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

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Date of Decision: 18.10.2024

+ **W.P.(C) 330/2023**

HARSH VARDHAN BANSAL

..... Petitioner

Through: Mr. Ruchesh Sinha and Ms.
Monalisa Maity, Advs.

Versus

ACIT CIRCLE 43(1) NEW DELHI & ANR.

..... Respondents

Through: Mr. Aseem Chawla, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition impugning a notice dated 25.05.2022 (hereafter the *impugned notice dated 25.05.2022*) issued under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*) in respect of the assessment year (AY) 2013-14. The petitioner also impugns an order dated 25.07.2022 (hereafter *the impugned order*) passed under Section 148A(d) of the Act as well as a notice dated 26.07.2022 (hereafter *the impugned notice dated 26.07.2022*) issued under Section 148 of the Act in respect of the AY 2013-14.

2. The petitioner is, essentially, aggrieved by the initiation of the reassessment proceedings. The petitioner's challenge to the impugned notices and the impugned order is founded on the basis that the



Assessing Officer (AO) had no information to suggest that the petitioner's income for the relevant AY 2013-14, in excess of ₹50,00,000/-, had escaped assessment.

3. The AO had briefly set out the information, which according to the AO suggested that the assessee's income to the extent of ₹60,46,263/- for the AY 2013-14, had escaped assessment. The relevant extract of the impugned order which refers to the information as available with the AO is reproduced below:

“2.1The tabular form and description of information in present case are as below:

S No	FY	Information Source	Description	Value in Rupees
1	2012-13	Investigation wing, Mumbai	Sale of shares	29,75,000/-
2			Fictitious Profits in Equity / Derivative Trading	30,71,263/-
	TOTAL			60,46,263/-

2.2 This information was uploaded on Insight portal. As per the information received from Unit-5(2) of Investigation Wing, Mumbai in an ongoing enquiry in the case of Gemstone Investment Ltd., it was found that the said company has been put under Graded Surveillance Measure (GSM) framework and in the investigating period Security and Exchange Board of India (here in after referred to as “SEBI”) also passed order u/s 11(4) and 11B of the Security and Exchange Board of India Act, 1992 and Section 12A of the Securities Contract (Regulation) Act, 1956 banning trading. M/s Gemstones Investments Ltd. is a company registered with RoC Mumbai. The company is engaged in Investment Banking, Counseling, Advising and in Mergers and Acquisitions activities. The company was as a private company in 1994, promoted by Mrs. Reena Bagai and Mrs. Avita Fernandes. Subsequently Mr. Arunkant Kalidas Shah and his



associates acquired control of the company. The top management of the company includes Mr. Anant Haridas Palan as Chairman and Managing Director with Mr. Nimesh Ganatra as the Executive Director. Perusal of the financials indicates the poor financials and razor thin profits earned by the company in recent past. The assessee has sold GEMSTONE INVESTMENT LIMITED share for the total value of Rs.29,75,000/- during the financial year 2012-13. Further, the assessee has taken bogus profits through Scrip of Cubical Financial Services Limited to the tune of Rs.30,71,263/- which is a penny stock during the financial year 2012-13. In view of the above, it is concluded that income of the assessee has escaped assessment to the extent of Rs.60,46,263/- during AY 2013-14. The said amount of Rs.60,46,263/- is believed to be undisclosed income of the assessee which has not been offered to tax for the AY. 2013-14.

3. Notice u/s 148 of the IT Act was issued on 30.06.2021. From the above mentioned information, it is seen that during the year under consideration, the assessee has entered into transaction to earn non- genuine Capital Gain. The amount received by the assessee in form of such CG is nothing but the undisclosed income of assessee being unexplained credit camouflage as legitimate and routed back to the account of assessee without paying tax. Therefore, the unexplained credit has escaped assessment. Hence, there are reasons to believe that the income chargeable to tax amounting to Rs. 60,46,263/- has escaped assessment within the meaning of Section 147/148 of the Act.”

4. It is apparent from the above that the AO had alleged that the petitioner had reflected income from capital gains, which was undisclosed income that was camouflaged as capital gains. According to the AO, the income escaping assessment was in respect of two items. First, the shares of M/s Gemstone Investment Ltd. (hereafter also referred to as *Gemstone* in short) were sold for a total consideration of ₹29,75,000/-; and second, the shares of M/s Cubical Financial Services



Ltd. (hereafter also referred to as *Cubical* in short) were sold resulting in income to the extent of ₹30,71,263/-.

5. The impugned notice dated 25.05.2022 was also accompanied by an annexure, which included a report in respect of Gemstone. The said report indicated that Gemstone had been put under Graded Surveillance Measure (GSM framework) and Securities and Exchange Board of India (SEBI) had passed the orders banning trading in the said script. During the period of five AY's spanning from the AY 2010-11 to 2014-15, the said company had returned income ranging from ₹29,27,660/- in the AY 2014-15 to ₹73,06,160/- in the AY 2012-13. The financials of the company did not indicate any substantial increase. The analysis of the share price of Gemstone indicated very wide fluctuations. It had moved from ₹98/- per share in May, 2009 to ₹202/- per share in July, 2010 and thereafter, it had fallen to ₹6/- per share in March, 2011 and the current price of the script amounts to ₹0.57/- per share. It was alleged that the share price of Gemstone was controlled by the syndicate members, which started rigging the price after the shares were been purchased by the beneficiaries. It is stated that the share price was thereafter, artificially increased by the controlled transactions. The beneficiaries would hold the shares for over one year. They would thereafter, give cash which was routed through paper companies or entry operators. The said cash would be parked in one company that would purchase the shares of the company from the market at an artificially inflated price. This resulted in large capital gains in the hands of the beneficiaries, which at the later time was not taxable under



Section 10(38) of the Act. The report also indicated that an investigation has been conducted by the SEBI.

6. Insofar as the second item is concerned – the shares of Cubical – the impugned notice dated 25.05.2022 does not reflect any information to the aforesaid effect. It merely mentioned Cubical as a penny stock. The impugned notice dated 25.05.2022 mentioned that the petitioner had transacted in the said share.

7. The petitioner filed a reply to the impugned notice issued under dated 25.05.2022. He contended that the information as set out in the impugned notice dated 25.05.2022 did not suggest that the long-term capital gains of ₹30,71,263/- was earned by the petitioner from the sale of the shares of Cubical and the same had escaped assessment. He submitted that the statements made in the impugned notice dated 25.05.2022 did not qualify as the requisite material – (i) books of accounts; (ii) other documents; and, (iii) evidence – on the basis of which assessment could be reopened for assessment years, which ended more than three years prior to the date of notice.

8. On merits, the petitioner stated that he was a *bona fide* investor and was regularly investing in various stocks. He stated that he had been tracking the price movement of the scrips and had purchased the same when its price was low and had sold the same when its price had risen. He also stated that he had neither purchased the scrip at the lowest price nor sold the same at the highest price. He submitted that it was thus, clear that the transactions in respect of Cubical were genuine



transactions. The petitioner also called upon the AO to furnish any other information which suggested otherwise.

9. The AO had passed the impugned order under which substantially reiterated the contents of the impugned notice dated 25.05.2022. The AO rejected the petitioner's contention that he did not have any material for invoking the extended period of limitation under Section 149(1)(b)(i) of the Act. The AO held that the word "evidence" would also cover circumstantial evidence. The AO held that the scrips in which the petitioner had traded were "proven to be penny stocks" and the assessee had claimed exempt income in respect of long-term capital gains under Section 10(38) of the Act to the extent of ₹50,36,186/- and as per the information available, the same was believed to be unaccounted income of the assessee, which had not been offered to tax.

10. We have heard the counsel for the parties.

11. It is relevant to note that the petitioner had filed his income tax return for the AY 2013-14 on 31.07.2013. The AO had issued a notice dated 30.06.2021 under Section 148 of the Act. After receipt of the said notice, the petitioner sent a letter dated 29.01.2022, seeking reasons to believe that his income had escaped assessment and reopening the reassessment proceeding. He had also mentioned that there were no grounds for believing that any profit in respect of the transaction in the scrips of Cubical had resulted in income of the petitioner that had escaped assessment. Several assesses who had received notices after 31.03.2021 had challenged the same. The orders passed by the Courts were the subject matter of challenge before the Supreme Court. The



Supreme Court in *Union of India & Ors. v. Ashish Aggarwal: 2022 SCC OnLine SC 543*, while issuing certain directions had granted further time to the Revenue to issue a fresh notice under Section 148A(b) of the Act.

12. Pursuant to the decision rendered by the Supreme Court in *Union of India and Ors. v. Ashish Aggarwal (supra)*, the Central Board of Direct Taxes (CBDT) had issued the instructions (Instruction No.1 of 2022) dated 11.05.2022, setting out the procedure to be followed. Paragraph 8 of the said instructions is set out below:

“8. Procedure required to be followed by the Assessing Officers to comply with the Supreme Court judgment:

8.1 The procedure required to be followed by the Jurisdictional Assessing Officer/Assessing Officer, in compliance with the order of the Hon’ble Supreme Court, is as under:

- ◆ The extended reassessment notices are deemed to be show cause notices under clause (b) of section 148A of the Act in accordance with the judgment of Hon’ble Supreme Court. Therefore, all requirement of new law prior to that show cause notice shall be deemed to have been complied with.
- ◆ The Assessing Officer shall exclude cases as per clarification in paragraph 7.1 above.
- ◆ Within 30 days i.e. by 2nd June, 2022, the Assessing Officer shall provide to the assessee, in remaining cases, the information and material relied upon for issuance of extended reassessment notices.
- ◆ The assessee has two weeks to reply as to why a notice under section 148 of the Act should not be issued, on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for



the relevant assessment year. The time period of two weeks shall be counted from the date of last communication of information and material by the Assessing Officer to the assessee.

- ◆ In view of the observation of Hon'ble Supreme Court that all the defences of the new law are available to the assessee, if assessee makes a request by making an application that more time be given to him to file reply to the show cause notice, then such a request shall be considered by the Assessing Officer on merit and time may be extended by the Assessing Officer as provided in clause (b) of new section 148A of the Act.
- ◆ After receiving the reply, the Assessing Officer shall decide on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148 of the Act. The Assessing Officer is required to pass an order under clause (d) of section 148A of the Act to that effect, with the prior approval of the specified authority of the new law. This order is required to be passed within one month from the end of the month in which the reply is received by him from the assessee. In case no such reply is furnished by the assessee, then the order is required to be passed within one month from the end of the month in which time or extended time allowed to furnish a reply expires.
- ◆ If it is a fit case to issue a notice under section 148 of the Act, the Assessing Officer shall serve on the assessee a notice under section 148 after obtaining the approval of the specified authority under section 151 of the new law. The copy of the order passed under clause (d) of section 148A of the Act shall also be served with the notice u/s 148.
- ◆ If it is not a fit case to issue a notice under section 148 of the Act, the order passed under clause (d) of section 148A to that effect shall be served on the assessee.”



13. The impugned notice dated 25.05.2022 was issued thereafter. In terms of the decision of the Supreme Court in ***Union of India and Ors. v. Ashish Aggarwal*** (*supra*), the AO was required to provide all the information material to the assessee whose assessments were sought to be reopened within a period of thirty days.

14. In the present case, the AO seeks to reopen the assessment in respect of the AY 2013-14 ending prior to a period of three years. Admittedly, a notice under Section 148 of the Act in such cases can be issued only where the AO had in his possession, the books of account or other documents or evidence, which reveal that the income chargeable to tax that had escaped assessment amounts to or likely to the amount of ₹50,00,000/- or more.

15. Section 149 of the Act as in force at the material time is set out below:

“149. *Time limit for notice.* – (1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—

(i) an asset;

(ii) expenditure in respect of a transaction or in relation to an event or occasion; or



(iii) an entry or entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Provided also that for cases referred to in clauses (i), (iii) and (iv) of Explanation 2 to section 148, where,—

- (a) a search is initiated under section 132; or
- (b) a search under section 132 for which the last of authorisations is executed; or
- (c) requisition is made under section 132A,

after the 15th day of March of any financial year and the period for issue of notice under section 148 expires on the 31st day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under section 148 in such case shall be deemed to have been issued on the 31st day of March of such financial year:

Provided also that where the information as referred to in Explanation 1 to section 148 emanates from a statement recorded or documents impounded under section



131 or section 133A, as the case may be, on or before the 31st day of March of a financial year, in consequence of,—

- (a) a search under section 132 which is initiated; or*
- (b) a search under section 132 for which the last of authorisations is executed; or*
- (c) a requisition made under section 132A,*

after the 15th day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under clause (b) of section 148A in such case shall be deemed to have been issued on the 31st day of March of such financial year:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A does not exceed seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this sub-section, “asset” shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(1A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b)



of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

16. It is also relevant to note that in terms of the instructions (Instruction No.01/2022 dated 11.05.2022), notices under Section 148 of the Act in respect of the AYs 2013-14, 2014-15 and 2015-16 were not to be issued, if the income escaping assessment of the aforesaid years is or likely to amount less than ₹50,00,000/-. Paragraph 7 of the said instruction is set out below:

“7. Cases where the Assessing Officer is required to provide the information and material relied upon within 30 days:

7.1 Hon’ble Supreme Court has directed that information and material is required to be provided in all cases within 30 days. However, it has also been noticed that notices cannot be issued in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Hence, in order to reduce the compliance burden of assesseees, it is clarified that information and material may not be provided in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Separate instruction shall be issued regarding procedure for disposing these cases.”

17. In view of the above, the key question to be addressed is whether the AO had in his possession, the books of account, other documents or evidence, which reveal that the income chargeable to tax represented in the form of (i) an assets; or (ii) expenditure in respect of transaction or an event or occasion; or (iii) an entry in the books of account, had



escaped assessment and the amount of such income is or likely to be ₹50,00,000/- or more.

18. Insofar as the transactions of the sale of shares of Gemstone is concerned, it is apparent that the AO had the material which suggested that the petitioner's income chargeable to tax for the AY 2013-14, had escaped assessment. However, neither the impugned notice dated 25.05.2022 issued under Section 148A(b) of the Act nor the impugned order passed under Section 148A(d) of the Act indicates that the AO had any books of account or documents or evidence, which would reveal that the petitioner's income chargeable to tax, reflected as capital gains from the transactions in Cubical, had escaped assessment in the relevant AY 2013-14.

19. As noted above, the impugned notice dated 25.05.2022 merely alleges that "the assessee had taken bogus profits through the scrips of Cubical to the tune of ₹30,71,263/- which is a penny stock during the financial year 2012-13". However, there was no material to suggest that any profit from sale and purchase of the said shares was made or had escaped assessment. The report annexed with the impugned notice dated 25.05.2022 was only related to Gemstone and it did not mention about Cubical.

20. The AO had also furnished a tabular statement which reflected the transactions entered by the petitioner in the financial year 2012-13. The third row of the said tabular statement in the impugned order mentions the value of the opening quantity, the value at which the



quantity was bought, the sale quantity, and the value which resulted in the profit of ₹30,71,263/-. The said tabular statement did not mention that the quantities or values were in respect of the shares of Cubical. The tabular statement is merely a statement reflecting the figures which represented the transactions. However, even if it is assumed that the said tabular statement related to the transactions in respect of the shares of Cubical, the same does not suggest that the income as generated from the shares was bogus or a camouflage to reflect the undisclosed income as long term capital gains.

21. The impugned order also does not reflect any material that would suggest that the assessee's income in respect of the transactions in Cubical, had escaped assessment. The AO has merely mentioned Cubical as a penny stock. However, the fact that a stock is a penny stock (a stock of low value), absent of any other material or information led to the conclusion that the transaction in the said stock is not genuine or a subterfuge to bring the undisclosed income as capital gains in the books of account.

22. Mr. Chawla, the learned counsel appearing for the Revenue had also fairly stated that apart from one tabular statement, there was no other material on record on the basis of which the AO could suspect that the income reflected as the transactions, had escaped assessment.

23. In absence of any material or evidence with the AO at the material time to suggest that the transactions in Cubical were bogus transactions, the amount of ₹30,71,263/- relating to the transactions in



Cubical could not be included in the amount suggested having escaped assessment. If the said amount of ₹30,71,263/- is excluded, the value of the sale transaction of the shares of Gemstone (₹29,75,000/-) falls short of the threshold limit of ₹50,00,000/- for reopening of an assessment ending prior to three years preceding the notice.

24. In view of the above, the impugned notices and the impugned order in respect of the AY 2013-14, are set aside.

25. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 18, 2024

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