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

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Decision delivered on: 10.10.2023+ **W.P.(C) 13578/2022**

ARUN KHANNA

..... Petitioner

Through: Mr Ruchesh Sinha and Ms Nivedita,
Advts.

versus

ITO, WARD 63(1) NEW DELHI & ORS.

..... Respondents

Through: Mr Kunal Sharma, Sr Standing
Counsel with Ms Zehra Khan,
Standing Counsel.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. Via the instant writ petition, a challenge is laid to the order dated 19.07.2022 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, "Act"].

1.1 Besides this, the petitioner also seeks to assail the consequential notice of even date, i.e., 19.07.2022, issued under Section 148 of the Act.

2. Both the impugned order and notice concern Assessment Year (AY) 2015-16.

3. The record shows that the principal allegation against the petitioner is that he is a beneficiary of accommodation entries provided by, one, Mr Rajnish Garg.



3.1 In this context, it is alleged that the petitioner was a beneficiary of Rs.50,94,24,738/- which, according to the respondents/revenue, stood credited in the bank accounts maintained with HDFC Bank and DCB Bank in the period in issue, i.e., Financial Year (FY) 2014-15 (AY 2015-16).

4. The record shows that this allegation was embedded in the notice dated 31.03.2021 issued to the petitioner under Section 148 of the Act, i.e., under the old regime, which obtained prior to the Finance Act 2021 [in short, “F.A. 2021”] being in force.

5. Concededly, F.A. 2021 was brought into force from 01.04.2021. The respondents/revenue claim that the aforementioned notice dated 31.03.2021 was issued to the petitioner on 02.04.2021. There is some significance to these dates and events, to which we will make a reference in the latter part of the judgment.

6. Continuing with the narrative, the petitioner was issued thereafter a notice dated 11.01.2022 under Section 142(1) of the Act. This was followed by a show cause notice-cum-draft assessment order dated 12.03.2022 being served on the petitioner. Paragraph 5 of the said show cause notice-cum-draft assessment order would show that a proposal to add Rs.50,94,24,738/- to the income of the petitioner (based on the allegations which were contained in the notice dated 31.03.2021) was made under Section 148 of the Act.

7. Concededly, the petitioner filed a reply to the aforementioned show cause notice-cum-draft assessment order. This reply is dated 15.03.2022. *Inter alia*, the petitioner took the stand that he did not maintain any account with HDFC Bank and DCB Bank, as alleged or at all.

7.1 Furthermore, in this context it was pointed out by the petitioner that



he had received information from the said banks which indicated that the bank account numbers allocated by the said banks had 14 digits, whereas as per the information supplied by the respondents/revenue, the bank account numbers carried 13 digits.

7.2 Thus, according to the petitioner, some mischief had been played against him as he had nothing to do with Mr Rajnish Garg, who, according to the respondents/revenue, was the source of entries credited in the bank accounts referred to hereinabove, i.e., the bank accounts maintained with HDFC Bank and DCB Bank.

8. Pursuant to the reply, the Assessing Officer (AO) passed a reassessment order dated 22.03.2022 under Section 147 read with Sections 144 and 144B of the Act. Interestingly, in the concluding part of the said reassessment order, there is nothing to suggest that any addition was made *qua* the petitioner. This is evident if one were to peruse paragraphs 5 and 6 of the said order. For the sake of convenience, the said paragraphs are extracted hereafter:

“5. Accordingly, a show cause notice u/s 144 of Income Tax Act, 1961 along with “Draft Assessment Order” issued to assessee on 12.03.2022 to provide one more opportunity for furnishing any explanation in this case, fixing the date of compliance on or before 18.03.2022. In compliance assessee submitted its reply on 15.03.2022 along with Bank Statements with narrations, copy of ITR-V, Computation of Income etc.

6. After perusing all the details & documents furnished by assessee, assessment in this case for A.Y. 2015-16 is being completed u/s 144/147 of Income Tax Act, 1961 at return income. Notice of demand and challan are being issued as per the procedure.”

9. However, the demand notice issued to the petitioner on the same date, i.e., 22.03.2022, quantified pegged demand raised against the petitioner at Rs.67,55,23,292/-.



10. We are told that the petitioner carried the matter in appeal to the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"]. A hard copy of the order dated 25.09.2023 passed by the CIT(A) has been placed before us. A copy of the same has also been furnished to Mr Kunal Sharma, learned senior standing counsel, who appears on behalf of the respondents/revenue.

11. The petitioner was further served with a notice dated 31.05.2022 issued under Section 148A(b) of the Act. A bare perusal of the said notice shows that the allegations levelled against the petitioner were identical to what was contained in the notice dated 31.03.2021 issued under Section 148 of the Act, *albeit* under the old regime. For convenience, the relevant part of the notice dated 31.05.2022 is extracted hereafter:

"3. In this regard, in compliance with the subject order of the Hon'ble Supreme Court, you are hereby provided with the information and material relied upon by this office for issue of the show cause notice as above. The details of which are provided as under: -

"1. In this case, information has been received from Dy. Commissioner of income Tax that during the course of assessment proceedings in the case of entry provider Shri Rajnish Garg it is noticed that the ultimate beneficiary in the case is Shri Arun Khanna Prop: M/s Arun Plastic. Later, the case was audited and found that amount of Rs.50,94,24,738/-credited/deposited in various bank accounts of the assessee through the entry provider Mr. Rajnish Garg (only worked for commission). In this regard, the copy of following documents is being given to you:

(a) The copy of relevant information."

4. In accordance with the aforesaid judgment, you are required to furnish the reply regarding why reassessment u/s 147 of the I.T. Act may not be made in your case. In this regard, the reply may be furnished by 15.06.2022. You may submit your response in 'E-Proceedings' facility through your account in e-filing portal of the Income Tax Department."

12. In response to the said notice, the petitioner filed a reply dated 13.06.2022 wherein the petitioner, *inter alia*, made the following assertions, some of which were a repetition of the reply dated 15.03.2022, which, as



noticed above, was a reply to the show cause-cum-draft assessment order dated 12.03.2022:

- (i) That it did not maintain any bank account with HDFC Bank and DCB Bank.
- (ii) No material has been furnished to demonstrate that the petitioner was a beneficiary of the amount credited to the account maintained with HDFC Bank and DCB Bank. In this context, reference was made to the amount in issue, i.e., Rs.50,94,24,738/-.
- (iii) The aforementioned amount also did not find mention in the petitioner's accounts maintained with the Sadar Bazar, Delhi Branch of the ICICI Bank and Sadar Bazar, Delhi Branch of the Jammu and Kashmir Bank.
- (iv) That the notice was vague and had been issued without due application of mind.
- (v) The AO should have in this case conducted an inquiry under Clause (a) of Section 148A of the Act.
- (vi) That the reassessment order dated 22.03.2022 had been passed, against which an appeal had been preferred with the National Faceless Appeal Centre [CIT(A)].

13. Despite the aforesaid stand of the petitioner, the AO passed the impugned order dated 19.07.2022 under Section 148A(d) of the Act. The rationale provided by the AO is rather curious and is found embedded in paragraph 8 of the said order. For convenience, the contents of the said paragraph are extracted hereafter:

“8. Considering the facts stated above, the reply of the assessee is not accepted and hereby, rejected. As per the information available, the assessee through entry provider Shri Rajnish Garg has credited sum of



Rs.50,94,24,738/- in various bank accounts maintained in HDFC Bank and DCB Bank during the FY 2014-15. No documentary evidence have been submitted to establish the source of sum deposited in these accounts in which assessee is the beneficiary. In this case, information available suggests that the income chargeable to tax, represented in the form of asset (credits in bank accounts), has escaped assessment which is more than fifty lacs.”

14. It is against this backdrop that the petitioner has approached this court *via* the instant writ petition.

15. Mr Ruchesh Sinha, who appears on behalf of the petitioner, has broadly made the following submissions:

(i) Firstly, the reassessment proceedings triggered *via* notice dated 31.05.2022 issued under Section 148A(b) of the Act were flawed as there was no fresh material available with the AO. The AO having passed an order dated 22.03.2022 based on the very same allegation; this was a case of change of opinion.

(ii) Secondly, the AO even in the second round has failed to furnish any material which could link the petitioner to the credit entries found in the accounts maintained with HDFC Bank and DCB Bank.

16. On the other hand, Mr Kunal Sharma submitted that notice dated 31.05.2022 under Section 148A(b) of the Act was issued to the petitioner pursuant to the judgment rendered by the Supreme Court in ***Union of India v. Ashish Aggarwal*** (2022) 444 ITR 1 (SC)

17. It is Mr Sharma's contention that because the notice dated 31.03.2021 had been issued to the petitioner on 02.04.2021, the AO had to take recourse to the new regime, which was triggered pursuant to F.A. 2021 coming into force on 01.04.2021.

17.1 In other words, according to Mr Sharma, the earlier notice had lost its



legal efficacy and, therefore, no fault could be found with the commencement of the proceedings under the new regime.

18. We have heard learned counsel for the parties and perused the record.

19. The facts as narrated above are not in dispute. The moot point which comes up for consideration is whether the judgment of the Supreme Court mandates the AO to trigger proceedings under the new regime, even where the proceedings were commenced under the old regime based on a set of allegation and material with the AO which ultimately had culminated in an assessment order.

20. A careful perusal of the judgment rendered by the Supreme Court in *Ashish Aggarwal* shows that no such aspect was the subject matter of discussion in the said judgment.

21. There is no doubt that, in this particular case, the allegations which were levelled against the petitioner and form part of the notice dated 31.03.2021 are identical to those which are contained in the notice dated 31.05.2022. Had earlier notice not culminated into an assessment order, perhaps, what Mr Sharma said may have carried weight.

22. The AO, in the instant case, failed to note that even before the petitioner was served with a notice dated 31.05.2022 issued under Section 148A(b) of the Act, the assessment order dated 22.03.2022 had been passed under Section 147 read with Sections 143 and 144B of the Act. The AO also, for some strange reason, ignored the fact that allegations in the notice dated 31.03.2021 were identical to those which had been levelled against the petitioner in the notice dated 31.05.2022 issued under Section 148 of the Act.

23. The reasoning that the AO provided, as alluded to in the impugned



order dated 19.07.2022, was that the petitioner had failed to provide any evidence to establish that the amounts found in the accounts maintained with HDFC Bank and DCB Bank in the FY 2014-15 did not belong to him, i.e., he was not the beneficiary.

24. As noted above while narrating the events, the petitioner had taken an emphatic stand that the bank accounts adverted to by the AO did not belong to him.

25. The petitioner instead had furnished the statement of accounts of the two banks, i.e., ICICI Bank and Jammu and Kashmir Bank which were maintained by him.

26. Thus, without any actionable material, the AO embarked on a journey to reopen, in a sense, a closed assessment which had reached culmination *via* order dated 22.03.2022, at least at the point in time when notice under Section 148A(b) of the Act was issued.

27. What has compounded, in our view, at least for the moment, the problem of the respondents/revenue is the order dated 25.09.2023 passed by the CIT(A). The following paragraph demonstrates that the assessment order dated 22.03.2022 had, in fact, made no addition to the declared income of the petitioner. As noticed hereinabove, despite this position obtaining, a demand notice was served on the petitioner pursuant to the assessment order dated 22.03.2022. It is perhaps because of this position that even though the CIT(A) had called for a response to the remand report, the AO failed to place before the CIT(A) his stance in the matter:

“5.3 Ground Nos. 7 to 10 raised by the appellant relate to action of the Ld. AO in making addition of Rs.50,94,24,738/- as narrated in the show cause notice issued during assessment proceedings. It is noted that the Ld AO had certain information regarding deposit of Rs.50,94,24,738/- in the appellant's bank



account maintained with HDFC Bank and DCB Bank, but the appellant did not furnish return of income neither as per provision of section 139(1) of the I.T. Act, 1961 nor in response to notice u/s 142(1) of the Act. In the grounds of appeal as well as in the written submission, the appellant has contended that the bank accounts namely HDFC Bank and DCB Banks relied upon by the AO do not belong to the appellant. It has also been contended in the submission that bank account nos. mentioned in the show cause notice were 13 digit numbers whereas account nos. of the said two banks accounts were 14 digit nos. In this regard, the Ld. AO was requested to furnish comments on the said two issues along with supporting documents which can prove that the accounts were belonging to the appellant, however, the Ld. AO failed to furnish his comments by way of remand report till the date of passing of this order. Further, in the show cause notice u/s 144 dated 12.03.2022 proposed addition was shown at Rs.50,94,24,738/-, however, in the Computation Sheet of the assessment order Gross Total Income has been calculated at Rs.101,98,01,196/- In this regard also, the Ld. AO has been requested to furnish his comments by way of remand report, but inspite of several reminders the same has not been received. Hence it is presumed that the Ld. AO has nothing to say in the matter.

5.4 In the assessment order at Page- 3 Para- 6, the Ld. AO mentioned "After perusing all the details & documents furnished by assessee, assessment in this case for A. Y. 2015-16 is being completed u/s 144/147 of Income Tax Act, 1961 at return income", however, Gross Total Income in the Computation Sheet has been calculated at Rs. 101,98,01,196/- raising a demand of Rs. Rs.67,55,23,292/-

5.5 Under the facts and circumstances of the case and in absence of remand report sought in this case, it is presumed that there might be a mistake in calculation of gross total income in the Computation Sheet and accordingly, there is no option but to direct the Ld. AO recalculate the gross total income while giving effect to this order. Therefore, Ground Nos. 7 to 10 taken by the appellant is allowed."

[Emphasis is ours]

28. Thus, having regard to the foregoing discussion, we are of the view that the writ petition would have to be allowed.

28.1 It is ordered accordingly. The impugned order dated 19.07.2022 passed under Section 148A(d) and the consequential notice of even date, i.e., 19.07.2022, issued under Section 148 of the Act shall stand quashed.



29. The writ petition is disposed of, in the aforesaid terms.
30. The Registry will scan and upload a copy of the order dated 25.09.2023 passed by the CIT(A), so that it remains embedded in the case file.
- 30.1 Likewise, the copy of the counter-affidavit which was furnished to us by Mr Kunal Sharma shall also be scanned and uploaded and, accordingly, made part of the record.
31. Furthermore, interim order dated 20.09.2022, which was made absolute on 29.03.2023, shall stand vacated.
32. Parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 10, 2023

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Click here to check corrigendum, if any