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

\+ W.P.(C) 13712/2024

SUMEET KAWATRA .....Petitioner

Through: Mr. K.R. Manjani & Mr. Tarun Aswani, Advs.

Versus

INCOME TAX OFFICER WARD 35(1) NEW DELHI.....Respondent

Through: Counsel for the respondent (appearance not given)

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

**ORDER**

% **01.10.2024**

1. Issue notice.

2. The learned counsel appearing for the respondent accepts notice.

3. The petitioner has filed the present petition impugning an order dated 31.08.2024 (hereafter *the impugned order*) issued under Section 148A(d) of the Income Tax Act, 1961 (hereafter *the Act*) as well as the notice dated 31.08.2024 (hereafter *the impugned notice*) issued under Section 148 of the Act, pursuant thereto.

4. The petitioner has filed the return for the assessment year 2018-19 disclosing an income of ₹3,98,560/-. The said return was processed under Section 143(1) of the Act.

5. The petitioner received a notice dated 19.08.2024 under Section 148A(b) of the Act calling upon the petitioner to show cause why notice under Section 148 of the Act not be issued on the basis of information that an amount of ₹97,76,003/- has escaped assessment for the Assessment Year 2018-19. The said information was premised on the basis that an immovable property had been purchased for an amount of ₹97,00,000/-. The said property was gifted by one Mr. Harish Kumar to the petitioner who was the brother of

the petitioner's father. According to the assessing officer, a nephew was not a relative within a meaning of explanation (e) to proviso to Section 56(2)(vii) of the Act, the said gift would be taxable.

6. The petitioner responded to the impugned notice dated 19.08.2024, *inter alia*, seeking the copy of the approval by the concerned authority under Section 151 of the Act and further contending that the definition of 'relative' would also include the donor (Mr. Harish Kumar) as he is the brother of the petitioner's father.

7. The assessing officer rejected the said contention in terms of the impugned order. The Assessing Officer noted the definition of expression 'relatives' under explanation (e) to proviso to Section 56(2)(vii) of the Act and held that since the word 'nephew' is not mentioned in the definition of a 'relative', the gift received by nephew from his uncle would be taxable in the hand of donee. Paragraph 4 of the impugned order which also refers to the definition of the term 'relative' is reproduced below:

> "4. In response, the assessee filed reply on 21.08.2024 stating that under definition of 'relatives' given in clause (e) of sec.56(2)(vii), brother of either parents of individual are covered for purpose of gift. The gift has been received from the uncle (brother of my father) and consequently the proceedings are started wrongly. The reply of the assessee has duly been considered, however, it is not found tenable. As per Income Tax Act u/s 56(2)(vii)(e) relative means:
>
> (i) in case of an individual —
>
> (A) Spouse of the individual
>
> (B) brother or sister of the individual
>
> (C) brother or sister of the spouse of the individual
>
> (D) brother or sister of either of the parents of the individual
>
> (E) any lineal ascendant or descendant of the individual
>
> (F) any lineal ascendant or descendant of the spouse of the individual

(G) spouse of the person referred to in the items (B) to (F)

The word "nephew" is nowhere mentioned in the definition of relative as per clause (e) of section 56(2)(vii). Therefore the gift received by the nephew from uncle is taxable in the hand of donee. Considering that the assessee has not given any suitable explanation, such transactions represent the undisclosed income of the assessee for the year under consideration. Moreover, this piece of information falls in the category as explained in Explanation 1(i) to Section 148 of the Act and suggests that income of Rs.97,00,000/- chargeable to tax has escaped assessment. It is also evident from information available with Assessing Officer that the income chargeable to tax for the relevant year, which has escaped assessment is more than Rs. 50 lakhs and same is represented in form of an "asset as immovable property acquired through gift". Thus, the assessee's case is covered under provisions of section 149(1)(b) of the Act, accordingly, it is concluded to be fit case for issuing notice u/s 148 of the Act for the A.Y. 2018-19."

8. It is clear from the plain language of explanation (e) to proviso to Section 56(2)(vii) of the Act that a relative would also include a brother or sister of either of the parents of the individual. In this case, the donor is the brother of the petitioner's father and therefore, is covered under the said clause. The fact that the word 'nephew' has not been mentioned cannot be a reason for proceeding on the basis that uncle or nephew are not relatives within the meaning of explanation (e) to proviso to Section 56(2)(vii) of the Act.

9. In view of the above, the impugned order as well as the notice is set aside. The petition is disposed of in the aforesaid terms.

**VIBHU BAKHRU, J**

**SWARANA KANTA SHARMA, J**

**OCTOBER 01, 2024**

'gsr'

*Click here to check corrigendum, if any*