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

+ W.P.(C) 11482/2022

RAJNISH PURI

..... Petitioner

Through: Mr.Ruchesh Sinha, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 43(1),
DELHI & ORS. Respondents

Through: Mr.Ruchir Bhatia, Sr.Standing
Counsel for the Revenue.

Date of Decision: 05th August, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J:

C.M.No.33943/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No. 11482/2022 & C.M.No.33942/2022

1. Present writ petition has been filed challenging the order dated 23rd July, 2022 passed under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and the consequential notice dated 24th July, 2022 issued under Section 148 of the Act for the Assessment Year 2014-15.



2. In the present matter, the assessment of the Assessee was reopened on the basis of information uploaded on INSIGHT portal stating that search under Section 132 of the Act had been conducted on 11th September, 2018 in the case of Jignesh Shah and Sanjay Shah of Ahmedabad and the search had resulted in seizure of unaccounted cash of Rs.19.37 crores (relating to accommodation entries and commission earned thereon), along with incriminating digital as well as documentary evidences. As per the impugned Order, the Assessee, Shri Rajnish Puri, was found to be a beneficiary of accommodation entry of fictitious loan of Rs.63,06,250/- during Financial Year 2013-14.

3. Learned counsel for the Petitioner contends that the Petitioner has consistently stated during the proceedings that he has not entered into any transaction with Mr. Jignesh Shah or Mr. Sanjay Shah, much less any loan transaction and that the Petitioner is ready to file an affidavit in this regard. He contends that the information on which the reassessment proceeding had been initiated was incorrect and the assumption of jurisdiction was completely flawed.

4. Mr.Ruchir Bhatia, learned Senior Standing Counsel for the Respondents-Revenue, who appears on advance notice, states that the present case is of 'fictitious long term capital gain' arising out of trading in the shares of Safal Herbs Ltd. In support of his contention, he relies upon the Dissemination of Information note as well as the annexures attached thereto. He emphasises that the hyperlinks mentioned in the annexures are functional.

5. However, this Court finds that both in the notice issued under Section 148A(b) of the Act as well as in the Dissemination of Information note



supplied to the Petitioner, the allegation is of a ‘fictitious loan’ and not ‘fictitious long term capital gain’ of Rs.63,06,250/-

6. This Court is of the view that the allegation in the notice issued under Section 148A(b) of the Act has to be precise, so that the assessee has a fair and reasonable opportunity to put forward its defence. In the event, the allegation in the notice under Section 148A(b) of the Act is incorrect or vague, the Assessee would be deprived of an opportunity of putting forward its defence and Section 148A(b) would be rendered nugatory.

7. At this stage, Mr.Ruchir Bhatia states that the Respondents have no objection if the impugned order dated 23rd July, 2022 passed under Section 148A(d) of the Act and the notice dated 24th July, 2022 issued under Section 148 of the Act are set aside and the matter is remanded back to the Assessing Officer for a fresh consideration. He further states that, in the Show Cause Notice under Section 148A(b) as well as in the Dissemination Note, the expression ‘fictitious loan’ should be read by the assessee as ‘fictitious LTCG’ of Rs.63,06,250/- and the said notice should be read along with Dissemination Note’ as well as the annexures handed over in the Court. The notice may be deemed to be amended to this effect by way of this order.

8. Learned counsel for the petitioner has no objection to the said course of action.

9. Consequently, the impugned order dated 23rd July, 2022 passed under Section 148A(d) of the Act and the notice dated 24th July, 2022 issued under Section 148 of the Act are set aside and the Petitioner-Asseesee is given an opportunity to file a response to the notice under Section 148A(b) as amended above of the Act within three weeks. The Assessing Officer is



directed to pass a fresh order under Section 148A(d) of the Act within four weeks thereafter.

10. With the aforesaid directions, the present writ petition along with pending application stands disposed of. This Court clarifies that it has not commented on the merit of the controversy. The rights and contentions of all the parties are left open.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 05, 2022
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