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

+ W.P.(C) 4572/2022

ABHA GUPTA

.....Petitioner

Through: Mr. Mani Bhadra Jain, Adv.

versus

INCOME TAX OFFICER WARD 35(5) DELHI
& ORS.

....Respondents

Through: Mr. Vipul Agrawal, SSC along
with Ms. Sakshi Shairwal, JSC.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER
10.03.2025

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1. The writ petitioner impugns the reassessment action as initiated by the respondents pursuant to the issuance of a notice under Section 148 of the **Income Tax Act, 1961**¹ dated 31 March 2021, being in relation to **Assessment Year**² 2013-14.

2. The proceedings themselves were commenced with the issuance of a notice under Section 148 dated 31 March 2021. Although that notice came to be issued prior to the promulgation of **Finance Act, 2021**³, the respondents do not appear to have placed the writ petitioner on due notice and apprising it of a right to furnish objections as was contemplated in terms of the directions issued by the Supreme Court

¹ Act

² AY

³ 2021 Act



in **GKN Driveshafts (India) Ltd. v. Income Tax Officer and Ors.**⁴.

The reasons for reopening ultimately came to be disclosed in the course of the reassessment exercise itself and when the writ petitioner is stated to have been provided not just the reasons for formation of opinion that income liable to tax had escaped assessment but also the the approval which was granted for the initiation of such action by the Principal Commissioner of Income Tax.

3. The reasons stand placed on our record as Annexure P-6 and which reads as follows:-

“ In this case information was pushed by Investigation Wing through the Insight portal that the assessee had claimed bogus LTCG of Rs.3960000/- during the F.Y.- 2012-13 (details is given below).

S. NO.	SOURCE PAN	Source PAN Name	Information FY	Information Type	Information Value	Remarks
1	AAHPG1822F	DAYAND SINGH	2012-13	Fi	3871920	Sell Trades Quantity is higher than buy Trades Quantity

2. On perusal of the ITR for the AY-2013-14 filed on 14-12-2013, it is found that the assessee had claimed Long-term capital gains(LTCG) of Rs.3814434/- in the schedule of EI(Exempt income) of the ITR-4.

3. During the course of investigation conducted by the Investigation Wing, New Delhi where 19 penny scrips were identified where manipulation in trade by way of complex web of prearranged or artificial web of transactions was carried out to book bogus LTCG/STCL entries to the interested persons (beneficiaries). The investigation conducted by the Delhi Investigation Directorate reveals that the trading in the said penny stock was a manipulated affair to generate entries of bogus LTCG/STCL facilitating tax evasion by a large number of persons. The assessee was one of such person who has availed accommodation entry of bogus LTCG.

4. I have examined the information at hand and analyzed with the

⁴ (2003) 1 SCC 72



material available on records and observed that during the period the assessee had sold bogus shares of Rs.3871920/-. An analysis of his financial details in ITR for the year under consideration reveals that the transactions are suspicious and found non genuine. Considering the unexplained nature of non-genuine/bogus transactions, it is clear that the assessee had income chargeable to tax during the A.Y 2013-14. The case of assessee accordingly come under explanation 2(b) of section 147 of Income Tax, 1961 which lay down that it deemed to be case where income chargeable to tax has escaped assessment.

5. In view of above discussed facts, I have reason to believe that Income of Rs. 3960000/- chargeable to tax has escaped assessment during the F.Y 2012-13 relevant to A.Y 2013-14 and it is a fit case for issue of notice u/s 148 of I.T Act for the A.Y 2013-14.

6. Since, four years have elapsed but not more than six years have elapsed from the end of the relevant assessment year, it is therefore, proposed as per the provision of section 149(1)(b) read with section 151 of I.T Act, 1961 that approval for initiating action u/s 147 of Income Tax Act, 1961 may be granted in the case. ”

4. As is manifest from a perusal of the reasons extracted above, the **Assessing Officer**⁵ has based its decision to invoke Section 148 on information provided by the Investigation Wing in respect of Dayand Singh and against whom an allegation was laid that during **Financial Year**⁶ 2012-13 his ‘sell trades’ quantity was higher than the ‘buy trades’.

5. The AO then proceeds to take note of the claim of Long Term Capital Gains which was claimed by the writ petitioner in the **Return of Income**⁷ which was submitted for AY 2013-14. It was further alleged that the Investigation Wing, in the course of its inquiry, had identified 19 penny scrips in respect of which trade manipulations had occurred and which were camouflaged by an artificial web of transactions in order to book bogus Long Term/ Short Term Capital Gains to interested persons. It was thus alleged that the assessee had

⁵ AO

⁶ FY

⁷ Return



availed of those accommodation entries.

6. The AO then proceeded to allege that during the period in question, the writ petitioner had sold bogus shares amounting to INR 38,71,920/-. The AO opined that the transactions appeared to be “suspicious” and “non genuine”. It was on the aforesaid basis that it proceeded to observe that income amounting to INR 39,60,000/- chargeable to tax had escaped assessment.

7. The petitioner, upon being confronted with those allegations, filed detailed objections on 16 February 2022. It was at the outset asserted that the notice under Section 148 was based on information pertaining to Dayand Singh and the share purchase information valued at INR 38,71,920/- pertaining to the said assessee. It was further asserted that the notice itself did not rest on any material which would have established even remotely that the sell trades undertaken by the writ petitioner had exceeded the purchase trades. This stance appears to have been struck since the notice itself was based solely on transactions undertaken by Dayand Singh. It was thus averred that in the absence of any of the allegations being pointed towards the writ petitioner, the initiation of action under Section 148 was rendered wholly unsustainable.

8. Those objections came to be rejected by the AO on 06 March 2022, with it being held that the reassessment action was based on a proper analysis of the information in possession of the AO as well as the report of the Investigation Wing. Insofar as the claim of Long Term Capital Gains is concerned, the AO, while rejecting the objections which were taken, has merely observed that the “*Exact value of capital gain will be determined on the basis of verifying different facts*”. The AO has thus, while rejecting the objections



tendered, merely reiterated its stand of the reassessment action being based on the report of the Investigation Wing and which had explained the modus adopted by various persons involved in “bogus entries”.

9. Mr. Agrawal, learned counsel representing the respondents, had sought to justify the invocation of Section 148 by drawing our attention to the various disclosures which were made in the counter affidavit. It was submitted that the report of the Investigating Wing had in great detail captured the bogus trading which was indulged in by beneficiaries pertaining to the 19 penny scrips in question.

10. Our attention was specifically drawn to Paragraphs 26 (ix) and (xi) and which are extracted hereinbelow:-

“ix. The contents of **Ground E, F and G** are denied as being incorrect and misplaced in law. As it earlier stated that reason was recorded on the information received from investigation wing wherein it was held that assessee was one of the beneficiary to claim bogus LTCG through fabricated contract notes shares sale purchase. The copy of approval u/s 151 from the Competent Authority i.e. PCIT along with reason to believe were duly provided to assessee through ITBA module. Further, the dates of proposal of AO along with name of the AO and designation, recommendation by Addl. CIT and approval by, PCIT are also mentioned in the said approval along with reason' recorded by AO. Since approving authority is the PCIT, finally it bears the digital signature of the PCIT and was made available on system for assessee. The said approval was also supplied to the assessee on 08.02.2022. It is reiterated that the case was re-opened after obtaining approval the competent authority and Notice u/s 148 of the Income Tax, 1961 was issued on 31.03.2021 by ITO Ward-35(5) Delhi. Thereafter case was transferred to Regional E- Faceless Assessment CENTRE (ReFAC) on 10.12.2021 for further assessment proceedings. All proceedings thereafter have been monitored and done by ReFAC.

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xi. The contents of **Ground I** are denied as being incorrect and misplaced in law. It is submitted that the report so received contained the financial information of other assesses also and it is an Internal communication of the Assessing Officer and the Investigation Wing. List of such beneficiaries who have received shares from the 15 conduit accounts during the period FY 2012-13,



F.Y. 2013-14, F.Y. 2014- 15 & F.Y. 2015-16 is available on record of the assessing officer, while recording the reasons of reopening. There are a total 2404 such beneficiaries pertaining to FY 2012-13, FY 2013-14, FY 2014-15 & FY 2015-16. The assessing officer is not bound to disclose the same to the assessee. Therefore, the same has not been provided to assessee. However, the relevant information related to petitioner on the basis of which the case was reopened, was duly provided to her. Assessee never sought copy of any specific report of Investigation Wing from the assessing Officer during the assessment proceedings. Also, the relevant extract of the investigation report mentioning the name of the Petitioner is being annexed with this affidavit as Annexure R- 1.”

11. Having heard learned counsels for respective sides, we find that the disclosures and allegations which are made in the counter affidavit clearly travel far beyond the skeletal allegations which came to be recorded by the AO in support of formation of an opinion that income liable to tax had escaped assessment. We are constrained to observe that the validity of an action referable to Section 148 would have to be examined and evaluated basis the reasons assigned in the order framed by the AO as opposed to what may be averred and alleged in a counter affidavit which comes to be subsequently filed in proceedings before this Court. It is the reasons as recorded by the AO which alone can be countenanced in order to evaluate whether circumstances warranted the invocation of Section 148. The formation of opinion thus cannot be sought to be bolstered or given flesh by way of an affidavit which may come to be subsequently filed.

12. When we revert to the reasons that were recorded and disclosed, it becomes ex facie apparent that the allegations were levelled solely against Dayand Singh. The AO, while conveying the reasons forming the basis for reassessment, has failed to allude to any material or information that the Investigation Wing may have gathered in the course of its inquiry and which may have implicated the writ petitioner in the alleged manipulation of 19 penny scrips. While the



respondents do allude to a large number of beneficiaries, and which it pegs at 2404, suffice it to note that even the counter affidavit fails to disclose material particulars which could have been countenanced as germane to the formation of an opinion that income taxable in the hands of the writ petitioner had escaped assessment.

13. In fact, as we read paragraph 26(xi) of the counter affidavit, we find that the respondents assert that they were not even obliged to disclose the material information which had been gathered by the Investigation Wing. In the very same breath, they also assert that the petitioner never sought a copy of the report submitted by the Investigation Wing. The stand as taken is thus clearly self-contradictory.

14. In any event, we are of the firm opinion that the AO in order to justify the invocation of Section 148 was undoubtedly obliged to allude to the material facts that may have formed part of the report of the Investigation Wing and which would have given at least a broad indication of the involvement of the petitioner in the alleged manipulation of the 19 penny scrips and thus rendering support to the allegation of a wrongful claim of Long Term Capital Gains. Since the reasons which were recorded by the AO in this respect were gloriously silent and failed to make even a rudimentary disclosure on the basis of which we could have examined whether the formation of opinion even on a prima facie basis would sustain, we find ourselves unable to uphold the action of reassessment.

15. We, accordingly, allow the present writ petition and quash the impugned notice dated 31 March 2021 referable to Section 148 of the Act as well the order dated 06 March 2022 disposing of objections.



16. It is, however, left open to the respondents to draw proceedings afresh if otherwise permissible in law.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 10, 2025/RW