$~86

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

% *Date of Decision : 22.10.2024*

\+ W.P.(C) 17203/2022

SMT.ANU GUPTA .....Petitioner

Through: Mr. Sanjeev Rajpal, Advocate.

versus

INCOME TAX OFFICER WARD 54(1) DELHI .....Respondent

Through: Mr. Vipul Agrawal, Advocate.

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

VIBHU BAKHRU, J. (*ORAL*)

1. The petitioner has filed the present petition impugning an order dated 21.10.2022 passed under Section 148A(d) of the Income Tax Act, 1961 (hereafter *the Act*) in respect of assessment year (AY) 2015-16. The petitioner also impugns the notice dated 21.10.2022 issued under Section 148 of the Act.

2. The Assessing Officer (hereafter *the AO*) had issued a notice dated 23.05.2022 under Section 148A(b) of the Act in consequence of the order passed by the Supreme Court in ***Union of India & Ors. v. Ashish Agarwal: 2022 SCC OnLine SC 543***, providing details of certain information that was available with the AO, which suggested that the income of the petitioner for the relevant AY (AY 2015-16) had escaped assessment.

3. The information as set out in the said notice is to the effect that a search was conducted by the investigation wing on a company known as Tradenext Securities Ltd. (Lifeline Securities Ltd.) [hereafter *Tradenext*] and Kundu Group of Rohtak (hereafter *Kundu Group*). The search had revealed that family members of Kundu Group had availed of accommodation entries in the form of exempt income under Section 10(38) of the Act. It was found that the members of Kundu Group/beneficiaries had, in their possession, contract notes for purchase of shares which dated back to the financial year (FY) 2009-10; however, no such transactions could be traced on market/stock exchange.

4. The authorized signatory of Tradenext had accepted that the contract notes issued by it were bogus and fabricated. The shares of the company were purchased/exchanged in the name of one Mr. Rakesh Sharma and were subsequently transferred by off-market transactions to Tradenext. Mr. Rakesh Sharma had filed an FIR stating that his name had been misused and he had never opened any Demat Account. It was also found that some of the beneficiaries had admitted that they had no knowledge of the share trading and they had arranged for exempt income by payment of 2-3% commission.

5. The information, which was available with the AO, as highlighted in the notice issued under Section 148A(b) of the Act, is reproduced below:

> "In this case information was received through Insight portal in High Risk category that-
>
> 1. A search was conducted by the inv Wing, Rohtak on Tradenext Securities Ltd (Lifeline Securities Ltd) and Kundu Group of Rohtak. It was found that family members of Kundu group had taken accommodation entries in form of Exempt LTCG u/s 10(38) of the IT Act, 1961.
> 2. It was found that the members of Kundu group/beneficiaries

had in their possession contract notes for purchase of shares which dated back to F.Y. 2009- 10 but on further investigation no such transaction was traced on market/stock exchange.

3. Authorized signatory of Tradenext Securities Ltd had accepted on oath that the contract notes issued by them were bogus and fabricated. He has further stated that these contarct notes were not issued by his company.

4. It was found that shares were purchased on exchange in the name of one Sh. Rakesh Sharma and were subsequently transferred off-market to Tradenext Securities Ltd without any consideration and this was ultimately transferred to the beneficiaries. Sh. Rakesh Sharma has stated that his account was mis-used and he had lodged FIR in regard to the same. Sh. Rakesh Sharma has also stated that he has never opened any Demat Account.

5. Some of the beneficiaries have admitted that they had no knowledge of Share trading and they had arranged exempt LTCG for 2-3% commission.

6. Modus-Operandi(MO)

• Cash will be received from various clients and this cash will be deposited in account of some dummy persons who would purchase shares of well known companies on exchange.

• These stocks will subsequently be transferred to the beneficiaries in off-line/offmarket transaction but the bills will be issued in past date at a much lower rate than at what the shares were actually purchased.

• The Beneficiaries will then get these stocks/shares transferred to their Demat Account and then sell these stocks through market by paying STT to earn huge Capital Gain but all exempt u/s 10(38).

1. The Stocks which were selected were generally the stocks which had seen huge rise in their share prices.

2. 12 Entry operator controlled demat accounts were identified and it was found that these demat accounts were used to provide accommodation entries in the above manner. Many of these person-account holders are not traceable. Most of them have never filed their ITR and transactions in their demat/bank accounts do not reflect in their final accounts/ITR if filed.

> There is no bonafide commercial connection between account holders and beneficiaries.
> 3. It was also found that Karnam Securities P Ltd earlier holding company of Lifeline Securities Ltd was also involved in providing accommodation entries through this MO. Mridul Securities P Ltd was found to be one of the 12 dummy demat accounts.
> 4. It was further found that the Assessee had received 4800 shares of Aurobindo Pharma Ltd worth Rs. 5604000/- from one of the dummy Demat A/c Mridul Securities P Ltd."

6. It is the petitioner's case that the said information does not relate to her and, therefore, was not suggestive of her income escaping during the relevant AY. The petitioner filed a response to the notice issued under Section 148A(b) of the Act, in effect, stating that she had no relation with Tradenext and/or Kundu Group. The petitioner also stated that she had not claimed income exemption under Section 10(38) of the Act in respect of the shares that were purchased from Tradenext or Mridul Securities Pvt. Ltd. (hereafter *Mridul Securities*) or any other broker. The petitioner also stated that she had not purchased any shares on the basis of a contract note, which dated back to FY 2009-10 and, therefore, the allegations did not have any relevance in the case of assessee.

7. Insofar as dealing with Mridul Securities is concerned, the petitioner accepted that she had a trading account with Mridul Securities for many years and had been regularly trading in share market through its account. The petitioner also acknowledged that she had purchased 4800 (four thousand eight hundred) shares of a company known as Aurobindo Pharma Ltd. (hereafter *Aurobindo*) in the normal course of its trading in share market through Mridul Securities and did not claim any long term capital gains on sale of shares.

8. It is material to note that the petitioner did not provide any details as to the purchase of 4800 (four thousand eight hundred) shares of Aurobindo. The petitioner had claimed that the said purchase was in the normal course of its trading in share market. However, during the course of arguments, the learned counsel appearing for the petitioner had informed this Court that the transaction of purchase of 4800 (four thousand eight hundred) shares of Aurobindo was an off market transaction and the said shares were not purchased through a recognized stock exchange.

9. The AO had considered the response of the petitioner and had passed the impugned order dated 21.10.2022 under Section 148A(d) of the Act.

10. The AO had also referred to a report that it had received from the investigation wing, which explained the *modus operandi* for bringing the undisclosed income in the books of accounts. In essence, the allegation is that certain assessees had paid an unaccounted cash for acquiring shares of traded listed companies, through an off market transaction through certain entry operators. The said shares were then sold through stock exchanges and Securities Transaction Tax (STT) was paid. In this manner, the assessees availed the benefit of the exemption under Section 10(38) of the Act.

11. Insofar as the petitioner is concerned, the allegation clearly is that the petitioner had purchased 4800 (four thousand eight hundred) shares of Aurobindo, a listed entity, worth ₹56,04,000/-, by an off-market transaction (not through a recognized stock exchange). This was the first limb of the alleged transaction of avoiding payment of tax. This limb of transaction is admitted.

12. The AO had noted that investment of such a value was not commensurate with the returns furnished by the assessee during three years (AY 2014-15, 2015-16 & 2016-17).

13. It is also material to note that the petitioner had earlier filed a writ petition being W.P.(C) No.12683/2022, which was disposed of by an order dated 02.09.2022, thereby directing the Revenue to provide the report on the basis of which the notices were issued. Admittedly, a copy of the report had been provided to the petitioner. A hard copy of the said report has also been handed over to this Court during the course of the proceedings.

14. It is noted that the said report is fairly comprehensive and has sought to deconstruct the manner in which the accommodation entries were being routed through transaction in shares of listed companies, which were regularly traded on the stock exchange. The report also indicated that during the search conducted on Tradenext (then known as Lifeline Securities Ltd.) as well as its holding company (Karnam Securities Ltd.), it was found that the said entities were actively involved in providing accommodation entries through transactions in listed shares, which would result in bogus long term capital gains. The report indicates that as many as twelve listed companies were identified, whose shares were used for structuring the accommodation entries. The report also included Annexure A, setting out the details of the beneficiaries and the names of the listed companies whose shares had been transferred in Demat Accounts of the beneficiaries. Annexure A to the said report is not produced but the extract, which pertains to the petitioner, has been filed along with an additional affidavit filed on behalf of the Revenue, which clearly indicates that the transaction in respect of 4800 (four thousand eight hundred) number of shares of Aurobindo, through Mridul Securities,

was identified as one of the transactions for structuring the accommodation entries.

15. The petitioner in her response to the notice under Section 148A(b) of the Act had denied the allegations. However, it is material to note that she did not provide any details of the alleged transaction of purchase of 4800 (four thousand eight hundred) shares of Aurobindo. The petition is also bereft of any particulars as to the said particulars which were identified and also alluded to in the notice under Section 148A(b) of the Act. The petitioner has not disclosed the price that she had paid for the 4800 shares, the source of funds of the said price, the date on which the said shares were purchased and the date on which the shares were lodged or transferred in the name of the petitioner.

16. On the contrary, the petitioner claims that these shares were purchased through routine purchases in the market. However, as noted above, it is now conceded that the purchase of 4800 (four thousand eight hundred) shares of Aurobindo was an off-market transaction and the said purchase was not through any stock exchange.

17. In view of the above, we are unable to accept that the information available with the AO is not suggestive of the fact that income of the petitioner had escaped assessment.

18. At this stage, it is not necessary for this Court to determine whether, in fact, the petitioner has made any investment, which establishes that the petitioner's income has escaped assessment, and is chargeable to tax as unexplained investment or otherwise. The question involved at this stage is merely to ascertain whether the AO has information suggestive of the petitioner's income escaping assessment. In the facts of the case, this

condition for issuance of a notice under Section 148 of the Act, is clearly met.

19. The petition is unmerited and, accordingly, dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 22, 2024

A

Click here to check corrigendum, if any