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

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Date of decision: 17.01.2023

+ **W.P.(C) 512/2023**

SUNIL MALIK

..... Petitioner

Through: Mr Ved Jain, Mr Nischay Kantoor,
Mr Aminish Tripathi & Ms Richa
Mishra, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 49(1),
DELHI & ORS. Respondents

Through: Mr Abhishek Maratha, Sr. Standing
Counsel for R-1 to 5.
Mr Vardhman Kaushik, Mr Vinay
Kaushik, Mr Ajay Kanojiya, Mr
Ayush, Mr Dhruv, Advocates for R-
6/UOI.

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 APPL. 2026/2023

1. Allowed, subject to just exceptions.

W.P.(C) 512/2023 & CM APPL. 2025/2023 *[Application filed on behalf of
the petitioner seeking interim relief]*

2. Issue notice.

2.1 Mr Abhishek Maratha accepts notice on behalf of the respondent
nos.1 to 5/revenue, while Mr Vardhman Kaushik accepts notice on behalf of
the respondent no. 6/UOI.

3. In view of direction that we propose to pass, Mr Maratha says that

counter-affidavit need not be filed. Therefore, with the consent of the counsel for the parties, the writ petition is taken up for hearing and final disposal at this stage itself.

4. The instant writ petition seeks to challenge the notice dated 23.06.2021 issued by the respondent no.1, as also the notice dated 01.06.2022 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, “the Act”].

4.1. Besides this, challenge is also laid to the order dated 31.07.2022 passed under Section 148A(d) of the Act, the consequential notice of even date i.e., 31.07.2022 issued under Section 148 of the Act, and the intimation letter dated 31.07.2022.

5. To be noted, the above-captioned writ petition concerns Assessment Year (AY) 2015-16.

6. The principal allegation leveled against the petitioner is that he is trading in shares. According to the respondents/revenue, the transactions in which the petitioner has indulged amount to Rs. 30 crores.

7. Mr Ved Jain, who appears on behalf of the petitioner, says that after the return had been filed concerning the aforementioned AY, a notice under Section 133(6) of the Act had been issued, wherein the share transaction entered into by the petitioner had been examined. For this purpose, our attention is drawn by Mr Jain to Annexure P-2 (Colly), which is appended on page 93 of the case file.

8. Mr Jain says that the petitioner had categorically taken the stand in response to notice dated 01.06.2022 issued under Section 148A(b) of the Act, that he is not in the business of trading in shares. It is also pointed out that the petitioner has, in the relevant AY, purchased 2,50,000 shares of an

entity going by the name Vakrangee Limited amounting to Rs.3,13,38,750/- via a broker namely A.K. Stockmart Pvt. Ltd.

9. Mr Jain says that there is no basis articulated in the impugned order dated 31.07.2022 passed under Section 148A(d) of the Act for triggering reassessment proceedings. Mr Jain also submits that no material or information was supplied in support of the allegation that the petitioner was trading in shares.

10. Mr Maratha, who appears on behalf of the contesting respondents, i.e., respondent Nos.1 and 2, says that Vakrangee Limited is presently under an inquiry by the Securities and Exchange Board of India [in short, "SEBI"].

11. Furthermore, Mr Maratha also places reliance on the following parts of the order dated 31.07.2022:

"6.....

(vi) Even though the assessee has himself admitted that he has purchased 2,50,000 shares of Vakrangee Ltd. for a sum of Rs.3,13,38,750/- from AK Stockmart Pvt. Ltd. but he failed to prove its source of investment, demat account and whether he sold any other shares. Subsequently, it is also seen that an amount of Rs.1.5 Crore was reported as gross value of services provided.

(vii) It is surprising that assessee said nothing about transaction of Rs.30cr in which he was reported to be involved nor submitted copy of his demat account or bank account statements. From analysis of ITR, the creditworthiness of the assessee to enter into such huge amount transactions was not established as the total income Rs.73,15,200/- is far below the transaction or traded values. Thus, there is clear that income has escaped assessment in the case of the assessee."

12. What emerges from the record is that the show cause notice which was issued on 01.06.2022 crystallized the allegation *qua* the petitioner in the following words:

"The assessee is involved in high value shares transaction/activities of Rs. 30 Cr. in AY 2015-16. The assessee has filed ITR for AY 2015-16 but no

income has been shown under head 'Income from Capital Gain'. The assessee has reflected income only under the head salary & income from the other sources.

13. Given the fact that no information has been furnished to the petitioner as to how income chargeable to tax amounting to Rs.30 crores has escaped assessment, and since the order passed under Section 148A(d) of the Act only suggests that the assessee has not established his credit worthiness and failed to prove the source of investment, we are of the view that the best way forward would be to set aside the impugned order passed under Section 148A(d) with the following directions:

- (i) The Assessing Officer [in short, "AO"] will carry out a *de novo* exercise from the stage at which notice under Section 148A(b) is positioned.
- (ii) Before proceeding further, the AO will furnish the relevant information concerning the petitioner, after redacting information which concerns third parties.
- (iii) The petitioner will cooperate during the course of proceedings and furnish information with regard to the allegation levelled against him, as crystallized in the notice issued under Section 148A(b) of the Act.
- (iv) The AO will grant personal hearing to the petitioner and/or his authorized representative.
- (v) Thereafter, the AO will pass a speaking order, a copy of which would be furnished to the petitioner.
- (vi) The AO, for this purpose, will issue notice to the petitioner fixing the date, time and venue of the hearing.
- (vii) The AO will be at liberty to conduct the hearing *via* video conferencing as well.
- (viii) Needless to add, if the order passed by the AO is adverse to the

interest of the petitioner, he will have liberty to take recourse to an appropriate remedy, *albeit*, as per the law.

14. The writ petition is disposed of in the aforesaid terms. Consequently, CM APPL. 2025/2023 is disposed of.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JANUARY 17, 2023 / ha

Click here to check corrigendum, if any