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

\+ W.P.(C) 16117/2024 & CM APPL. 67709/2024 (interim directions)

TARUN DUA .....Petitioner

Through: Mr. Satpal Singh, Mr. Gaurav Gupta, Mr. Rupal Gupta and Ms. Lakshika Kaushik, Advocates

versus

INCOME TAX DEPARTMENT WARD 43 6 DELHI ....Respondent

Through: Counsel (appearance not given)

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

ORDER

% **21.11.2024**

CM APPL. 67710/2024 (Exemption)

1. The application is allowed, subject to all just exceptions.

2. The application is, accordingly, disposed of.

W.P.(C) 16117/2024

3. Issue notice.

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

5. The petitioner has filed the present petition impugning an order dated 01.03.2024 (hereafter *the impugned* order) passed under Section 148A(d) of the Income Tax Act, 1961 (hereafter *the Act*) as well as a notice dated 01.03.2024 (hereafter *the impugned notice*) the issued under Section 148 of the Act in respect of the assessment year (AY) 2017-18.

6. The petitioner had filed his return of income under Section 139(1) of

the Act in respect of the AY 2017-18 on 27.09.2017. The said return was not picked up for scrutiny. However, subsequently on 30.06.2021, the Assessing Officer (hereafter *AO*) issued a notice under Section 148 of the Act seeking to re-open the assessment for AY 2017-18. Pursuant to the said notice, the petitioner's income was re-assessed and an assessment order dated 20.04.2023 was passed, accepting the petitioner's returned income for the AY 2017-18. The said assessment order indicates that the AO had information from the investigation wing that the petitioner had availed of bogus long term capital gains through reputed stocks by issuing ante-dated forged contract for a value of ₹64,06,508/-. The petitioner had contested the said allegation by producing a copy of its Demat Account, contract notes for sale of shares and complete documents for the purchase of shares in question. The petitioner had substantiated his claim that he had purchased 5300 shares of Indusind Bank Ltd. at the rate of ₹27.49 on 06.03.2009 amounting to ₹1,45,697/-. The said shares were thereafter, sold on 29.09.2016, resulting in long term capital gains of ₹62,06,605/-.

7. The AO had thereafter, issued a notice dated 20.02.2024 under Section 148A(b) of the Act, once again seeking to re-open the petitioner's assessment for the AY 2017-18. The annexure to the said notice indicated a list of transactions which, according to the AO, were suggestive of the petitioner's income escaping assessment. The said tabular statement setting out the transactions is reproduced below:

Information Code	**Information Description**	**Source**	**Amount Description**	**Amount (Rs.)**
TDS-194H	TDS Statement – Commission or brokerage	BSB MARKETING	Amount paid or credited	376460

	(Section 194H)	PRIVATE LIMITED		
SFT-005	Time deposits (other than a time deposit made through renewal of another time deposit)	HDFC BANK LIMITED	Aggregate gross amount received from person – Aggregate gross amount paid to the person	1000000
TDS-192	TDS Statement – Salary to employees (Section 192)	INDUSTRI AL AIDERS	Amount paid or credited	735000
TDS-192(II)	TDS Statement – Salary to employees (Section 192) (Annexure-II)	INDUSTRI AL AIDERS	Taxable amount from current employer	735000
STT-02	Sale of equity share (settled by the actual delivery or transfer) in a recognised stock exchange	-	Value of taxable securities transactions (Code 02)	6381889
TDS-194A	TDS Statement – interest other than interest in securities (Section 194A)	HDFC Bank Limited	Amount paid or credited	502085
AAACS1172N	Bogus LTCG through reputed stocks by issuing ante dated forged contract notes	DDIT/ADI T(INV.) Rohtak	Bogus entry	6406508

8. The petitioner responded to the said notice on 23.02.2024 stating that

the transactions as referred to in the notice were duly declared in the return of income filed by the petitioner and some of the transactions were also repeated twice over. Insofar as the information regarding bogus long terms capital gains amounting to ₹64,06,508/- is concerned, the petitioner informed the AO that the same had been examined in the earlier round of proceedings held under Section 147 of the Act.

9. The AO passed the impugned order dated 01.03.2024 under Section 148A(d) of the Act, *inter alia,* holding that it was a fit case to issue a notice under Section 148 of the Act. The AO's reasoning for rejecting the petitioner's response to the notice under Section 148A(b) of the Act is set out below:

> "...6. The reply of the assessee has been examined with respect to information received on Insight Portal. On perusal of Assessment Order and reasons recorded by erstwhile Assessing Officer it is found that the information received from Insight Portal in respect of bogus LTCG of Rs. 64,06,508/- has already been covered in Assessment Order dated 16.01.2023. It is pertinent to mention that the assessee has been given benefit of exempt income u/s 1 0(38) of the IT Act, of Rs. 62,06,605/- as Long Term Capital Gain on sale of shares of Rs. 64,06,508/. It is pertinent to mention that in the present information sale of shares of Rs. 63,81,889/- has not been covered in assessment order. The remaining amount 1s Rs. 97,30,434/- (Rs. 1,61,36,942- 64,06,508/-). A.Y. 2017-18 which is more than threshold amount of Rs. 50 lacs and is represented in the form of "asset" (Shares and securities and entries in books of account) as per section 149(1)(b) of the Income Tax Act, 1961 has escaped assessment in the hands of the assessee.
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> 7. Considering the above and on the basis of material available on record, it is a fit case to issue a notice under section 148 of the Income Tax Act, 1961.
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> **This Order is being passed with prior approval of Chief Commissioner of Income Tax-3, Delhi. Notice u/s 148 of the Income Tax Act, 1961 is issued alongwith this Order.**"

10. We are at a loss to understand the aforesaid reasoning. The assessment order dated 20.04.2023 clearly indicates that the petitioner's explanation for long term capital gains amounting to ₹64,06,508/- was duly examined and accepted by the AO. Apart from a bald allegation that the long-term capital gains claimed by the Assessee were bogus entries, there is no material to substantiate the said allegation.

11. Notwithstanding the same, the AO has proceeded to hold that "the present information relating to the sale of shares of ₹63,81,889/- has not been covered in the assessment order. It is apparent that the AO has failed to apply his mind to the assessment order, which is already on record.

12. Other than the transaction of sale of shares of a value of ₹ 64,06,508/-, the information as set out in the notice under Section 148A(b) of the Act does not mention any other shares or any other transaction leading to long term capital gains. The only transaction referred to in the notice relating to long term capital gains is expressed as "bogus LTCG through reputed stocks by showing ante dated forged contract notes" of a value of ₹64,06,508/-. This is precisely the same information that had triggered the earlier re-assessment proceedings.

13. Insofar as the information regarding other transactions is concerned, it is the petitioner's case that the same were a part of his return. The petitioner has also filed the computation of his income, which was a part of his return. The same, *prima facie,* reflects that the other transactions as mentioned in the notice under Section 148A(b) of the Act were disclosed.

14. None of the contentions advanced by the petitioner were considered by the AO, including the claim that the entry regarding TDS of ₹7,35,000/- has been mentioned twice over in the said notice. *Prima facie*, the same is

evident from the information as set out in the notice under Section 148A(b) of the Act itself as it reflects TDS statement pertaining to the salary of employees at ₹7,35,000/- twice.

15. In view of the above, we allow the present petition and set aside the notice dated 20.02.2024 issued under Section 148A(b) of the Act; the impugned order dated 01.03.2024 passed under Section 148A(d) of the Act as well as the impugned notice dated 01.03.2024 issued under Section 148 of the Act.

16. We, however, clarify that this order will not preclude the AO from issuing a fresh notice under Section 148A(b) of the Act, subject to there being any information, which is suggestive of the petitioner's income escaping assessment for the relevant assessment year.

17. Needless to state that before issuing any such notice, the AO is required to apply its mind to the material already on record.

18. The petition is allowed in the aforesaid terms. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 21, 2024

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Click here to check corrigendum, if any