$~30

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

% *Date of Decision :22.11.2024*

\+ **W.P.(C) 15477/2024 & CM APPL. 68370/2024 (delay of 06 days in filing counter-affidavit)**

ISHITA VARSHNEY JAIN .....Petitioner

Through: Ms. Rano Jain, Mr. Venketesh Chaurasia, Ms. Renu Arora, Ms. Sakshi Rustagi & Ms. Sakshi Srivastava, Advocates.

versus

ACIT, CEN CIR-31, DELHI .....Respondent

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semwal, JSC & Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha, MS. Muskaan Goel, Mr. Himanshu Gaur & Mr. Kamkshraj Singh, Advocates.

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, *inter-alia*, impugning the notices dated 18.10.2023 issued under Section 153C of the Income Tax Act, 1961 (hereafter *the Act*) in respect of the assessment years (AYs) 2015-16 to 2021-22.

2. It is the petitioner's case that the said notices have been issued without jurisdiction as no incriminating material has been found either belonging to the petitioner or pertaining to the petitioner in any search conducted under Section 132 of the Act or any requisition made under Section 132A of the Act.

3. This petition was taken up for hearing on 08.11.2024 and this court was of the *prima facie* view that there is no material on record, which was found in any search or requisitioned, either belonging to the petitioner or containing information pertaining to the petitioner. Accordingly, this court passed an order directing the Revenue to file an affidavit, clearly setting out the material found during the search proceedings, which contained such information and also produce the said material on record before the Court on the next date of hearing.

4. Pursuant to the order dated 08.11.2024, an affidavit has been filed. It is affirmed in the said affidavit that a search was conducted at the residence of one Sh. Praveen K. Jain. The date of the search is not mentioned in the affidavit. But this court is informed that the said search was conducted on 10.01.2021. It is stated that during the course of the search, property deeds involving cash transactions were found. It is stated that from the mobile phone of Sh Vaibhav Jain, an image of the Agreement to Sell, pertaining to Property No. 319, Nirman Vihar, Delhi was found. The said image was a part of the WhatsApp chat dated 05.01.2021 between Sh. Vaibhav Jain and Sh. Shashi Chawla. It is affirmed that the said Agreement to Sell pertained to the Ground and the First floor of the property bearing no. 319, Nirman Vihar, Delhi. It is material to note that the said deed was between Sh. Praveen Mahajan and Sh. Dinesh Mahajan (who were reflected as sellers)

and Sh. Shashi Chawla was reflected as the purchaser. The consideration mentioned in the said deed was ₹4,97,00,000/-, for the said two floors (ground floor and the first floor of the said property). According to the learned counsel for the Revenue, the said deed confirmed that the price of one floor was about half of the total consideration mentioned in the said agreement to sell, that is, about ₹2,48,50,000/-. It is contended that, although the information was found in the electronic devices of the parties during the search, the said information is related to Smt. Ishita Varshney Jain, the petitioner in the present case. The Revenue's claim is made on the strength of the following reasoning, as set out in the affidavit.

> "It is submitted that the information discovered through the above referred agreement to sell (as found via WhatsApp chat with Sh. Shashi Chawla) is related to Smt. Ishita Varshney Jain in the following manner:
>
> i. The agreement to sell was retrieved from the mobile phone of Sh. Vaibhav Jain, who is the husband of Smt. Ishita Varshney Jain.
>
> ii. The agreement to sell identifies the seller of the ground floor of Property No. 319, Nirman Vihar, Delhi, as Sh. Dinesh Mahajan. Upon examination of the sale deed executed with Smt. Ishita Varshney Jain on 14.06.2021, it is confirmed that the seller is the same, i.e., Sh. Dinesh Mahajan. It is evident that, instead of selling the property to Sh. Shashi Chawla, as initially indicated, Sh. Dinesh Mahajan sold the property to Smt. Ishita Varshney Jain.
>
> iii. As per the agreement to sell, the price of one floor is stated to be ₹2,48,50,000 (half of ₹4,97,00,000), indicating that the actual consideration paid by the

buyer was ₹2,48,50,000.

iv. However, the sale deed executed with Smt. Ishita Varshney Jain by Sh. Dinesh Mahajan reflects a sale consideration of only ₹81,00,000. This deed was executed after a period of three years, on 14.06.2021. This strongly suggests that the cash component of the transaction might have been received earlier, potentially through Sh. Shashi Chawla or Sh. Parveen Kumar Jain, the father-in-law of Smt. Ishita Varshney Jain.

v. During the course of assessment proceedings concerning Sh. Parveen Kumar Jain and M/s Jainco Ltd. (wherein the directors are Sh. Parveen Kumar Jain and Sh. Vaibhav Jain), it was observed that Sh. Parveen Kumar Jain, who is the father-in-law of Smt. Ishita Varshney Jain, had facilitated property transactions for various individuals, including prominent persons. These transactions often involved payments made partly in cash and partly through cheque, as evidenced by WhatsApp chats and images recovered from his mobile phone."

5. It is apparent from the above, that neither any books of account nor documents, either belonging to the petitioner or containing information pertaining to the petitioner, were found. The fact that an Agreement to Sell between two separate parties has been retrieved from the mobile phone of the husband of the petitioner, does not establish that the information pertains to the petitioner. As noted above, the information is that there was an Agreement to Sell between two separate parties. Therefore, the assumption that the said information pertained to the petitioner is clearly erroneous. It

appears that the Assessing Officer has, based on the image of the Agreement to Sell sent on Whatsapp, assumed the value of one floor of the property and based on this assumption, the AO is seeking to impute that said value in a separate transaction involving the petitioner.

6. We do not consider it apposite or necessary to comment on this train of reasoning, as the scope of examination in this petition is limited. The only question to be addressed is, whether any asset, bullion, jewellery, books of account, documents were found during search, which either belonged to the petitioner or contained information pertaining to the petitioner. The fact that the image suggested a value of a particular property, in respect of a transaction between two other parties, cannot be stated to be pertaining to the petitioner.

7. In view of the above, the present petition is allowed and the impugned notices are set aside. Pending application also stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 22, 2024

at