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

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Date of Decision: 04.11.2024

+ W.P.(C) 13882/2024

RISHI BANSAL

.....Petitioner

Through: Mr Kapil Goel and Mr Sandeep Goel,
Advocates.

versus

INCOME TAX OFFICER WARD 44(6)
NEW DELHI

.....Respondent

Through: Mr Indruj Singh Rai, SSC with Mr
Sanjeev Menon, Mr Rahul Singh and
Mr Anmol Jagga, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (ORAL)

CM APPL. 58093/2024

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 13882/2024 and CM APPL. 58092/2024

3. Issue notice.
4. The learned counsel appearing for the respondent accepts notice.
5. The petitioner has filed the present petition, *inter alia*, impugning an order dated 31.08.2024 (hereafter *the impugned order*) passed under Section 148A(d) of the Income Tax Act, 1961 (hereafter *the Act*) as well as the reopening of the assessment proceedings initiated pursuant to the notice dated 31.08.2024 (hereafter *the impugned notice*) issued under Section 148



of the Act.

6. The petitioner has raised several grounds for assailing the impugned order and the impugned notice in this petition. However, the learned counsel for the petitioner has confined the present petition assailing the impugned notice and the impugned order on the ground that the assessment proceedings have been initiated after an expiry of a period of three years and the information available indicates that the income that could possibly have escaped assessment is less than the threshold amount of ₹50,00,000/- as specified under Section 149(1)(b) of the Act.

7. The Assessing Officer (AO) had issued a notice dated 17.08.2024 under Section 148A(b) of the Act, alleging that there was information which suggests that the petitioner's income for the AY 2018-19, has escaped assessment. The said notice indicates that the AO had received information from the AO of M/s Bhagwati Developers to the effect that the petitioner had purchased a residential flat (Flat No. B-0902 in a development known as Baybliss) for a total consideration of ₹70,35,940/-. However, the value on the Agreement dated 25.07.2017 for purchase of the said flat was reflected as ₹45,00,000/- and the petitioner had paid "On Money" of ₹25,35,940/-.

8. The allegation, in essence, is that the petitioner had paid cash of ₹25,35,940/-, which is suggestive of the petitioner's income escaping assessment.

9. The petitioner had responded to the notice issued under Section 148A(b) of the Act raising several grounds including that the information could not possibly lead to a conclusion that income in excess of ₹50,00,000/-, had escaped assessment and therefore, the notice issued under



Section 148A(b) of the Act was *ex facie* beyond the period prescribed under Section 149 of the Act. Thereafter, the AO passed the impugned order rejecting the petitioner's contention.

10. A plain reading of the impugned order indicates that it is *ex facie* erroneous and has been passed without application of mind. The AO has now concluded that the income, which has escaped assessment is ₹95,71,880/- and that the petitioner had received the said amount during the financial year (FY) 2016-17. Paragraph 2 of the impugned order is set out below:

“2. On analysis of the aforesaid information, it has been found that the assessee has received payment in cash from M/s Bhagwati Developers & its group concerns during F.Y. 2016-17 as per details mentioned below:-

Actionable AY	Result Type	Description	Value Rs
2018-19	Undisclosed transaction	Purchase of immovable property and some payment in cash	7035940
			2535940
		Total	95,71,880

2.1. ITR of the assessee for AY 2017-18 has been perused and it gathered that the same is filed on 27.09.2018 declaring total income of Rs. 34,49,134/- only. It is noted that the assessee has not declared any income related to the aforesaid cash transactions. Also, the income declared by the assessee cannot justify the huge amount of cash transaction. In view of the above, the source of money/cash of Rs. 95,71,880/- as reported above remains unexplained and the same is in the nature of income likely to have escaped assessment for the year under



consideration.

[emphasis added]

11. The conclusion that the petitioner had received any amount from M/s Bhagwati Developers and its group concern during FY 2016-17 is without any basis. Apparently, the AO has lost track of the allegation made in the notice issued under Section 148A(b) of the Act, which was to the effect that the petitioner had purchased a flat for a consideration which included ₹25,35,940/-. There was no allegation that the petitioner had received any amount from M/s Bhagwati Developers or any of its group concern. The information available with the AO is also not suggestive of the petitioner having received any money from M/s Bhagwati Group. The information available on the portal also indicates that the petitioner had purchased an immovable property for a consideration of ₹70,35,940/-, which included payments in cash.

12. *Prima facie*, it appears that the AO had erroneously added the value of the transaction, which includes the element of cash, and the alleged cash payment. However, the information available with the AO as disclosed does not support this computation.

13. In view of the above, the impugned order is set aside. The matter is remanded to the AO to consider afresh in the light of the information as available as well as the petitioner's reply to the notice issued under Section 148A(b) of the Act.

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



15. If the AO has any information other than what is articulated in the notice issued under Section 148A(b) of the Act, the AO would be at liberty to supply the same to the petitioner for eliciting the petitioner's response. Any fresh order that may be passed under Section 148A(d) of the Act, would be confined to the notice issued under Section 148A(b) as well as further information that may be provided by the AO.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 4, 2024
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[Click here to check corrigendum, if any](#)