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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7698/2024**

SUSHMA AGGARWAL Petitioner

Through: **Ms. Surbhi Chandra, Adv.**

versus

**ASSISSTANT INCOME TAX OFFICER CIRCLE 43(1) &
ORS.** Respondents

Through: **Mr. Ruchir Bhatia, Sr. SC
alongwith Mr. Anant Mann and
Mr. Pratyaksh Gupta Jr. SCs.
Mr. Manish Kumar, Sr. Panel
Counsel for UOI alongwith Mr.
Lalan Kumar and Ms. Pragya
Bharti, Advs.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR

KAURAV

ORDER

27.05.2024

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CM APPL 32032/2024 (Exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 7698/2024 and CM APPL 32031/2024 (Stay)

1. This writ petition has been preferred seeking the following reliefs:-

“A. That this Hon'ble Court may be pleased to issue a writ of CERTIORARI or a writ in the nature of CERTIORARI or any other appropriate WRT, order or direction, calling for the records of the Petitioners case and after going into the legality and propriety thereof, to quash and set aside the impugned order under section 148A(d) on dated 10.04.2024 for A.Y. 2020-21 and notice dated 23.03.2024 under section 14BA(b) of the Act.



B. That this Hon'ble court be pleased to issue a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting Respondents from taking any steps in furtherance of the said order under section 148A(d) dated 10.04.2024 and notice under section 14BA(b) of the Act dated 23/03/2024.

C. That pending the hearing and final disposal of the present petition, this honorable court may be pleased to restraining the respondents from taking any coercive action against the petitioner based on impugned order under section 148A(d) of the Act dated 10.04.2024.

D. For add interim reliefs in terms of prayers above

E. For costs of the petition and

F. For such further and other reliefs as the nature and circumstances of the case may require”

2. The petitioner is essentially aggrieved by the initiation of re-assessment action by the respondents pertaining to Assessment Year [“AY”] 2020-21. As would be evident from a perusal of the record, responding to the notice issued under Section 148A(b) of the Income Tax Act, 1961 [“Act”] dated 23 March 2024, the petitioner had furnished a detailed reply which also finds reflection in the impugned order passed under Section 148A(d) of the Act.

3. We take note of the response which was submitted and which proceeded along the following lines:-

"This is with reference to the captioned subject wherein your honor has stated that total amount of transaction made by the assessee as per the annexures attached has not been fully/correctly disclosed to the Income Tax Department and show cause why notice u/s 148 of the IT Act shall not be issued.

1. In this regard, it is submitted that at point no. 1 of page 2 of the captioned notice, you have alleged that the captioned notice has been issued based on the information received through the high risk CRIU/VRU cases uploaded on insight portal that the income chargeable to tax for the A.Y. 2020-21 has escaped assessment within the meaning of section 147 of the I.T Act, which is based on



Risk Management strategy formulated by the CBDT arzhonor has provided 10 file(s) to the assessee

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In this regard, it is submitted that the assessee has earned total rental of Rs. 59,22,000 as per following details:-

S. No.	Property given on rent	Tenant name	Amount	Rent/Lease Agreements attached as Annexure -1 (colly.)
1.	C-1/119, JANAKP URI, DELHI	M/S G.D. Food Manufacturing (India) Pvt. Ltd.	48,00,000	Copy of Rent Agreement. (Page no. 1-16)
2.	WZ-611, PALAM, NEW DELHI	Jagdarshan Singh proprietor of M/S Amrik Rainbow Fashion and Bharat enterprises	7,47,000 48,000	Copy of Lease Agreement. (Page no. 17-20)
3.	A-3/55 JANAK PURI, DELHI.	M/S A.D. Global Pvt. Ltd.	3,00,000	Copy of rent Agreement (Page no. 21-24)
Total			59,22,000	

Your Honor, total rental income has been correctly reported in the ITR for the year under consideration.

Further, as per GST Law, when the turnover exceed Rs. 20,00,000 in a year relating to the service given, a taxpayer is required to obtain GST Registration and file GST Return.

In the instant case, the assessee has filed GST Returns (GSTR-3B) which are showing on the income tax portal. The assessee has declared total turnover of Rs. 59,22,000/- in GSTR-3B which has also been declared in the Income Tax Return for the year under consideration.

Copy of computation showing Rental income of Rs. 59,22,000/- is attached as **Annexure-2**.

Also, Copy of GSTR 3B filed by the assessee for A.Y. 2020-21 is



attached herewith as **Annexure 3.**

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In this regard it is submitted that the assessee has purchased a property bearing no. Farm no. 5 Measuring 12 Bighas in khaasra no. 170/5, 171/2, 171/3, 184/1, 185/1, situated in Revenue Estate of Village Gadaipur, Tehsil Hauz Khas (Mehrauli), New Delhi from Sh. Ranold Nagar, on 07/01/2020 for a total consideration of Rs. 4,20,01,200/- (including stamp total co duty of Rs. 16,00,000, registration charges of Rs. 4,00,000 and pasting & Misc. charges of Rs. 1,200) in the year under consideration.

Further, it is submitted that the Purchase consideration was duly paid from Bank A/c of the assessee and the property is duly fully/correctly reflected in the details of immovable assets filed with ITR.

The copy of deed in favor of the assessee dated 07/01/2020 is attached herewith as **Annexure-4.**

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In this regard it is submitted that the assessee has given security deposit to BSES Rajdhani Power Limited for obtaining electricity connection on which BSES paid interest of Rs. 15,518 (including TDS of Rs. 1,552) which has been fully/correctly declared in the Income Tax return under the head Income from Other sources. Schedule OS: Income from other sources details are as follows:

Particular	Amount	Ledger
Bank Interest	58621	Attached as Annexure - 5
Interest on Income Tax refund	3065	
Interest from BSES Rajdhani	15518	
Total	77205	

Copy of computation showing income from interest of Rs.77,205/- is already attached as **Annexure-2.**

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In this regard, it is submitted that the assessee has earned rental income of Rs.7,74,000/- from Jagdarshan Singh of premises WZ- 611, situated at Part 1 Raj Nagar, Palam, New Delhi-110045 (30% share) in total for the year under consideration which has also been fully/correctly declared in the income tax return by the assessee.

Copy of lease deed of premises no. WZ- 611, situated at Part 1 Raj Nagar, Palam, New Delhi-110045 is already attached herewith as



Annexure-I. (Page no.17-20)

Copy of computation showing rental income of Rs.7,74,000/- is already attached as **Annexure-2.**

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In this regard, it is submitted that the assessee has earned rental income of Rs. 48,00,000/-from G.D. Foods Manufacturing (India) Pvt. Ltd. of premises no. C-1/119, JanakPuri, NewDelhi (50% share) in total for the year under consideration which has also been fully/correctly declared in the income tax return of the assessee.

Copy of lease deed of premises no. C-1/119, JanakPuri, New Delhi is already attached herewith as Annexure-I. (Page no. 1-16)

Copy of computation showing rental income of Rs.48,00,000/- is already attached as **Annexure-2.**

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In this regard, it is submitted that the assessee has earned rental income of Rs. 3,00,000/-from AD Global Advisors Pvt. Ltd. of premises no. A-3/55, JanakPuri, New Delhi (100% share) in the year under consideration which has also been fully/correctly declared in the income tax return of the assessee.

Copy of rent agreement of premises no. A-3/55, JanakPuri, New Delhi is already attached herewith as Annexure-I. (Page no. 21-24)

Copy of computation showing rental income of Rs. 3,00,000/- is already attached as **Annexure-2.**

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In this regard, it is submitted that details given in this file relates to the TDS deducted on the purchase of property no. Farm no. 5 Measuring 12 Bighas in Khaasra no. 170/5, 171/2,171/3, 184/1, 185/1, situated in Revenue Estate of Village Gadaipur, Tehsil HauzKhas (Mehrauli), New Delhi from Sh. Ranold Nagar whose details and deed are given above at point no. b.

Your Honor, the assessee has deducted TDS of Rs. 4,00,000 on purchase of the property. In support of this, the assessee hereby produce copy of bank statement showing the TDS deposited on 31.12.2019 which is given below:

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In this regard, it is submitted that the assessee has sold property no. C-3/219, JanakPuri, New Delhi on 13/02/2020 to Ms. Malti Singh and Sh. Gopal Prasad Singh for a total sale consideration of Rs. 1,50,00,000/-.



Ms. Malti Singh and Sh. Gopal Singh have paid Rs. 75,00,000/- (against the sale of above property) each being their 50% share in the property in the year under consideration and deducted TDS of Rs. 75,000 respectively whose details are showing in the file provided to the assessee and given above.

Further, the assessee has duly declared the sale of the property and capital gain earned on it in the Income Tax return.

In support of this, copy of computation of income is attached as **Annexure- 2.**

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In this regard, it is submitted that the assessee has sold property no. C-3/219, JanakPuri, New Delhi on 13/02/2020 to Ms Malti Singh and Sh. Gopal Prasad Singh for a total sale consideration of Rs. 1,50,00,000/-.

Ms. Malti Singh and Sh. Gopal Singh have paid Rs. 75,00,000/- (against the sale of above property) each being their 50% share in the property in the year under consideration and deducted TDS of Rs. 75,000 respectively whose details are showing in the file provided to the assessee and given above.

Further, the assessee has duly declared the sale of the property and capital gain earned on it in the Income Tax return.

In support of this, copy of computation of income is attached as **Annexure- 2.**

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This file is the summary of all the files provided to the assessee separately against which the assessee has given its response to each respectively.

Lastly, it is submitted that all the above transaction mentioned in the files have already been declared in the Income Tax Return filed on 25.12.2020 for the year under consideration.

Hence, it is requested to drop the proceedings and not issue the notice as notice has been issued on the basis of vague information only.

2. Your Honor you have mentioned in Point 2 of page 3 of the Notice *“From the above it is evident that total amount of transaction made by you as per annexure attach alongwith have not been fully/correctly disclosed to the Income Tax Department.”*

Your Honor, all the above transactions mentioned in the notice have already been declared in the Income Tax Return dated 25.12.2020



for the year under consideration. So, question of not fully/correctly disclosed in the ITR is incorrect.

Moreover, it is submitted that captioned notice has been issued u/s 148A(b) of the IT Act, 1961 and Section 1484 states that:-

[Conducting inquiry, providing opportunity before issue of notice under section 148.]

148A. The Assessing Officer shall, before issuing any notice under section 148,-

- (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- (b) provide an opportunity of being heard to the assessee, - [***] by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 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 and results of enquiry conducted, if any, as per clause (a);
- (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);
- (d) 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, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Your Honor, as mentioned in section 148A(a) of the act and quoted above, the assessing officer shall before issuing any notice conduct any enquiry, if required, with the prior approval of specified authority with respect to information which suggests that the income chargeable to tax has escaped assessment.

In the present case, an information uploaded on insight portal of income tax department has been used against the assessee without conducting any independent enquiry and notice u/s 148A(b) of the



Act has been issued which is clear violation of the provisions of the Act.

Your Honor, any information received from any source relating to an assessee must be verified with an independent application of mind and then a notice shall be issued.

In the present case, no enquiry was made with respect to even the details available with your office, i.e. the ITR form.

Hence, it is requested to provide details of independent enquiry conducted before issuing the said notice to the assessee.

Hence, it is requested to consider the reply and request of the assessee and drop the proceedings and not issue notice u/s 148 of the Act as notice has been issued without making any enquiry which was necessary in the present case considering the facts of the case”

4. However and while dealing with the aforesaid explanation all that the Assessing Officer [“AO”] has chosen appropriate to observe is as follows:

“6. Remarks of the AO: The assessee in his reply has submitted copy of ITR, computation of income, Form GSTR-3B, copy of lease deed and other details. Further, on perusal of the details/documents filed by the assessee, there is need of elaborated explanation for the transactions made by the assessee during the period under consideration. However, since the assessee has failed to justify conclusively each transactions flagged with details of each transaction alongwith detailed documentary evidence. Hence, it is a fit case for issuing of notice u/s 148.

6.1 The assessee vide notice u/s 148A(b) dated 23.03.2024 was required to explain/justify the above transactions with supporting documents on or before 08.04.2024. However, mere filing of few details/documents, do not have any explanation w.r.t. the above-mentioned transactions. Therefore, the total transactions of Rs. 11,26,83,519/- remain unexplained in the hands of the assessee for the year under consideration..”

5. Prima facie, it is manifest that the AO has clearly failed to accord any consideration on the reply which has been submitted.

6. Faced with the above, Mr. Bhatia, learned counsel appearing for the respondent submitted that there would be no justification to retain the writ petition on the board of this Court at this stage, subject to liberty being reserved to the AO to examine the matter afresh.



7. Accordingly and for the aforesaid reasons we allow the instant writ petition and quash the impugned order under Section 148A(d) of the Act and consequential notice under Section 148 of the Act dated 10 April 2024. The matter shall stand remitted to the desk of the AO to be taken up afresh from the stage of the receipt of the reply of the petitioner. All rights and contentions of respective parties are kept open.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 27, 2024

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