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

% *Date of decision: 13.04.2023*

\+ **W.P.(C) 4668/2023 & CM Appl.18000/2023**

ASHOK KUMAR MADAN ..... Petitioner

Through: Mr Kapil Goel, Adv.

versus

INCOME TAX OFFICER WARD 67(1) NEW DELHI AND ANR. ..... Respondents

Through: Mr Sunil Agarwal, Sr. Standing Counsel with Mr Shivansh B. Pandya, Jr. Standing Counsel and Mr Utkarsh Tiwari, Advs.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM Appl.18001/2023

1. Allowed, subject to just exceptions.

W.P.(C) 4668/2023 & CM Appl.18000/2023 ***[Application filed on behalf of the petitioner seeking interim relief]***

2. Issue notice.

2.1 Mr Sunil Agarwal, senior standing counsel, accepts notice on behalf of the respondents/revenue.

3. In view of the directions that we propose to pass, Mr Agarwal says that a counter-affidavit is not required to be filed and he will argue based on the record presently available with the court. Therefore, with the consent of the counsels for the parties, the writ petition is taken up for final hearing and

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disposal, at this stage itself.

4. This writ petition is directed against the notice dated 17.03.2023 issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "the Act"].

4.1 Besides this, challenge is also laid to the order dated 31.03.2023 passed under Section 148A(d) and the consequential notice of even date i.e., 31.03.2023 issued under Section 148 of the Act.

5. The impugned order and notices concern Assessment Year (AY) 2016-17.

6. The record shows that the Assessing Officer (AO) proceeded to issue the notice dated 17.03.2023 under Section 148A(b) of the Act based on a premise that the petitioner had not filed his return for the AY in issue.

7. The AO, thus, having obtained information from the Insight Portal System of the Income Tax Department, confronted the petitioner *via* the said notice with regard to the income which had escaped assessment. The information put to the petitioner was the following:

S.No.	*F.Y.*	*Information Description*	*Source*	*Amount (in Rs.)*
1.	*2015-16*	*TDS STATEMENT – SALARY TO EMPLOYEES (SECTION-192)*	*STATE BANK OF INDIA*	*5,87,959/-*
2.	*2015-16*	*PURCHASE OF EQUITY SHARE IN A RECOGNISED STOCK EXCHANGE*	*NSE*	*10,93,270/-*
3.	*2015-16*	*SALE OF EQUITY SHARE IN A RECOGNISED STOCK EXCHANGE*	*NSE*	*3,50,849/-*
4.	*2015-16*	*TDS STATEMENT-SALES CONSIDERATION ON SALE OF IMMOVABLE PROPERTY (SECTION-194IA)*	*MOHD ATHAR ANJUM*	*1,15,00,000/-*
5	*2015-16*	*TDS STATEMENT–*	*HDFC BANK*	*50,123/-*

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		INTEREST OTHER THAN INTEREST ON SECURITIES (SECTION-194A)	*LIMITED*	

8. In response to the notice issued under Section 148A(b) of the Act dated 17.03.2023, the petitioner filed a response dated 24.03.2023, whereby he sought accommodation to file a reply to the notice issued under Section 148A(b) of the Act. The petitioner sought time to file a reply till 05.04.2023.

9. The record indicates that a fresh notice under Section 148A(b) of the Act was issued by the AO on 25.03.2023, wherein the petitioner was accorded time to file a reply to the notice on or before 27.03.2023.

9.1 Apart from this, the AO extended the time to file a reply *vis-à-vis* the notice dated 17.03.2023. The AO indicated that reply could be filed "before or on 27.03.2023 by 11 AM".

9.2 The AO in this notice also adverted to the fact that limitation *qua* the petitioner was expiring on 31.03.2023.

10. Concededly, the petitioner was not able to file the reply within the time allocated by the AO. It appears that the time given was short, and the reasons given by the petitioner on 24.03.2023 as to why he wanted extension of time continued to obtain.

10.1 *Inter alia*, the petitioner had indicated on 24.03.2023, that he is a senior citizen and was suffering from various ailments.

10.2 Furthermore, the petitioner also indicated that he was involved in litigation with his tenant concerning his house, and therefore, was living with his relatives. The submission was that, he was, presently, bedevilled with circumstances which were unsettling.

11. Suffice it to state that the AO, based on his understanding of the

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provisions of the Act, passed an order dated 31.03.2023 under Section 148A(d) of the Act.

12. In the said order, the AO made a course correction, to the extent that he noticed the fact that the petitioner had filed a return for the AY in issue. Having noticed this aspect of the matter, the AO adverted to the aspects which were not referred to in the notice issued under Section 148A(b) of the Act.

11.1 This is evident on perusal of paragraph 2.2 of the order dated 31.03.2023 passed under Section 148A(d) of the Act. For the sake of convenience, the said paragraph is extracted hereafter:

> *"2.2 Further, a survey action was carried out on 01.09.2022 on M/s Mahajan Group of Industries and M/s Ferticity IVF Clinics Pvt. Ltd. During the examination of email-id of Mohd. Athar Anjum, it is reviled that the assessee i.e. Sh. Ashok Kumar Madan sold immovable property bearing Flat No. 702, Gnaga-2, Vasant Kunj, New Delhi at Rs. 2,51,00,000/-. Further, it is quite evident from the contents of the mail that at least Rs. 1,00,00,000/- was paid in cash to the owner of the property (assessee) i.e. Sh. Ashok Kumar Madan.* ***Therefore, the cash receipt amounting to Rs. 1,00,00,000/- is undisclosed income of the assessee.***

S No	*Information code*	*Issue description*	*Amount (Rs.)*
1.	*2015-16*	*TDS Statement- Salary to employees (section 192)*	*5,84,959/-*
2.	*2015-16*	*TDS Statement –Purchase of Equity share Recognised stock exchange.*	*10,93,270/-*
3.	*2015-16*	*TDS Statement – Sale of Equity share Recognised stock exchange*	*3,50,849/-*
4.	*2015-16*	*TDS Statement- sales consideration on sale of immovable property (Section-194IA)*	*1,15,00,000/-*
5.	*2015-16*	*TDS Statement-Interest other than securities*	*50,123/-*

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		(Section-194A)	

Particulars of the Property Sold (Section 194IA):			
Address of property	*PAN/TAN of purchaser*	*Name of Purchaser*	*Amount (Rs.)*
G-2/702, GANGA APARTMENT,VASANT KUNJ, NEW DELHI	*NA*	*MOHD ATHAR ANJUM*	*1,15,00,000/-*
Total Amount received (Rs)			*1,15,00,000/-*

12. Mr Kapil Goel, who appears on behalf of the petitioner, has, *inter alia*, made three submissions.

12.1 First, the notice issued under Section148A(b) of the Act proceeded on a completely incorrect premise i.e., that the petitioner was a non-filer. In support of the plea that the petitioner had filed its Income Tax Return(ITR), our attention was drawn to Annexure P-1 which is appended on page 57 of the case file.

12.2 Second, the information concerning the salary received by the petitioner, as also the sale of property, was disclosed in the ITR. It was emphasised that in respect of his ITR, the petitioner received intimation on 20.10.2016 under Section 143(1) of the Act.

12.3 Third, the email said to have been received from the buyer of the subject property i.e., G2/702, Ganga Apartment, Vasant Kunj, New Delhi had not been shared with the petitioner.

13. Mr Agarwal, in defence of the impugned action, has relied upon the order passed under Section 148A(d) of the Act.

14. However, on being queried, Mr Agarwal cannot but accept that the factum of the AO having, in his possession, an email of the buyer i.e., Mohd Athar Anjum, does not find mention in the notice issued under Section

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148A(b) of the Act.

14.1 As is evident from paragraph 2.2 of the order passed under Section 148A(d) of the Act, which has been extracted hereinabove, the AO has not mentioned the date of the email.

14.2 As indicated hereinabove, the AO had noted in paragraph 2.2 of the order passed under Section 148A(d) of the Act that the email is indicative of the fact that the petitioner has received "at least" Rs.1 crore.

15. We are unable to appreciate what has been noted in paragraph 2.2 concerning the amount said to have been received by the petitioner. The email would have either indicated an amount or none at all; the use of the expression "at least" is not understood by us.

16. Therefore, according to us, the best way forward would be to set aside the impugned notices and order.

17. Mr Agarwal's understanding of the relevant provisions of the Act is that since the instant case concerns AY 2016-17 and the limitation under the old regime had not expired as on 01.04.2021, the limitation stands extended.

18. As noted by us hereinabove, the AO proceeds on the basis that the limitation was expiring on 31.03.2023.

19. Thus, for the foregoing reasons, the impugned notices and the order are set aside.

19.1 Liberty is, however, given to the AO to take next steps in law.

19.2 In case the AO takes a decision to recommence reassessment proceedings, he/she shall furnish the relevant material/information in his/her possession, in particular, the email that emanated from the buyer of the aforementioned immovable property i.e., Mr Mohd Athar Anjum, to the petitioner.

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19. The writ petition is disposed of in the aforesaid terms.

20. Parties will act based on the digitally signed copy of the order.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

APRIL 13, 2023/r

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