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

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Date of Decision: 18.05.2023

+ **W.P.(C) 6672/2023**

PRAVEEN KUMAR BHARDWAJ Petitioner
Through: Mr Rajat Navet, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME
TAX & ANR. Respondents
Through: Mr Sunil Agarwal, Sr Standing
Counsel with Mr Shivansh Pandaya
and Mr Utkarsh Tiwari, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J. (Oral):

CM Appl.26127/2023

1. Allowed, subject to just exceptions.

W.P.(C) 6672/2023 & CM Appl.26126/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

2.1 Mr Sunil Agarwal, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.

3. Given the directions that we propose to pass, Mr Agarwal says that no counter-affidavit is required to be filed and he will rely on the record



presently available with the court.

4. This writ petition concerns Assessment Year (AY) 2019-20.

5. The petitioner has assailed the order dated 15.04.2023 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, “Act”].

5.1 In addition thereto, a challenge is also laid to the consequential notice dated 16.04.2023 issued to the petitioner under Section 148 of the Act.

6. A perusal of the notice dated 04.03.2023 issued under Section 148A(b) of the Act would show that the Assessing Officer (AO) had flagged the following transactions based on the information he had received from the Insight Portal:

- (i) Time deposits (other than a time deposit made through renewal of another time deposit) – Rs. 1,30,00,000/-.
- (ii) Statement of reportable account under Section 285 BA(1) – Rs.2,79,87,633/-.
- (iii) TDS statement- Payment to non-resident - Rs.43,086/-.

7. Concededly, the cumulative value of the aforesaid transactions is Rs.4,10,30,719 /-.

8. Admittedly, the petitioner is a resident of Canada. According to the petitioner, he was in India in the relevant AY for, consecutively, 31 days.

9. The petitioner does not dispute the fact that he has not filed a return *qua* the AY in issue. It is, however, the petitioner’s stand that he was not required to file a return, as his income was below the prescribed threshold.

10. The record shows that the petitioner filed a response to the notice dated 04.03.2023 issued under Section 148A(b) of the Act, which is dated 20.03.2023. In the response, the petitioner attempts to explain the



transactions, which were flagged by the AO.

10.1 In this context, it may be relevant to extract the relevant portion of the reply in the context of three transactions, which have been noted in the notice issued under Section 148A(b) of the Act:

“A.3 The assessee is holding following Bank Accounts (NRE & NRO) with ICICI Bank, during the relevant assessment year:

<i>Bank Name</i>	<i>Type of Account</i>	<i>Account No.</i>	<i>Remarks.</i>
<i>ICICI Bank</i>	<i>Savings-NRO</i>	<i>000701092098</i>	<i><u>Interest of Rs.5,261/- earned during the relevant assessment year and the same is taxable Tax at Source of Rs.1,643/- has been deducted by the Bank u/s 195 of the Act.</u></i>
<i>ICICI Bank</i>	<i>FDR-NRO</i>	<i>0007 13020691</i>	<i><u>Interest of Rs.37,825/- earned during the relevant assessment year and the same is taxable Tax at Source of Rs.11,802/- has been deducted by the Bank u/s 195 of the Act.</u></i>
<i>ICICI Bank</i>	<i>Savings-NRE</i>	<i>000701092269</i>	<i>Interest of Rs.20,574/- earned during the relevant assessment year and the same is exempted u/s 10(4) of the Act. No tax is deductible at source u/s 195 of the Act since the same is not chargeable to tax under the provisions of the Act.</i>
<i>ICICI Bank</i>	<i>FDR-NRE</i>	<i>000713112046 (Ref Page No.- 19, 20 & 21)</i>	<i><u>The said deposit was made on 05-Oct-2017 and matured on 05-Oct-2018. Total Interest of Rs.6,09,331/- is earned during the preceding assessment year (2018-19) & the relevant assessment year and the same is exempted u/s 10(4) of the Act. No tax is deductible at source u/s</u></i>



			<u>195 of the Act Since the same is not chargeable to tax under the provisions of the Act.</u>
ICICI Bank	FDR-NRE	000710901559	<u>The said deposit was made on 08-Oct-2018 out of the maturity proceeds of FDR-NRE Account NO 000713112046.</u> <u>Interest of Rs.4,17,090/- is earned during the relevant assessment year and the same is exempted u/s 10(4) of the Act.</u> <u>No tax is deductible at source u/s 195 of the Act since the same is not chargeable to tax under the provisions of the Act</u>

A.4 The assessee do not have any income from any source other than Income from Other Sources (Interest on Bank Deposits), as declared in above table, in India.

xxx xxx xxx

A.8. The assessee has no transactions during the relevant assessment year, other than as declared hereinabove, which are prescribed as reportable transactions by the entities/banks under Section 285 BA of the Act. Copies of all the above said Bank Statements for the period from 01st April 2018 to 31st March 2019 and Form 26AS for relevant assessment year is annexed herewith as Annexure-N-2 (Ref Page No. -09 to 28).

xxx xxx xxx

C.3 The time deposit (other than a time deposit made through renewal of another time deposit) of Rs.1,30,00,0001- made on 08-Oct-2018 was out of the maturity proceeds of Rs.1,36,09,3311- of an earlier time deposit (NRE-FDR Account No-000713112046) which was made on 05-Oct-2017 and the same matured on 05-Oct-2018. Ref Page No.-19, 20 & 21.

C.4 As regards "Statement of reportable account u/s 285 BA (1)", it is most respectfully submitted that no such alleged transactions have been undertaken by the assessee during the relevant assessment year and there is an apparent error either at the information extraction level by your good self or reporting level by the concerned entity/bank U/S 285BA of the Act.



C.5 Without prejudice to above submission, it is most respectfully submitted that no details or break up of Rs.2,79,87,633/- has been provided in the above said SCN thus seriously prejudicing the rights of the assessee as provided u/s 148A(b) of the Act.

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C.11 In view of above it is humbly requested to kindly inform the exact nature and detail of each entry as reported u/s 285BA by any entity bank so that the assessee is being provided an opportunity as mandated u/s 148A(b) of the Act. It is also requested to conduct an enquiry after obtaining approval of the specified authority as also provided u/s 148A(a) of the Act....”

[Emphasis is ours]

11. A perusal of the aforesaid extract would show that the petitioner has attempted to explain the remittance amounting to Rs.43,086/- by alluding to the fact that this was nothing but interest earned by him against savings account FDR-NRO maintained with ICICI Bank.

11.1 Insofar as the other transaction is concerned, i.e., time deposit amounting to Rs.1,30,00,000/-, the petitioner has indicated that the amount was deposited in FDR-NRE account on 05.10.2017, which matured on 05.10.2018.

11.2 It is the petitioner's assertion that the interest earned and the matured amount was re-invested on 08.10.2018 in the FDR-NRE account, once again with ICICI Bank.

11.3 The petitioner also takes stand that he had no other source of income, apart from interest earned from bank interest.

11.4 Insofar as the third transaction is concerned, the petitioner/assessee appears to take the position that he would want the AO to give detailed break-up of the amount involved.



12. To be noted, the third transaction concerns high value (specified) transactions which are required to be reported by the concerned person in terms of the provisions of Section 285BA(1) of the Act.

12.1 The amount which AO has quantified insofar as this transaction is concerned is Rs.2,79,87,633/-.

13. The AO, however, has given short shift to the reply filed by the petitioner. This aspect of the matter has been put to Mr Sunil Agarwal.

13.1 Mr Agarwal says that the best course forward would be that the AO be directed to reexamine the matter in the light of the reply filed by the petitioner and material placed by him.

14. We tend to agree with Mr Agarwal. Accordingly, the impugned order dated 15.04.2023 issued under Section 148A(d) of the Act and the consequential notice dated 16.04.2023 issued under Section 148 of the Act are set aside.

14.1 The AO is directed to carry out a *de novo* exercise.

14.2 The AO will issue a notice to the petitioner and accord personal hearing to the petitioner and or his authorized representative. For this purpose, the AO will issue a notice indicating the date and time of the hearing.

15. We make it clear that before the AO proceeds further, he will furnish a break-up of the high value (specified) transactions amounting to Rs.2,79,87,633/-, which, according to him, the petitioner was required to report under Section 285BA(1) of the Act.

16. The writ petition is disposed of, in the aforesaid terms.

17. Resultantly, pending application shall stand closed.



RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 18, 2023/pmc



Signature Not Verified

Digitally Signed By: TARUN
RANA

Signing Date: 24.06.2023
18:47:14

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