61**

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

\+ **W.P.(C) 12626/2022 & CM APPL.38255/2022**

SAROJ BHATIA ..... Petitioner

Through: Mr.V.K.Sabharwal, Advocate with Mr.R.B.Gupta, Advocate.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX & ANR. ..... Respondents

Through: Mr.Abhishek Maratha, Sr.Standing Counsel.

% Date of Decision: 01st September, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, J (Oral):

C.M.APPL. 38256/2022

1. Exemption allowed, subject to all just exceptions.

2. Accordingly, the application stands disposed of

W.P.(C) 12626/2022 & CM APPL.38255/2022

3. Present writ petition has been filed challenging the order passed under Section 148A(d) of the Income Tax Act, 1961 ['the Act'] and the notice issued under Section 148 of the Act both dated 30th July, 2022 for the Assessment Year 2015-16.

4. Learned counsel for the petitioner states that the impugned order passed under Section 148A(d) and the impugned notice issued under Section 148 of the Act are without jurisdiction, as the income alleged to have escaped assessment is Rs.34,44,855/-, which is less than the jurisdictional requirement of Rs.50 Lakhs.

5. He states that the Respondent has passed the impugned order without considering the detailed submissions of the Petitioner, wherein the Petitioner had submitted that the Petitioner had already paid tax on the Short Term Capital gain ('STCG') of Rs. 995/- and that the Petitioner had only claimed Long Term Capital Gain ('LTCG') of Rs.33,74,855/- under Section 10(38) of the Act.

6. Learned counsel for the petitioner states that the finding of the Assessing Officer in the impugned order dated 30th July, 2022 passed under Section 148A(d) of the Act that an income of Rs.50,10,500/- has escaped assessment is factually incorrect. He states that Section 148A(d) of the Act only talks of escapement of Income on the basis of material available on record and not on material to be available in future. He points out that the material available suggested that an income of Rs.34,44,855/- has escaped assessment. In support of his submission, he relies upon the judgment of the Rajasthan High Court in ***Abdul Majeed vs. Income Tax Officer, Ward 1, D.B. Civil Writ Petition No.7853/2022/***

7. This Court finds that in the impugned order passed under Section 148A(d) it is stated that the petitioner had sold penny stock i.e. M/s Solis Marketing Ltd. for a consideration of Rs.50,10,500/-. The impugned order further states that the petitioner did not furnish the Demat Account

Statements or respond to the case on merits of case in his reply to the show cause notice.

8. This Court takes judicial notice of the fact that in the case of another assessee in W.P.(C) No.12532/2022 who had similarly purchased the stock of M/s. Solis Marketing Ltd., the revenue department has alleged that the assessee therein had earned long term capital gain which was almost forty-five times the investment within a short span of time. In this case as well, a perusal of the petitioner's reply dated 29th May, 2022 evidences that the shares purchased at face value of Rs.1 were sold at approx. Rs.50 per share earning the petitioner the LTCG which were admittedly claimed as exempt income. The Assessing Officer in the impugned order has also held that *'the assessee is one of the beneficiary of generating bogus LTCG & STCG through M/s Solis Marketing Ltd. in planned manner and has routed her unaccounted income. Hence, the total consideration of Rs.50,10,500/- has escaped assessment'*. In fact, in the impugned order, it has been repeatedly emphasised by the Assessing Officer that the entire consideration of Rs.50,10,500/- received by the petitioner is income that has escaped assessment.

9. Consequently, neither the bifurcation between the STCG and LTCG nor the calculation of income furnished by the petitioner can be accepted at this stage in writ proceedings. The judgment of the Rajasthan High Court in ***Abdul Majeed*** (supra) has no application to the facts of the present case as in the said case *'only cash deposit of Rs.9,39,000/- chargeable to tax had escaped assessment, without anything more....'*

10. Accordingly, this Court is of the view that the impugned order calls for no interference at this stage. However, the petitioner is given liberty to

raise all contentions and submissions before the Assessing Officer. With the aforesaid liberty, the present writ petition along with pending applications stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 1, 2022
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