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

% *Date of Decision: 07.01.2025*

+ **W.P.(C) 16238/2024 and CM APPL. 68208/2024**

**CAPITAL PROPERTY CONSULTANTS THROUGH
AUTHORIZED REPRESENTATIVE MR.**

LALIT POPLI

.....Petitioner

Through: Mr Gaurav Jain, Mr Shubham Gupta
and Ms Shalini, Advocates.

Versus

ASSISTANT COMMISSIONER OF INCOME

TAX CENTRAL CIRCLE 31, DELHI

.....Respondent

Through: Mr Abhishek Maratha, SSC, Mr
Apoorv Agarwal, Mr Parth Samwal,
JSCs, Ms Nupur Sharma, Mr Gaurav
Singh, Ms Muskaan Goel, Mr
Himanshu Gaur and Mr Kamakshraj
Singh, Advocates for the Revenue.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

VIBHU BAKHRU, ACJ (Oral)

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 02.05.2024 (hereafter *the impugned order*) passed under Section 148A(d) of the Income Tax Act, 1961 (hereafter *the Act*) and also impugning a notice dated 02.05.2024 (hereafter *the impugned notice*) issued



under Section 148 of the Act in respect of the assessment year (AY) 2020-21. The impugned notice was preceded by two other notices issued under Section 148A(b) of the Act – one dated 31.03.2024 and, the other dated 18.04.2024.

2. Both the said notices contained different information which according to the Assessing Officer (AO) are suggestive of the petitioner's income escaped assessment.

3. The notice dated 31.03.2024 (hereafter *the first notice*) recorded information to the effect that an agreement to sell of immovable properties was found during the search proceedings and image of the said document was reproduced in the said notice. According to the AO the transaction of sale and purchase of the immovable property was facilitated by the petitioner, which suggested that the Assessee's income had escaped assessment. The relevant extract of the said notice (sans the image of the agreement to sell) is set out below:

“2. During the course of search action of SBP group, various loose papers and documents were found and seized. On perusal of seized records, it is found that M/s Capital Properties Consultants Pvt. Ltd facilitated deal between M/s. Shub dev Associates (P) Ltd., through its director Shri. Deepak Kumar s/o Shri. Harbans Lal, 201. Ram vihar, Delhi (110092) (SELLERS) and shri. Ram Swaroop Jayswal s/o Shri. Sukhdev Singh, 138, Pushpanjali enclave, Delhi (110092) (PURCHASER) regarding property 1, 7,8, 2 & ½, 3, Kamal Complex, Plot no. 6, Local shopping center, Suraj Mal Vihar, Delhi (110092) dated 27.05.2019. As per the said agreement the land deal was finalized for Rs. 8,01,00,000/-. This agreement to sell was facilitated by M/s. Capital Properties and consultant (P) ltd. The said document is reproduced below for your kind information.



3.The above said information suggests that income chargeable to tax has escaped assessment in this case for A.Y. 2020-21. Accordingly, as per the provisions of Section 148A(b),you are being provided an opportunity of being heard, to explain the treatment of commission received on brokering the above said property deal and thus show caused as to why the said commission should not be treated as your undisclosed income in A.Y. 2020-21. Please submit your reply stating the amount of commission received, mode of receipt of said commission, its treatment in your books etc., along-with relevant documentary evidence in support of your claim (if any), in compliance to this show cause notice.”

4. It is apparent from the above that the AO’s assumption that the petitioner’s income had escaped assessment was premised on the basis of an Agreement to Sell in respect of certain lands valued at ₹8,01,00,000/-. According to the AO, the petitioner had facilitated the said sale and therefore, it was assumed that the petitioner would have earned a commission on the said transaction. Since the petitioner had not disclosed any such income, the AO suspected that the petitioner’s income for AY 2020-21 has escaped assessment.

5. The petitioner filed a response dated 15.04.2024 controverting the said suggestion. Apart from raising certain legal issues, the petitioner categorically stated that the Agreement to Sell mentioned in the notice dated 31.03.2024 was never acted upon. The petitioner also forwarded copies of the letters from the parties to the Agreement to Sell certifying that the Agreement in question was never acted upon. The same was cancelled and no commission was due to the petitioner. Paragraph no. 7 of the petitioner’s response dated 15.04.2024 is relevant and is set out below:



“7. Without prejudice to the aforesaid it is respectfully submitted that Agreement of sale as mentioned in the captioned notice was never acted upon and thus in consequence no commission was received by the assessee. To support our aforesaid contention, we requested the parties to furnish their confirmation in that regard. Copy of letters from both the parties to the agreement to sell certifying that the agreement to sell was never acted upon and was cancelled and thus no commission income was due to the assessee firm is attached herewith.”

6. It is material to note that the income, which was suspected to have escaped assessment, was confined to the commission on the solitary Agreement to Sell that was allegedly found during the search conducted in connection with the SBP Group. And, there is no material to controvert the petitioner’s claim that the said agreement was not acted upon.

7. Apparently, the AO accepted that the sale of the properties, which were the subject matter of an Agreement to Sell that was referred to in the notice dated 31.03.2024, was not acted upon and the sellers had not executed any sale deed in respect of the subject properties.

8. Notwithstanding the above, the AO issued another notice dated 18.04.2024 under Section 148A(b) of the Act, *inter alia*, stating that certain information had been received through insight portal, which suggested that the petitioner had earned a total commission of ₹29,87,213/-. The relevant extract of the said notice is set out below:

“1. Information pertaining to the assessee has been received through the Insight Portal under the High risk CRIU/VRU information.



2. As per information available, it is found that during the search and seizure operation u/s 132(4) of the Income Tax Act'1961 dated 28.05.2022 was conducted at the premises of B-20, 1st floor, Surajmal Vihar, New Delhi-92 related to the partnership firm (M/s. Capital property Consultants) of Shri Lalit Kumar Popli, receipts for commission received were seized which contained details of commission received by M/s Capital property consultants from various parties. The detailed information is as under:-

3. Further, during the search and seizure operation u/s 132(4) of the Act, 1961 was also conducted in the case of Sh. Om Prakash Popli and certain other information with regard to the commission earned by firm M/s. Capital Property Consultants were received. The detailed information is as under:-

4. On perusal of the above information, it is found that during the year under consideration, you have earned a total commission of Rs. 29,87,213/- based on registered value of the property for which services have been provided by you. It was also noticed that the commission have been earned on the registered value of the property instead of market value of the property which is threefold of commission shown in receipt book of M/s. Capital Property Consultants. The market value of the property is ascertained as per the information available in the public domain. Further as per the enquiry report by the Investigation wing, it is established that you have undertaken the commission on the difference of the market value of the property and the registered value of the property. Thus, in view of the above facts and the relied upon report of Investigation Wing, the total estimated commission as per the market value earned by you during the year under consideration is Rs. 29,87,213/-.

5. From the above, it is ascertained that you have received out of book commission which have not been declared and represent undisclosed income.



6. Based on the above discussion, prima facie it appears that the income chargeable to tax amounting to Rs. 29,87,213/- has escaped assessment in the assessment year under consideration. The stated transactions qualify the requirements specified u/s 149(1)(a) of the Income Tax Act.”

9. It is material to note that the said notice did not contain any allegation of receipt of commission in respect of the transaction which was the subject matter of the Agreement to Sell referred to in the notice dated 31.03.2024.

10. In the given facts, the controversy in the present case is centered around the AO's assertion that the second notice dated 18.04.2024 is in continuation of the first notice dated 31.03.2024 issued under Section 148A(b) of the Act.

11. It is at once clear that the assertion that the second notice is the continuation of the first notice, is *ex facie* erroneous. The notice dated 31.03.024 issued under Section 148A(b) was confined to the income by way of a commission on a transaction of certain property described as 1, 7, 8, 2 and ½, 3, Kamal Complex, Plot No.6, Local Shopping Center, Suraj Mal Vihar, Delhi-110092.

12. As noted above, the AO had the information regarding an Agreement to Sell that was entered into by M/s. Shubh dev Associates (P.) Ltd. (as Seller) and Sh. Ram Swaroop Jayswal (Purchaser) whereby the said parties had agreed to sell and buy the aforementioned immovable property at a price of ₹8,01,00,000/-. The AO had assumed that the petitioner had earned a commission on the said transaction, which had escaped assessment. There is



no dispute that the said Agreement, which according to the AO, constituted information suggestive of the petitioner's income escaping assessment, was not acted upon. There is no dispute that the petitioner had responded to the notice dated 31.03.2024 confirming that the Agreement to Sell had not been acted upon. Further, confirmation from the parties with respect to the Agreement to Sell in question was also furnished. It is not disputed that the petitioner could not have earned any commission in respect of the transaction covered under the said Agreement to Sell.

13. The second notice under Section 148A(b) of the Act – notice dated 18.04.2024 – is clearly premised on information that was not the subject matter of the notice dated 31.03.2024. It is stated that the AO had, for the purposes of ascertaining whether the Agreement to Sell in question [Agreement to Sell between M/s.Subh Dev Associates (P.) Ltd. through its Director Sh. Deepak Kumar S/o Sh. Harbans Lal (Seller) and Sh. Ram Swaroop Jayswal (Purchaser)] was acted upon, made inquiries from the Sub-Registrar's Office at Vivek Vihar and had requested for sale deeds and agreements in respect of the property in question (Property no. 1, 7, 8, 2 and ½, 3, Kamal Complex, Plot No.6, Local Shopping Center, Suraj Mal Vihar, Delhi-110092).

14. The Sub-Registrar's Office had forwarded the information pertaining to the sale deeds relating to the said property. The office had also sent copies of the sale deeds relating to parts of the said property. The said information indicated that the parts of the property were subject matter of the sale deeds. However, none of the same could be construed to be



executed pursuant to the Agreement to Sell referred to in the first notice. A tabular statement setting out the information provided by the Office of the Sub-Registrar as set out by the Revenue in a note filed in response to the present petition, is reproduced below:

“9. That the information regarding the sale deeds/agreements provided by the office of the Sub-Registrar, Vivek Vihar, has been tabulated as follows:

Deed /Agreement No	Registration Date	Property mentioned in deed/agreement	Seller	Purchaser
7167	16/09/2019	No.1, 7 & 8 Kamal Complex, Plot no.6, Local shopping Centre, Suraj Mal Vihar, Delhi	M/s Mayank Associates Pvt. Ltd.	M/s Shubdiv Associate Pvt. Ltd.
3969	29/05/2019	No.3, Kamal Complex, Plot no.6, Local shopping Centre, Suraj Mal Vihar, Delhi	Manju Bansal	Simran Kaur
2868	23/07/2020	No.7, Kamal Complex, Plot no.6, Local shopping Centre, Suraj Mal Vihar, Delhi	M/s Shubdiv Associate Pvt. Ltd.	Sunita Choudhary
2888	23/07/2020	No.8, Kamal Complex, Plot no.6, Local shopping Centre, Suraj Mal Vihar, Delhi	M/s Shubdiv Associate Pvt. Ltd.	Uday Vir Singh”

15. It is clear from the above that the information on which the first notice



(notice dated 31.03.2024) is based, is not the information on which the second notice dated 18.04.2024 is premised. The information, which according to the AO, was suggestive of the petitioner's income escaping assessment for the AY 2020-21, as set out in the second notice, is completely different from the information as set out in the first notice. The transactions in respect of which it is alleged that the petitioner's income may have escaped assessment as set out in the second notice, is not the transaction which had led the AO to issue the first notice.

16. In view of the above, there is considerable merit in the petitioner's contention that the second notice issued under Section 148A(b) of the Act must be viewed as a standalone notice and not in continuation of the first notice dated 31.03.2024.

17. The short note filed on behalf of the Revenue also states that the notice dated 18.04.2024 (the second notice) issued under Section 148A(b) of the Act pertains to the commission income of ₹29,87,213/- in connection with the search conducted on the JM Jain Group on 28.05.2022. It is relevant to note that the first notice (notice dated 31.03.2024) referred to lose papers and documents found during the course of search action in respect of "SBP Group". Plainly, the information as mentioned in the second notice cannot be said to be in continuation of the information as referred to in the first notice.

18. There is no dispute that if the second notice (notice dated 18.04.2024) issued under Section 148A(b) of the Act is considered as a standalone



notice, the same would be beyond the period as stipulated under Section 149(1)(a) of the Act as was in force at the material time. This is because the amount of income, which is alleged to have escaped income, is less than ₹50,00,000/- and a period of more than three years have elapsed from the end of the relevant assessment year (AY 20-21).

19. In view of the above, the impugned order dated 02.05.2024 passed under Section 148A(d) of the Act as well as the notice dated 18.04.2024 issued under Section 148A(b) of the Act, is set aside.

20. The impugned notice dated 02.05.2024 issued under Section 148 of the Act is also set aside and so are the proceedings initiated pursuant to the said notice.

21. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

JANUARY 07, 2025
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