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

\+ W.P.(C) 17702/2024 & CM APPL. 75339/2024

ALTAF HUSAIN .....Petitioner

Through: Ms. Shreya Jain and Mr. Gaurav Tanwar, Advocates

versus

INCOME TAX OFFICER .....Respondent

Through: Mr. Shlok Chandra, SSC with Ms. Naincy Jain and Ms. Madhavi Shukla, JSCs

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

O R D E R

% **08.01.2025**

1. Issue notice.

2. The learned counsel for the respondent accepts notice.

3. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "a) allow the present Writ Petition and issue any writ, order or direction in the nature of Mandamus and/or Certiorari and/or any other writ, order or direction in the nature thereof to quash/set aside the Impugned Order u/s 148A(d) of the Act dated 19.03.2024 and Impugned Notice u/s 148A(b) of the Act dated 19.01.2024 and Impugned Notice u/s 148 of the Act dated 19.03.2024 issued to the Petitioner for AY 2017-18, by the Respondent & all proceedings
> b) Pass any other such orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the Petitioner and against the Respondent."

4. The petitioner impugns an order dated 19.03.2024 (hereafter *the impugned order*) passed under Section 148A(d) of the Income Tax Act, 1961 (hereafter *the Act*) issued in respect of Assessment Year (AY) 2017-18. The petitioner also impugns a notice dated 19.03.2024 issued under

Section 148 of the Act in respect of AY 2017-18.

5. The impugned order was passed pursuant to a notice dated 19.01.2024 issued under Section 148A(b) of the Act whereby certain information – which according to the Assessing Officer (AO) is suggestive of the petitioner's income escaping assessment – was shared with the petitioner and he was called upon to show cause why the income for the relevant assessment year had not been assessed under Section 147 of the Act.

6. The information as set out in the said notice is, essentially, to the effect that certain deposits were made in the bank account aggregating ₹16,38,000/- (₹12,98,000 + ₹3,40,000). According to the AO, the said deposits were suggestive of the petitioner's income escaping assessment. Additionally, the AO also referred to a transaction regarding sale of an immovable property for a sum of ₹65,00,000/-. The AO, thus quantified the income escaping assessment in respect of AY 2017-18 at ₹81,38,000/- (₹65,00,000/- + ₹3,40,000/- + ₹12,98,000/-).

7. The petitioner contests the said suggestion on the ground that the amount of ₹65,00,000/- being the sale proceeds of an immovable property in question, could not possibly represent the income that had escaped assessment. This contention is founded on the basis that the said immovable property was purchased in the previous year (FY 2015-16) for a sum of ₹60,00,000/- and that amount had been taxed by the AO in the assessment year 2016-2017 relevant to FY 2015-16 as unexplained income. It is contented that since the entire purchase consideration of the property in question being ₹60,00,000/- was taxed as unexplained income, the sale proceeds amounting to ₹65,00,000/- could not represent any undisclosed income. At best, a sum of ₹5,00,000/- (₹65,00,000/- less ₹60,00,000/-) could

be considered by the AO as income that had escaped assessment and warranting an explanation from the petitioner.

8. The present petition was listed on 23.12.2024 and this court had directed the petitioner to produce all necessary documents to establish that the purchase consideration had been taxed by the AO in the earlier assessment year 2016-17. The learned counsel for the respondent was also directed to obtain the necessary instructions.

9. Pursuant to the aforesaid order, the petitioner has filed additional documents which indicates that the property in question (property bearing address C-7/31, Yamuna Vihar, Delhi-110053) has been purchased in terms of a deed dated 08.04.2016 for a consideration of ₹60,00,000/- and the said amount was taxed as unexplained expenditure during the FY 2015-2016 relevant to the assessment year 2016-2017. The petitioner has also produced a copy of the sale deed dated 08.04.2016 indicating that the aforesaid property was sold for a consideration of ₹65,00,000/-.

10. Undisputably, if the aforesaid facts are correct, the sale proceeds of ₹65,00,000/- could not be considered as unexplained income by the AO.

11. Mr. Chandra, the learned counsel appearing for the Revenue submits that since the documents, which have now been filed by the petitioner, had not been produced by the AO in response to the notice dated 19.01.2024 issued under Section 148A(b) of the Income Tax Act, the matter may be remanded to the AO for consideration afresh.

12. The said course commends to this court. Accordingly, we set aside the impugned order dated 19.03.2024 passed under Section 148A(d) of the Act in respect of AY 2017-18 and remand the matter to the AO for consideration afresh in light of the averments made in the present petition and the

documents filed in this petition.

13. The AO shall also be entitled to call upon the petitioner to furnish such other documents, if the AO considers relevant for taking an informed decision.

14. Consequently, the impugned notice issued under Section 148 of the Act is also set aside.

15. The petition is disposed of in the above terms.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

JANUARY 08, 2025

ms *Click here to check corrigendum, if any*