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

\+ **W.P.(C) 16478/2024 & CM APPL. 69490-91/2024**

RAKESH KUMAR BHATIA LEGAL HEIR OF LATE SHRI MOTI LAL BHATIA AND ANR .....Petitioners

Through: Mr Abhimanyu Jhamba and Ms Ayushi Srivastava, Advocates.

versus

INCOME TAX OFFICER WARD 47 1 & ANR. .....Respondents

Through: Mr Anurag Ojha, SSC, Ms Hemlata Rawat, and Mr V K Saksena, JSCs, Mr Dipak Raj and Mr Shubham Kumar, Advocates.

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

O R D E R

% **29.11.2024**

1. Issue notice. The learned counsel for the Revenue accepts notice.

2. The petitioner claims to be the legal heir of one Late Sh. Moti Lal Bhatia and he impugns the notice dated 31.08.2024 (hereafter *the impugned notice*) issued under Section 148 of the Income Tax Act, 1961 (hereafter *the Act*) in respect of the assessment year (AY) 2018-19.

3. The impugned notice indicates that it is addressed to Moti Lal Bhatia through his legal heirs. The petitioner has filed the copy of the death certificate, which indicates that Sh. Moti Lal Bhatia expired on 28.02.2013. The petitioner contends that no assessment could be framed in respect of a person who did not exist during the previous year relevant to the AY in question.

4. The Assessing Officer (AO) has issued a notice dated 13.08.2024 under Section 148A(b) of the Act in respect of the AY 2018-19 in the name

of Sh. Moti Lal Bhatia. Apparently, under the instructions of the petitioner, the Chartered Accountant of the firm responded to the said notice informing the AO that Sh. Moti Lal Bhatia expired on 28.02.2013 and was not alive during the previous year relevant to the AY 2018-19.

5. In response, the AO has passed the impugned order dated 31.08.2024 under Section 148A(d) of the Act holding that it was a fit case for issuance of notice under Section 148 of the Act as the legal heir has not submitted any document regarding the transaction as mentioned in the notice issued under Section 148A(b) of the Act.

6. According to the AO, there was information available on the insight portal that the Assessee (Sh. Moti Lal Bhatia) had unaccounted sale of the value at ₹6,32,73,289/-. The said information was uncovered during the search conducted on the VKC Group.

7. It is material to note that the impugned order issued under Section 148A(d) of the Act clearly notes that the Assessee in question Sh. Moti Lal Bhatia had expired. Notwithstanding the same, the AO has proceeded to consider that it was a fit case to issue notice for assessing the deceased person on the ground that his legal heirs has not provided any information.

8. The AO has proceeded on fundamentally erroneous assumption that the deceased person can be assessed through his legal heirs in respect of transactions that were entered into five years of the Assessee's demise. It is obvious that no transaction during the year in question could have possibly been executed by the deceased Assessee. The provision of Section 159 of the Act, which imposes a liability on the legal representative of a deceased, is confined to the liability, which was required to be discharged by the deceased person.

9. In view of the above, notice dated 31.08.2024 issued under Section 148 of the Act as well as the order dated 31.08.2024 issued under Section 148A(d) of the Act are set aside for the aforesaid reasons.

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

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 29, 2024

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Click here to check corrigendum, if any