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

\+ W.P.(C) 15856/2022 and CM APPL. 49320/2022 (for Stay)

SMT. SEEMA GUPTA ..... Petitioner

Through: Mr. Sanjeev Rajpal and Mr.Vijay Shukla, Advocates.

versus

INCOME TAX OFFICER
WARD 54(1) DELHI ..... Respondent

Through: Mr. Kunal Sharma, Senior Standing Counsel for Revenue along with Ms. Zehra Khan, Junior Standing Counsel for Revenue and Mr. Sandeep Kumar, Advocate.

% Date of decision:17th November, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. Present writ petition has been filed seeking quashing of the order passed under Section 148A(d) ('impugned order') of the Income Tax Act, 1961 ('the Act') and the notice ('impugned notice') issued under Section 148 of the Act, both dated 21st July, 2022, by the Income Tax Officer, Ward 54(1), Delhi for the Assessment Year ('AY') 2015-16.

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2. The brief facts giving rise to the present proceedings are that the Petitioner Assessee was served Show Cause Notice ('SCN') dated 23rd May, 2022 under Section 148A(b) of the Act by the Assessing Officer ('AO') wherein it was stated that a search was conducted by the Investigation Wing, Rohtak on Tradenext Securities Ltd. (Earlier known as Lifeline Securities Limited) and the said entity is involved in providing accommodation entries through the modus operandi set out in the notice. It was stated that the said Tradenext Securities Ltd. ('Tradenext Securities') operates several dummy demat accounts to provide accommodation entries and one such account is of Mridul Securities Private Ltd. ('Mridul Securities'). It was further stated that the Assessee has received 4800 shares of Aurobindo Pharma Ltd. worth Rs. 56,04,000/- from one of the dummy demat account of Mridul Securities.

The relevant portion of the SCN issued under Section 148A(b) of the Act reads as follows:

> *"In this case information was received through Insight portal in High Risk category that-*
> *1. A search was conducted by the inv Wing, Rohtak on Tradenext Securities Ltd (Lifeline Securities Ltd) and Kundu Group of Rohtak. It was found that family members of Kundu group had taken accommodation entries in form of Exempt LTCG u/s 10(38) of the IT Act, 1961.*
> *2. It was found that the members of Kundu group/beneficiaries had in their possession contract notes for purchase of shares which dated back to F.Y. 2009- 10 but on further investigation no such transaction was traced on market/stock exchange.*
> *3. Authorized signatory of Tradenext Securities Ltd had accepted on oath that the contract notes issued by them were bogus and fabricated. He has further stated that these contract notes were not issued by his company.*
> *4. It was found that shares were purchased on exchange in the name of one Sh. Rakesh Sharma and were subsequently transferred off-market to Tradenext Securities Ltd without any consideration and this was ultimately transferred to the beneficiaries. Sh. Rakesh Sharma has stated that his account was mis-used and he had lodged FIR in regard to the same. Sh.*

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Rakesh Sharma has also stated that he has never opened any Demat Account.

5. Some of the beneficiaries have admitted that they had no knowledge of Share trading and they had arranged exempt LTCG for 2-3% commission.

6. ***Modus-Operandi(MO)-***

• Cash will be received from various clients and this cash will be deposited in account of some dummy persons who would purchase shares of well known companies on exchange.

• These stocks will subsequently be transferred to the beneficiaries in off-line/off- market transaction but the bills will be issued in past date at a much lower rate than at what the shares were actually purchased.

• The Beneficiaries will then get these stocks/shares transferred to their Demat Account and then sell these stocks through market by paying STT to earn huge Capital Gain but all exempt u/s 10(38).

1. The Stocks which were selected were generally the stocks which had seen huge rise in their share prices.

2. 12 Entry operator controlled demat accounts were identified and it was found that these demat accounts were used to provide accommodation entries in the above manner. Many of these person-account holders are not traceable. Most of them have never filed their ITR and transactions in their demat/bank accounts do not reflect in their final accounts/ITR if filed. ***There is no bonafide commercial connection between account holders and beneficiaries****.*

3. It was also found that Karnam Securities P Ltd earlier holding company of Lifeline Securities Ltd was also involved in providing accommodation entries through this MO. ***Mridul Securities P Ltd was found to be one of the 12 dummy demat accounts.***

It was further found that the Assessee had received 4800 shares of Aurobindo Pharma Ltd. worth Rs. 5604000 from one of the dummy demat a/c Mridul Securities P Ltd."

3. The Assessee filed its reply dated 24th June, 2022 to the aforesaid SCN objecting to the reassessment proceedings, mainly in two grounds. The Assessee stated that the reassessment proceedings are barred by limitation and the AO has not provided any information and material related to initiation of the reassessment proceedings. The Assessee did not dispute specific transaction in shares of Aurobindo Pharma through Mridul Securities as stated in the SCN in its reply.

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4. After perusing the reply filed by the Assessee, the AO held that it is a fit case of issuance of notice under Section 148 of the Act.

5. Learned counsel for the Petitioner states that AO failed to appreciate that the Assessee has not claimed exempt Long Term Capital Gains ('LTCG') in the Return of Income ('ROI') filed for the relevant year. He further states that the AO appears to have initiated the proceedings on the wrong assumption that the Petitioner herein has claimed LTCG on the sale of the said shares, which is incorrect. He states that the matter be remanded back to the AO for passing a fresh order under Section 148A(d) of the Act, after considering the reply dated 24th June, 2022. He further states that the action of the AO is contrary to the directions contained in the judgment of the Supreme Court in the case of ***Ashish Agarwal v. Union of India (2022 SCC Online 543)*** as the Assessee was not furnished with material relevant for establishing the allegations and the proceedings are barred by limitation.

6. Learned senior standing counsel for the Respondent, who appears on advance notice states that the Assessee has failed to establish the genuineness of the purchase of 4800 shares of Aurobindo Pharma. He states that the subject matter of the notice is the transaction between the Petitioner and Mridul Securities.

7. He states that the information pertaining to the Petitioner is duly reflected in the investigation report and the Petitioner is a beneficiary of Mridul Securities, which is alleged to be in the business of providing accommodation entries and as per the Revenue, the entry pertaining to the alleged purchase of 4800 shares of Aurobindo Pharma by the Petitioner is an accommodation entry. He states that the Petitioner has not filed any

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documents on record along with its reply which establishes the genuineness of the purchase of these shares. He states that in light of the facts set out in the SCN and the impugned order since the genuineness of the transaction is disputed, the present writ cannot be maintained and the Assessee must establish the genuineness of the transactions in the re-assessment proceedings.

8. We have heard learned counsel for the parties and perused the paper book.

9. The Petitioner has not brought on record any relevant or contemporaneous documents evidencing the said purchase, i.e. bank statement etc., placed on record in this petition. As regards the disclosure, if any, of the purchase of the shares, in its earlier ROI, it was clarified by the learned counsel for the Petitioner that since the shares were bought in the same financial year, it is only the transaction with respect to sale of shares which is reported in the ROI. Thus, it is only the sale of shares which is documented by the Assessee in its ROI.

10. The SCN and impugned order states that the entity Mridul Securities is involved in providing accommodation entries and the Assessee is the beneficiary of the specified alleged transaction, in respect whereof, information has been received by the AO and the said transaction is not disputed by the Petitioner.

11. In light of the information which forms the basis of the initiation of the inquiry and in view of the fact the petitioner has not placed on record documents to establish genuineness of the transactions with Mridul Securities, we do not find any case for interfering in the writ proceedings.

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This Court finds that the Petitioner has not brought on record anything to suggest that the reassessment proceedings are being undertaken in an arbitrary manner.

12. With respect to the contention raised on the issue of limitation and the arguments of learned counsel for the Petitioner that the notice has been issued beyond limitation has already been rejected by this Court in ***Touchstone v. Income Tax Officer, Ward 25 (III) Delhi and Ors. 2022 SCC Online 3011***.

13. Learned counsel for the Petitioner has placed reliance on the order dated 2nd September, 2022 passed by this Court in ***W.P. (C) No. 12683/2022 in the case of Anu Gupta v. Income Tax Officer, Ward No. 54 (1)***. The said case has no application to the facts of the case in hand, as in the said case, the Petitioner's response to the SCN issued under Section 148A(b) of the Act has not been considered by the AO while passing the order under Section 148A(d) of the Act. However, in the present case, the response of the Petitioner has been considered before passing the impugned order under Section 148A(d) of the Act by the AO. There is another curious fact that Anu Gupta, who is related to the present petitioner has also transacted for the identical shares in the same AY for the same account.

14. The Supreme Court in ***Commissioner of Income Tax v. Chabildas and Anr. 2014 1 SCC 603*** has held that as the Act of 1961 provides an able machinery for assessment/reassessment of tax, the Assessee is not permitted to abandon with the machinery and invoke writ jurisdiction of the High Court under Article 226 of the Constitution of India.

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15. This Court is of the view that the present case do not fall under the exceptional ground on which a writ jurisdiction of the High Court can be invoked. The aforesaid facts put forth are disputed questions of facts, which cannot be adjudicated by a writ court exercising jurisdiction under Article 226 of the Constitution. Accordingly, the present writ petition along with the pending application is dismissed. This Court clarifies that the AO shall decide the matter on its own merits as we have not examined the merits of the controversy.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

NOVEMBER 17, 2022
j/kv

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