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

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+ W.P.(C) 15828/2022

AJAY GUPTA (HUF)

..... Petitioner

Through: Mr. Sanjeev Rajpal and Mr. Vijay Shukla, Advocates.

versus

INCOME TAX OFFICER

WARD 54(1) DELHI

..... Respondent

Through: Mr. Zoheb Hossain, Senior Standing Counsel for Revenue along with Mr. Vipul Agarwal and Mr. Parth Semwal, Junior Standing Counsel for Revenue.

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+ W.P.(C) 15829/2022 and CM APPL. 49258/2022 (for Stay)

RAJIV GUPTA (HUF)

..... Petitioner

Through: Mr. Sanjeev Rajpal and Mr. Vijay Shukla, Advocates.

versus

INCOME TAX OFFICER

WARD 54(1) DELHI

..... Respondent

Through: Mr. Kunal Sharma, Senior Standing Counsel for Revenue along with Ms. Zehra Khan, Junior Standing Counsel for Revenue and Mr. Sandeep Kumar, Advocate.

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Date of decision: 17th November, 2022

Signature Not Verified

Digitally Signed By PRAMOD
KUMAR VATS
Signing Date: 23.11.2022
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W.P.(C) Nos. 15828/2022 and 15829/2022

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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. Present writ petition, being W.P. (C) 15828 of 2022, has been filed by Mr. Ajay Gupta, who is the *Karta* of the Petitioner's Hindu Undivided Family ('HUF'), seeking quashing of the order dated 18th July, 2022 passed under Section 148A(d) ('impugned order') of the Income Tax Act, 1961 ('the Act') and the notice dated 18th July, 2022 passed under Section 148 ('impugned notice') of the Act, by the Income Tax Officer, Ward 54(1), Delhi, for the Assessment Year ('AY') 2016-17.

2. The brief facts giving rise to the present case are that the Petitioner Assessee was served with a Show Cause Notice ('SCN') dated 23rd May, 2022 under Section 148A(b) of the Act by the Assessing Officer ('AO') wherein it was stated that a search was conducted by the Investigation Wing, Rohtak on Tradenext Securities Ltd. (Earlier known as Lifeline Securities Limited) and the said entity is involved in providing accommodation entries through the modus operandi set out in the notice. It was stated that the said Tradenext Securities Ltd. ('Tradenext Securities') operates several dummy demat accounts to provide accommodation entries and one such account is of Mridul Securities Private Ltd. ('Mridul Securities'). It was further stated that the Assessee herein had received 32000 shares of TVS Motor Company

Ltd. ('TVS Motor') worth Rs. 94,81,600/- from the dummy demat account of Mridul Securities.

The relevant portion of the SCN issued under Section 148A(b) of the Act reads as follows:

"In this case information was received through Insight portal in High Risk category that-

1. A search was conducted by the inv Wing, Rohtak on Tradenext Securities Ltd (Lifeline Securities Ltd) and Kundu Group of Rohtak. It was found that family members of Kundu group had taken accommodation entries in form of Exempt LTCG u/s 10(38) of the IT Act, 1961.

2. It was found that the members of Kundu group/beneficiaries had in their possession contract notes for purchase of shares which dated back to F.Y. 2009- 10 but on further investigation no such transaction was traced on market/stock exchange.

3. Authorized signatory of Tradenext Securities Ltd had accepted on oath that the contract notes issued by them were bogus and fabricated. He has further stated that these contract notes were not issued by his company.

4. It was found that shares were purchased on exchange in the name of one Sh. Rakesh Sharma and were subsequently transferred off-market to Tradenext Securities Ltd without any consideration and this was ultimately transferred to the beneficiaries. Sh. Rakesh Sharma has stated that his account was mis-used and he had lodged FIR in regard to the same. Sh. Rakesh Sharma has also stated that he has never opened any Demat Account.

5. Some of the beneficiaries have admitted that they had no knowledge of Share trading and they had arranged exempt LTCG for 2-3% commission.

6. Modus-Operandi(MO)-

• Cash will be received from various clients and this cash will be deposited in account of some dummy persons who would purchase shares of well known companies on exchange.

• These stocks will subsequently be transferred to the beneficiaries in off-line/off- market transaction but the bills will be issued in past date at a much lower rate than at what the shares were actually purchased.

• The Beneficiaries will then get these stocks/shares transferred to their Demat Account and then sell these stocks through market by paying STT to earn huge Capital Gain but all exempt u/s 10(38).

1. The Stocks which were selected were generally the stocks which had seen huge rise in their share prices.

2. 12 Entry operator controlled demat accounts were identified and it was found that these demat accounts were used to provide accommodation entries in the above manner. Many of these person-account holders are not

traceable. Most of them have never filed their ITR and transactions in their demat/bank accounts do not reflect in their final accounts/ITR if filed. There is no bonafide commercial connection between account holders and beneficiaries.

3. It was also found that Karnam Securities P Ltd earlier holding company of Lifeline Securities Ltd was also involved in providing accommodation entries through this MO. Mridul Securities P Ltd was found to be one of the 12 dummy demat accounts.

4. It was further found that the Assessee had received 32000 shares of TVS Motor Company Ltd from one of the dummy Demat A/c Mridul Securities P Ltd worth Rs. 9481600/-.

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From the facts as discussed above, it is apparent that assessee is one of the beneficiary of bogus accommodation transactions of Rs. 94,81,600/-. Therefore, it is inferred that the income of assessee had escaped assessment for the AY 2016-17 for Rs. 94,81,600/-..."

3. The Assessee filed its reply dated 16th July, 2022 to the aforesaid SCN denying any transaction with Tradenext Securities and Kundu Group of Rohtak. However, it admitted holding a trading account with Mridul Securities in the past years and further admitted that it has undertaken regular trading in the share market through the said account.

The Petitioner further admitted that it had purchased 32000 shares of TVS Motors from Mridul Securities and the transaction amount of Rs.94,81,600. It was further stated that the said shares were thereafter transferred to a separate demat account maintained with Religare Securities Ltd. ('Religare Securities') and sold. It was stated therein that the Assessee has claimed Short Term Capital Gain ('STCG') on the sale of shares. The Assessee enclosed its return of income (ROI) with the said reply to substantiate its plea of STCG.

4. After perusing the reply filed by the Assessee, the AO held that it is a fit case of issuance of notice under Section 148 of the Act. The relevant portion of the impugned order reads as follows:

“...(iii) The information is not vague since the same is specific information mentioning the F.Y. 2016-17 which pertain to the period under consideration.

Further it is worthwhile to mention here that in this case assessee received 32000 shares of TVS Motor Company Ltd from one of the dummy Demat account worth Rs.94,81,600/-. The case requires deep scrutiny on this alert.

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7. In view of the above facts and circumstances of the case it is a fit case for issue of notice u/s 148 of the Income-tax Act, 1961...”

5. Learned counsel for the Petitioner states that the AO failed to appreciate that the Assessee in its ROI had disclosed that the sale of these shares, offered the income from the said shares as STCG and therefore there is no escapement of income. He states that the matter be remanded back to the AO for passing a fresh order under Section 148A(d) of the Act, after considering the reply dated 16th July, 2022. He states that the AO appears to have initiated the proceedings on the wrong assumption that the Petitioner herein has claimed Long Term Capital Gain (LTCG) on the sale of the said shares, which is incorrect. He further states that the action of the AO is contrary to the directions contained in the judgment of the Supreme Court in the case of *Ashish Agarwal v. Union of India (2022 SCC Online 543)* as the Assessee was not furnished with material relevant for establishing the allegations and the proceedings are barred by limitation.

6. He states that since the shares of TVS Motor are listed on the Stock Exchange and the sale through Religare Securities was undertaken through the Stock Exchange, the transaction of the sale is not suspicious.

7. Learned senior standing counsel for the Respondent, who appears on advance notice states that the Assessee has failed to establish the genuineness of the purchase of 32000 shares of TVS Motor from Mridul Securities. He states that the subject matter of the notice is the transaction between the Petitioner and Mridul Securities, an accommodation entry provider.

8. He states that the information pertaining to the Petitioner is duly reflected in the investigation report and the Petitioner is a beneficiary of Mridul Securities, which is alleged to be in the business of providing accommodation entries and as per the Revenue, the entry pertaining to the alleged purchase of 32000 shares of TVS Motor by the Petitioner is an accommodation entry. He states that the transaction is admitted by the Petitioner and it is therefore warranted that the said transaction is duly examined by the AO. He states that the Petitioner has not filed any documents on record along with its reply which establishes the genuineness of the purchase of these shares. He states that in light of the facts set out in the SCN and the impugned order since the genuineness of the transaction is disputed, the present writ cannot be maintained and the Assessee must establish the genuineness of the transactions in the re-assessment proceedings.

9. We have heard learned counsel for the parties and perused the paper book.

10. The Petitioner contends that it has duly purchased the said 32,000 shares from Mridul Securities but there are no relevant or contemporaneous documents evidencing the said purchase, i.e. bank statement etc., placed on record in this petition. As regards the disclosure, if any, of the purchase of the shares, in its earlier ROI, it was clarified by the learned counsel for the Petitioner that since the shares were bought in the same financial year, it is only the transaction with respect to sale of shares which is reported in the ROI. Thus, it is only the sale of shares which is documented by the Assessee in its ROI.

11. The SCN and impugned order states that the entity Mridul Securities is involved in providing accommodation entries and the Assessee is the beneficiary of the specified alleged transaction, in respect whereof, information has been received by the AO and the said transaction is not disputed by the Petitioner.

12. It would be relevant to mention here that in the connected writ petition, i.e., W.P.(C) No. 15829/2022, which pertains to HUF of brother of the Petitioner herein, the details of the transactions undertaken by the said Petitioner are identical i.e. the Petitioner therein Rajiv Gupta, the *Karta* of HUF is also alleged to have similarly purchased and sold 32,000 shares of TVS Motor in the same financial year and sold through Religare Securities for identical consideration of Rs. 94,81,600/-. However, this Petitioner as well has not placed on record the documents evidencing the purchase or sale of the said shares. The Petitioner therein has prayed for quashing of order passed under Section 148A(d) and Section 148 notice, both dated 19th July 2022 for the AY 2016-17.

13. In light of the information which forms the basis of the initiation of the inquiry and in view of the fact that the transactions with Mridul Securities are admitted by the Petitioners, we do not find any case for interfering in the writ proceedings. This Court finds that the Petitioners have not brought on record anything to suggest that the reassessment proceedings are being undertaken in an arbitrary manner.

14. With respect to the contention raised on the issue of limitation and the arguments of learned counsel for the Petitioners that the notice has been issued beyond limitation has already been rejected by this Court in ***Touchstone v. Income Tax Officer, Ward 25 (III) Delhi and Ors. 2022 SCC Online 3011.***

15. Learned counsel for the Petitioners has placed reliance on the order dated 2nd September, 2022 passed by this Court in ***W.P. (C) No. 12683/2022 in the case of Anu Gupta v. Income Tax Officer, Ward No. 54 (I).*** The said case has no application to the facts of the case in hand, as in the said case, the Petitioners' response to the SCN issued under Section 148A(b) of the Act has not been considered by the AO while passing the order under Section 148A(d) of the Act. However, in the present case, the responses of the Petitioners have been considered before passing the impugned orders under Section 148A(d) of the Act by the AO.

16. The Supreme Court in ***Commissioner of Income Tax v. Chabildas and Anr. 2014 1 SCC 603*** has held that as the Act of 1961 provides an able machinery for assessment/reassessment of tax, the Assessee is not permitted to abandon with the machinery and invoke writ jurisdiction of the High Court under Article 226 of the Constitution of India.

17. This Court is of the view that the present cases do not fall under the exceptional ground on which a writ jurisdiction of the High Court can be invoked. The aforesaid facts put forth are disputed questions of facts, which cannot be adjudicated by a writ court exercising jurisdiction under Article 226 of the Constitution. Accordingly, the present writ petitions along with the pending applications are dismissed. This Court clarifies that the AO shall decide the matter on its own merits and we have not examined the merits of the controversy.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

NOVEMBER 17, 2022

j/kv