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

% *Decision delivered on: 21.12.2022*

+ **W.P.(C) 17466/2022 & CM Nos.55738-39/2022**

RK GUPTA AND SON HUF

..... Petitioner

Through: Mr Ruchesh Sinha and Mr Samyak
Jain, Advocates

versus

INCOME TAX OFFICER WARD 58(3) AND ANR... Respondents

Through: Mr Ajit Sharma, Sr Standing Counsel

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.55739/2022

1. Allowed, subject to the petitioner filing legible copies of the annexures, at least three days before the next date of hearing.

W.P.(C) 17466/2022&CM No.55738/2022 [*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

2.1. Mr Ajit Sharma accepts notice on behalf of the respondents.

3. In view of the direction that we intend to pass, Mr Sharma says that a counter-affidavit need not be filed. Accordingly, with the consent of the learned counsel for the parties, the writ petition is taken up for hearing and final disposal at this stage itself.

4. This writ petition is directed against the notice dated 19.05.2022 issued under Section 148A(b) of the Income Tax Act, 1961 [in short "Act"]. Besides this, challenge is also laid to the order dated 27.07.2022 passed

under Section 148A(d) of the Act and the consequential notice of even date, i.e., 27.07.2022 issued under Section 148 of the Act.

5. The impugned notice issued under Section 148A(b) of the Act and the material supplied therein, by way of inter-departmental communication dated 15.05.2018, adverts to the following:

Sub: *Sharing of information of beneficiaries emanating out of survey carried out on 08.11.2017 in case of non-genuine Short Term Capital Gains in scrip M/s Varun Capital Services Ltd. – reg.*

Please refer to the subject cited above

1. *In this regard, please find enclosed herewith survey report in the case of M/s Varun Capital Service Ltd. duly approved by the Pr. CIT-09, New Delhi for necessary action at your end. In this case, the assessee had entered into share transaction with the M/s Kisna Traders Pvt. Ltd. in F.Y. 2014-15 and 2015-16 as below:*

Name of Beneficiary		Date	Name of Scrip	Quantity	Total Amount
R.K. Gupta & Sons	F.Y. 2014-15	22-09-2014	PAGE INDUSTRIES	75	563208
AAQHR2404F					563208
	F.Y. 2015-16	21-02-2015	BEML Ltd.	500	570170
		29-12-2015	BEML Ltd.	600	819312
		01-01-2016	Canara Bank	3000	709710
		05-01-2016	Canara Bank	3000	699360
		29-12-2015	Engineers India	3000	655710
		21-12-2015	Fortis Healthcare	2000	344500
		21-12-2015	Indian Hotels	5000	537400
		04-01-2016	Orchid Chem	5000	290820
		04-01-2016	Orchid Chem	4000	232280
		01-01-2016	Reliance Infra	2000	1012400
		05-01-	Reliance Infra	1500	814890

		2016			
		15-01-2016	Reliance Infra	1000	527110
		18-01-2016	Reliance Infra	2500	1296900
		19-01-2016	Reliance Infra	1600	784320
		01-01-2016	Union Bank of India	5000	754700
		15-01-2016	Union Bank of India	1000	124190
					10164772

2. *As the jurisdiction over the case lies with you, therefore, the necessary information is being shared with you for action at your end.*

7. Mr. Ajit Sharma, senior standing counsel for the respondents says that although the information supplied to the petitioner is not happily worded, what the Assessing Officer (AO) seeks to convey is that the petitioner had entered into transactions with Kisna Traders Pvt Ltd in the relevant period, through a broker going by the name Varun Capital Services Ltd., in respect of shares of companies referred to in the table extracted in departmental communication dated 15.05.2018.

8. According to us all that the communication dated 15.05.2018 shows, is that a survey report was generated *vis-à-vis* Varun Capital Services Ltd. The said communication also alludes to the fact that assessee had entered into share transaction with Kisna Traders Pvt Ltd in the Financial Years(FY) 2014-15 and 2015-16 in respect of the shares referred to in the table.

8.1. As to how this transaction led the AO to conclude/form an opinion that there was escapement of income is not articulated in the notice issued under Section 148A(b) of the Act.

9. Mr. Ruchesh Sinha, who appears on behalf of the petitioner, says that

this was an online trading and related to a genuine transaction between the petitioner and Kisna Traders Pvt Ltd.

10. As adverted to above, in our opinion, the notice issued under Section 148A(b) of the Act should have clearly brought out the allegations against the petitioner.

11. In these circumstances, the impugned notices, both under Section 148 and 148A(b) of the Act, as also the order passed under Section 148A(d) of the Act, are set aside, with liberty to the AO to issue a fresh notice under Section 148A(b) of the Act, wherein the AO will clearly articulate as to how, according to him, the income chargeable to tax has escaped assessment.

11.1 This notice will be issued within two weeks from the date of service of the order passed today and will accompany whatever material/information is available with the AO.

11.2. The AO will grant further three weeks to the petitioner to respond to the same. Thereafter, the AO will take the next steps in the matter as per law.

12. The writ petition is disposed of in the aforesaid terms.

13. Consequently, the pending application shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

DECEMBER 21, 2022/Aj