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

\+ W.P.(C) 8712/2023 and CM APPL. 32967/2023

LGT CAPITAL INVEST MAURITIUS PCC .....Petitioner

Through: Mr Vishal Kalra, Advocate.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE - 2(2)(1), INTERNATIONAL TAX, NEW DELHI .....Respondent

Through: Mr Sanjeev Menon, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **28.11.2024**

1. The petitioner is a company incorporated in Mauritius and has filed the present petition *inter alia* praying as under:

> "issue a writ of and/or order and or directions in the nature of certiorari, prohibition, mandamus or any other appropriate writ, order or direction for quashing of the Impugned Order issued under Section 148A(d) of the Act dated 24.04.2023, consequential notice issued under section 148 of the Act dated 24.04.2023 and notice issued under section 148A(b) of the Act dated 23.03.2023 by the Respondent for Assessment Year (**"AY"**) 2019-20."

2. The Assessing Officer (hereafter *AO*) had issued a notice dated 23.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*) for Assessment Year (AY) 2019-20 and sharing certain information which according to the petitioner was suggestive of its income escaping assessment. The annexure to the said notice indicated that the sum

of ₹76,79,80,555/- had escaped assessment. The same was based on information suggesting that the petitioner had remitted certain funds to India for purchase of shares. According to the assessee, it did not receive the said notice and consequently did not file a reply. The petitioner contends that since it is a foreign company and it has merely invested in shares it had no occasion to check its web portal.

3. Since the AO did not receive any response to the notice issued under Section 148A(b) of the Act, the AO passed an order dated 24.04.2023 under Section 148A(d) of the Act holding that it was a fit case for issuance of notice under Section 148 of the Act. Consequently, the AO also issued a notice dated 24.04.2023 under Section 148 of the Act for reopening of the petitioner's assessment for AY 2019-20. It is the petitioner's case that investment in shares cannot possibly be considered as suggestive of income escaping assessment. The petitioner has not received any amount in India or overseas in relation to the said investments. Since it does not have any other activity in India it was also not required to file any income tax return. The learned counsel for the Revenue submits that AO had no occasion to examine the petitioner's contention as no reply was furnished by the petitioner.

4. In view of the above, we consider it apposite to set aside the impugned order dated 24.04.2023 passed under Section 148A(d) of the Act and direct the AO to consider the contents of the present petition as the petitioner's response to notice dated 23.03.2023 issued under Section 148A(b) of the Act and pass an order in accordance with law. The impugned notice dated 24.04.2023 issued under Section 148 of the Act – which was issued consequent to the order dated 24.04.2023 – is also set aside.

5. It is clarified that nothing stated in this order should be construed as an expression of the opinion of this court on the merits of the controversy whether the information available with the AO is suggestive of the petitioner's income escaping assessment.

6. The petition is disposed of in the aforesaid terms. Pending application also stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 28, 2024 / *tr*

Click here to check corrigendum, if any