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

+ W.P.(C) 13743/2022 and CM APPL. 41953/2022 (for ad interim ex parte stay)

VIKAS JAIN

..... Petitioner

Through : Mr. Vishal Aggarwal and Mr. Rishabh Ostwal, Advocates.

versus

INCOME-TAX OFFICER, WARD 63(1)

DELHI AND ORS

..... Respondents

Through : Mr. Kunal Sharma, Senior Standing Counsel for Revenue along with Mr. Shray Nargotra, Advocate.

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Date of Decision: 7th October, 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 (ORAL):

1. The present writ petition has been filed seeking a direction to quash the order passed under Section 148A(d) of the Income Tax Act, 1961 ('the Act') and notice issued under Section 148 of the Act, both dated 20th July, 2022, for the Assessment Year ('AY') 2014-15.

2. The petitioner, Assessee, was initially served with a notice dated 12th April, 2021, issued under the erstwhile Section 148 of the Act, without following the mandatory procedure of newly inserted Section 148A of the Act, which was introduced vide Finance Act, 2021. The said notice was



challenged by the Assessee in W.P. (C) No. 9119 of 2021 and the said petition was allowed by common order and judgment dated 15th December, 2021 in ***Mon Mohan Kohli v. Assistant Commissioner of Income Tax, 2021 SSC OnLine Del 5250***, wherein this Court quashed the said notice holding it to be null and void.

3. Thereafter, Supreme Court in ***Union of India & Ors. v. Ashish Agarwal, 2022 SCC OnLine SC 543***, in partial modification, directed that the reassessment notices issued under the erstwhile Section 148 of the Act shall be construed as show cause notice ('SCN') under Section 148A(b) of the Act. In pursuance of the direction given by the Supreme Court, the Assessing Officer ('AO') in continuation of the initial notice dated 12th April 2021 issued a notice under Section 148A(b) of the Act dated 27th May, 2022 with respect to the subject AY 2014-15, alleging the following 'information/material relied upon' against the Assessee:

"1. In this case, information has been populated in INSIGHT PORTAL under high Risk parameter regarding search action on Naresh Jain Group who, further in verification, found to be an accommodation entry provider who in the form of LTCG/Loss in several scrips to various beneficiaries. The Assessee Mr. Vikas Jain, in further verification, found to be among one of the beneficiaries who created fictitious LTCG/Loss in the penny stock through the aforesaid entity for an amount of Rs.2,58,14,528/-. The amount requires further verification.

(a) The copy of information."

(Emphasis supplied)

4. Learned counsel for the petitioner states that the Assessee filed its reply dated 9th June, 2022, to the aforesaid SCN and specifically raised an objection with respect to absence of any document or evidence in support of



the said allegation. He states that in the said reply, the Assessee specifically raised an objection that it had not been provided with any report or material to substantiate the allegation made in the SCN. With respect to the allegation of earning of fictitious Long Term Capital Gain ('LTCG'), the Assessee stated that it has never traded in any scrip rigged by Mr. Naresh Manakchand Jain during the relevant year nor the Assessee has any transaction with Mr. Naresh Manakchand Jain.

5. Learned counsel for the Petitioner states that the profit i.e. LTCG earned by the Assessee from sale of shares had been duly declared in his Return of Income. He states that the sale of shares was made through online portal of a recognized stock exchange and this transaction was duly recorded in the Assessee's books of accounts. He further stated that the payment for purchase and sale was made through bank and the shares were sold through the Assessee's Demat Account and through a SEBI registered share broker.

6. Learned counsel for the Petitioner states that in his reply the Assessee has disputed that he was a beneficiary of an accommodation entry in the form of LTCG and no material or document has been provided to the Assessee which would show that the transaction undertaken by Assessee was non-genuine. The Assessee, in his reply also raised an objection with respect to limitation.

7. The matter was first listed on 22nd September, 2022, when learned counsel for respondent, Mr. Kunal Sharma, sought time to obtain instructions from the concerned AO with respect to the material relied upon in support of the transaction pertaining to the Assessee which led to the issuance of the notice and the matter was thereafter adjourned for today i.e.



07th October, 2022. The issue alleged in the present proceedings i.e., of accommodation entry provided by Mr. Naresh Manakchand Jain was also the subject matter of another writ bearing W.P.(C) No. 11944/2022. In the said writ petition, the information received by the Income Tax Department from Central Circle-2(1), Mumbai through Insight Portal with respect to the search and survey action conducted on a syndicate lead by Sh. Naresh Manakchand Jain was relied upon by the Income Tax Department ('Department'). The list of beneficiaries of accommodation entries from Sh. Naresh Manakchand Jain and his associates, who had been instrumental in manipulating the prices of several penny stocks scrips on the stock exchange including that of the scrip namely 'Nyssa Corporation Limited' was relied upon in the said proceedings. The Registry was directed to send the e-file of the said writ petition for the next date of hearing.

8. Today, learned counsel for respondent, has similarly relied upon the said report (a copy of which has been shown to this Court) along with a brief note about the case of Sh. Naresh Manakchand Jain which states a search and survey action was conducted on 19th March, 2019, on a syndicate of persons led by Sh. Naresh Manakchand Jain. The said note further states that it was discovered that Sh. Naresh Manakchand Jain was operating with his several associates to rig the stock market and to provide accommodation entries *inter alia* in the form of bogus LTCG to various beneficiaries who intended to bring their unaccounted income into their Books of Accounts without paying taxes. In this report, the petitioner, Assessee has been enlisted as a beneficiary of LTCG for a sum of Rs. 2,58,14,582/- in FY 2013-14, at Serial No. 7158, on account of the sale of shares undertaken in



Nyssa Corporation Limited. The details of the penny stocks manipulated by Sh. Naresh Manakchand Jain includes Nyssa Corporation Limited.

9. In reply to the aforesaid, learned counsel for the petitioner states that in the Assessee's ITR for AY 2014-15, he has duly disclosed that in the relevant assessment year he has sold shares of Nyssa Corporation Limited and earned LTCG of Rs. 2,54,64,904/-, which was claimed as exempt income under Section 10(38) of the Act. He states that the Assessee admits the said transaction, however he disputes that the aforesaid transaction is an accommodation entry. He states that in the ITR, the Assessee has duly disclosed that the said shares were purchased for Rs. 2,50,000/- on 05th April, 2011, and were sold on 19th November, 2013, for Rs. 2,57,40,720/- thereby earning the petitioner LTCG of Rs. 2,54,64,904/- after accounting for transfer expenses of Rs. 25,816/-. He disputes that the LTCG earned by the Assessee was bogus and asserts that it was an arm's length transaction undertaken on the stock exchange.

10. We have perused the paper-book. The impugned order records that the AO, after perusing the reply filed by the Assessee, concluded that the Assessee has not provided any documentary evidence such as its Demat Account, Broker's note, etc along with his reply. The AO further observed that the transactions have not been reported in the Assessee's ITR and concluded that it appears that the Assessee does not wish to explain the details of the transactions undertaken in the relevant AY. The AO, therefore rejected the reply of the Assessee and passed its impugned order dated 20th July, 2022, under Section 148A(d) of the Act and consequently issued a notice dated 20th July, 2022, under Section 148 of the Act.



11. The petitioner, in this petition as well has not placed on record any documents evidencing its purchase of the shares on 5th April, 2011 i.e. contract note, the Bank Statement and the Demat Account for the relevant period. Similarly, the ITR for Assessment Year, 2012-13 declaring the initial purchase of said shares has also not been placed on record. The AO had also observed to this effect in its impugned order dated 20th July, 2022. The ITR for AY 2014-15 disclosing sale has been placed on record.

12. Further, the respondent's submissions that Nyssa Corporation Limited is a penny stock, whose price has been manipulated by Mr. Naresh Manakchand Jain and its associates and that accommodation entries in form of bogus LTCGs has been provided to various beneficiaries including the Petitioner herein and the Petitioner's contention that the said shares were sold at arm's length on stock exchange are rival allegations, which cannot be examined by this Court in the writ jurisdiction.

13. The petitioner sought a remand to the AO for reconsideration by relying upon the order passed in W.P.(C) No. 11944/2022. However, the facts of the said writ petition are distinguishable, inasmuch as, the Assessee in that case had denied the transaction as well as allegation of being a beneficiary of any LTCG or loss, bogus or otherwise, and therefore, the matter was remanded to AO for re-consideration, however, in the present case, the Assessee has admitted to the transaction in respect whereof the AO has received investigation report. Therefore, no case for remand is made out.

14. The issue of limitation though raised in the reply to the SCN was not urged by the learned counsel for the petitioner. However, as noted above the initial reassessment notice has been construed as a notice under Section



148A(b) in terms of the judgment in *Ashish Agarwal (supra)* and therefore the proviso to Section 149 of the Act is not attracted in the facts of this case.

15. In view of the report of DDIT (Inv.) Unit-7(1) and 7(3) Mumbai, shared with the AO which suggests that the LTCG earned by the petitioner in AY 2014-15 was bogus and since, the said LTCG was claimed as exempt income, the AO at this stage, concluded that the said bogus LTCG is an income chargeable to tax which has escaped assessment. We therefore in the facts of this case do not find any ground to interfere with the impugned order dated 20th July, 2022, passed under Section 148A(d) of the Act and the re-assessment proceedings, at this initial stage.

16. The writ petition is dismissed reserving liberty to the petitioner to raise all its contentions before the AO. We however direct the AO to provide the petitioner with all the relevant information pertaining to petitioner's transaction with Nyssa Corporation Limited available with the AO, after redacting third party information within four weeks from today.

17. We make it clear that we have not expressed any opinion on the merits of the controversy in the writ petition.

18. With the above directions, the writ petition and the application stand dismissed.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

OCTOBER 7, 2022/j