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

% *Decision delivered on: 05.10.2023*

+ **W.P.(C) 7619/2019**

SHASHI MOHAN GARG ..... Petitioner

Through: Mr Ankur Goel, Adv.

versus

INCOME TAX OFFICER, & ANR. .... Respondents

Through: Mr Abhishek Maratha, Sr Standing  
Counsel with Mr Parth Semwal,  
Standing Counsel.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE GIRISH KATHPALIA**

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

**RAJIV SHAKDHER, J. (ORAL):**

1. This writ petition concerns Assessment Year (AY) 2012-13.
2. *Via* the instant writ petition, the petitioner/assessee has laid a challenge to the notice dated 28.03.2019 issued under Section 148 of the Income-tax Act, 1961 [in short, "Act"].
3. It is not in dispute that, pursuant to the impugned notice, objections were filed by the petitioner on 28.05.2019, which were disposed of by the Assessing Officer (AO) on 12.06.2019. The impugned notice, as was the requirement of law, was founded on the 'reason to believe' formulated by the AO for triggering the reassessment proceedings against the petitioner.
4. The petitioner's/assessee's case, thus, hinged on what is articulated by



the AO in the 'reason to believe'. In the articulation of the 'reason to believe', the AO concluded that, at least, Rs. 1,04,38,000/- has escaped assessment in the case of the petitioner/assessee for A.Y. 2012-13 within the meaning of Section 147/148 of the Act.

4.1 The AO arrived at this conclusion based on the information received on 16.03.2016 from the Kolkata Investigation Directorate. The information that the AO had received was, broadly, to the effect that certain persons, who were based in Kolkata, had incorporated shell companies. These shell companies were being operated by one Ashish Kumar Agarwal. Furthermore, the information claimed that two persons i.e, Ashok Kumar Kayan and Sushil Kumar Kayan, sharebrokers at the Calcutta Stock Exchange (CSE) and Bombay Stock Exchange (BSE), were providing bogus long-term capital gains (LTCG) through trading in shares of shell companies. The information also revealed that a survey was conducted on the premises of Ashok Kumar Kayan, which disclosed that Ashok Kumar was providing accommodation entries in the form of LTCG, in cahoots with entry providers and promoters of scrips at CSE.

4.2 Ashok Kumar Kayan has, apparently, provided the names of penny stock companies listed on BSE and CSE that were used for providing accommodation entries.

4.3 The AO refers to nine (9) shell companies in the 'reason to believe'. Among the nine shell companies, one such company went by the name Blue Print Securities Limited.

5. The AO, insofar as the petitioner/assessee is concerned, made the following assertions in the reasons to believe:

*“From the [sic] based upon outcome of such investigation and analysis of the*



data, Sh. Shashi Mohan Garg was found and intimated to be one of the beneficiaries for booking capital gains through these Penny Stock, whose details are given below:

Scrip Code	Scrip Name	Client Code	Client Name	PAN	Trade value (Total Amount)	Trade date
10012630	Blueprint Securities Ltd	5379	Shashi Mohan Garg	AAEPG6256A	1,04,38,000	24.02.2012 27.02.2012 02.03.2012 06.03.2012

On investigation, as discussed above, it was found that Blueprint Securities Ltd is a Jama Kharchi Company which is operated by Sh. Praveen Agarwal, Entry operator from the address 2C, Dover Road, Flat No. 2C/D Kolkata 19.

In view of the above information, the case of Sh. Shashi Mohan Garg has been analyzed.

### **3. Details of analysis of information received and collected material**

I have carefully examined the above referred information as received from CBDT. Consequent upon the receipt of captioned information and forming an opinion that Sh. Shashi Mohan Garg is one of the beneficiaries of the aforesaid tax evading modus operandi, the following enquiries and investigations were carried out:

- (i) PAN history of Sh. Shashi Mohan Garg was downloaded.
- (ii) The ITR(s) of the assessee were downloaded from the System.

On perusal of the PAN history of the captioned assessee, it was noticed that assessee got his PAN generated in 28.11.1996 i.e. during F.Y. 1996-1997 relevant for the A.Y. 1997-98. It was further noticed that the assessee is filing his Income Tax Return(s) in the individual capacity regularly since A.Y. 2001-02 till date. It was further noticed that during A.Y. 2012-13, the assessee has filed return on income on 28.07.2012 declaring the total income of Rs. 65,55,617/- as per following heads of income:

- (a) Salaries Rs. 66,00,000/-
- (b) Profit & gains from business (other than speculative) Rs.



- 1,62,94,440/-  
(c) Income from other sources Rs. 55,815/-

Out of his total income of Rs. 2,29,50,255/- assessee has claimed deduction under Chapter VI A [sic...of] Rs.1,63,94,6338/- (which includes deduction u/s 801C of Rs.1,62,94,440/-)

Subsequently, assessee filed revised return for AY 2012-13 on 04.03.2013 at a total income of Rs. 83,23,681/- wherein assessee has increased income from other sources from Rs. 55,815/- to Rs. 18,23,879/- where as other income, remain same. It was further observed that assessee has claimed **exempt income of Rs.1,56,28,239/-** in both the returns which includes:

- (a) Dividend Income Rs. 40,000/-  
(b) Long-term capital gains (securities transaction tax paid) Rs. 94,85,883/-  
c) Share in the profit of firm/AOP Rs. 61,02,356/-

The intimation of the assessee being one of the beneficiaries of Penny Stock based on the basis of information of the Investigation Wing Kolkata and subsequent outcome of the preliminary enquiries conducted as above makes firm belief that **Income (LTCG) of current year which has been claimed as exempt by Sh. Shashi Mohan Garg** has escaped assessment during A.Y. 2012-13 as from the information received I have reason to believe that this LTCG has been earned from the managed transactions in manipulated stocks in CSE.

#### **4. Income Chargeable to tax escaping assessment:**

Considering the above referred credible information, enquiries and investigation subsequent to the information, I have reason to believe that an amount at least of Rs. 1,04,38,000/- has escaped assessment in case of Sh. Shashi Mohan Garg for the A.Y. 2012-13 within the meaning of Section 147/148 of Income Tax Act, 1961.

Moreover, as the case pertains to A.Y. 2012-13 i.e. a period within four years from the end of relevant assessment years at the time of issue of notice as per provisions contained in section 151(2) which reads as under:

"(1) No notice shall be issued under section 148 by an Assessing Officer, after year [sic...four years], unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.



(3) .....

*Necessary sanction has to be obtained from Addl. Commissioner of Income Tax, in view of the amended provision of Section 151(2) w.e.f. 01.06.2015. The necessary sanction in this regard is being obtained separately from Addl. Commissioner of Income Tax, Range-14, New Delhi before the issue of notice u/s. 148.”*

6. A perusal of the reasons to believe, as noted above, would show that the AO had obtained information from the Kolkata Division of the Investigation Directorate regarding the booking of LTCG which was relatable to trade in shares of Blue Print Securities Limited by the petitioner/assessee.

7. It was, thus, asserted that the petitioner/assessee was one of the beneficiaries of LTCG from the sale of shares in a penny stock company i.e., Blue Print Securities Limited.

7.1 Furthermore, the AO also notes that the petitioner/assessee, in his revised return of income (ROI) filed for the AY 2012-13 on 04.03.2013, had disclosed LTCG amounting to Rs. 94,85,883/-.

7.2 Besides this, quite curiously, the AO alludes to the fact that the petitioner's/assessee's case fell within four (4) years from the end of the relevant AY at the time of issuance of notice. This observation seemed odd since, admittedly, notice under Section 148 of the Act was issued on 28.03.2019 and therefore, more than four (4) had elapsed from the end of the relevant AY i.e, 2012-13. What compounds the problem further is that there is a reference to Section 151(2) of the Act, a provision that covers cases where no scrutiny assessment has been made either under Sections 143(3) or 147 of the Act. However, in this case, scrutiny assessment under section 143(3) was completed *via* the assessment order dated 14.01.2015.



8. According to us, a bare perusal of the 'Form for Recording the Reasons for Initiating Proceedings u/s 148 and for obtaining the approval of the Principal Commissioner of Income Tax, Delhi-05, New Delhi' [see Annexure P-2] [in short, "Form"], reveals that course correction was sought to be made. This is evidenced on the perusal of the response entered against Sr. 10 of the Form, which revealed that the relevant provision applicable to this case was Section 151(1) of the Act, and not, as mentioned by the AO in the 'reason to believe', Section 151(2) of the Act.

8.1 Furthermore, insofar as the reply framed against the query posed in Sr. No. 12 of the Form is concerned, it alluded to the fact that the case fell in a period beyond four (4) years and, therefore, sanction had to be obtained from the Principal Commissioner of Income. In this case, it is accepted by the respondents/revenue that notice under Section 148 of the Act was issued after four (4) years had elapsed since the end of relevant AY i.e., 2012-13.

9. Given this admitted position that is obtained in the matter, the provision captured in the first proviso to Section 147 of the Act [as the provision then stood] was applicable, which required the AO to suggest, at the very least, that income chargeable to tax had escaped assessment on account of the petitioner failing to disclose, 'fully and truly', all material facts relevant for the assessment. For convenience, Section 147 and its proviso are extracted hereafter:

*"Income escaping assessment.*

*147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or*



*recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*

***Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year** by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to **disclose fully and truly all material facts necessary for his assessment, for that assessment year:**”*

[Emphasis is ours]

10. A perusal of the ‘reason to believe’ would show that there is not a word contained, therein, that is suggestive of the fact that, according to the AO, the petitioner/assessee had failed to ‘fully and truly’ disclose all material facts relevant for assessment. This becomes even more relevant in the instant case as, admittedly, the petitioner was subjected to scrutiny assessment before the reassessment proceedings under Section 147 were triggered against him.

10.1 Previously, before the said scrutiny assessment order under Section 143(3) was passed, the petitioner/assessee, *via* letter dated 03.01.2014, had submitted details of LTCG earned from the sale of Blue Print Securities Limited. For convenience, the relevant parts of the letter are extracted hereafter:

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**“CHAUDHARY PRADIP & CO.**

*Chartered Accountants*

***B-136, F.F, Malviya Nagar***

***New Delhi-110017***

***Ph. 26681669, 26674426***

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Email: [nkbca@gmail.com](mailto:nkbca@gmail.com)

THE INCOME TAX OFFICER

03/01/2014

Circle 5(1)  
New Delhi-110002

Dear Madam/Sir,

Reg: Shri. Shashi Mohan Prop M/S/ Deepak Industries  
7, Eastern avenue, New Delhi-110065  
PAN. No:- AAEPG6256A  
Assessment Year 2012-13

In continuation to our letter dated 18/12/2014, We under instructions of above said client have to submit to you as under:

xxx    xxx    xxx

**DETAIL OF LONG TERM CAPITAL GAIN**

<b>PARTICULARS</b>	<b>DATE OF SALE</b>	<b>NO. OF SHARE</b>	<b>AMOUNT</b>	<b>PURCHASE DATE</b>	<b>NO. OF SHARE</b>	<b>AMOUNT</b>	<b>LTCG</b>
BLUE PRINTS SECURITIES LTD.	24/02/2012	5100	1562812.8	05/04/2010	32000	320000	
	27/02/2012	6000	4565864.5				
	02/03/2012	6000	1838602.7				
	06/03/2012	6000	1838602.7				
		<b>32000</b>	<b>9805882.7</b>		<b>32000</b>	<b>320000</b>	<b>9485882.78</b>

**NOTE:-** Assesee purchase 800 equity shares of Rs. .10/- each of Ranisati Commotrade Pvt. Ltd. On 05/04/2010 and got the same transferred with the company vide Transfer No. 0197 Dated 28/04/2010.

The said company was amalgamated with Blue Print Securities Ltd. vide order of



*honorable high court of Calcutta vide order dated 25/11/2019 and as per scheme sanctioned by the honorable court, 32000 shares of Rs. 10/- each of blueprint securities ltd. have been issued in lieu of 800 shares of Rs. 10/- each of Ranisati Commotrae Pvt. Ltd.”*

10.2 The petitioner, in the above-mentioned letter, had indicated that he had purchased 800 equity shares at the face value of Rs. 10/- each, of a company going by the name Ranisati Commotrade Pvt. Ltd. on 05.04.2010. These shares, according to the petitioner's/assessee's explanation, were transferred to him on 28.04.2010.

10.3 It was also asserted by the petitioner/assessee that the said company was amalgamated with Blue Print Securities Limited, and that the amalgamation was sanctioned by the Calcutta High Court *via* order dated 25.11.2010.

11. The petitioner/assessee had taken a stand that, against 800 shares held by him in Ranisati Commotrade Pvt. Ltd., he had received 32,000 shares of Blue Print Securities Ltd. at a face value of Rs. 10/-. It is these shares that the petitioner had sold and, thus, earned a long-term capital gain amounting to Rs. 94,85,882.78/-.

12. Interestingly, in the 'reason to believe', there is no reference to the original assessment order dated 14.01.2015. Had the AO looked at the assessment order and the record concerning the petitioner's/assessee's case, the explanation given by the petitioner/assessee would have come to light.

13. Therefore, the AO being unable to tie up the information received by him, with the alleged failure on the part of the petitioner to 'fully and truly' disclose all material facts, attains criticality in the instant case. There is a non-application of mind by the AO. The AO appears to have solely proceeded based on the general information received by him. The AO, in a



sense, has taken recourse to 'borrowed' satisfaction. It is on account of this reason that, although, the AO notes that LTCG said to have been earned by the petitioner amounted to Rs. 94,85,883/-, he continued to hold the position that income chargeable to tax which had escaped assessment [which he had tied to LTCG from sale of shares in Blue Print Securities] was Rs. 1,04,38,000/-.

14. There is nothing in the 'reason to believe' that would show how the AO has reached a figure of Rs. 1,04,38,000/-. The only clue concerning that figure is in the information that he had received from the Kolkata Division of the Investigation Directorate.

15. Furthermore, as noted above, the AO verily believed, for some strange reason, that the petitioner's/assessee's case was the one which fell within four (4) years, which is why he had adverted to Section 151(2) rather than Section 151(1) of the Act.

16. Thus, for the foregoing reasons, we are of the view that the reassessment proceedings were triggered against the petitioner/assessee without due application of mind by the AO about the information received by him from the Kolkata Division of the Investigation Directorate.

17. We are, thus, inclined to allow the prayer made in the writ petition. Consequently, the impugned notice dated 28.03.2019 issued under Section 148 of the Act is quashed.

18. We may note that, although the petitioner has not made a specific prayer regarding the order dated 12.06.2019, whereby, the objections were disposed of, the said order would automatically collapse once the notice is quashed. In any case, to obviate ambiguity, the order dated 12.06.2019 is quashed under the residuary prayer made by the petitioner/assessee in terms



of clause 'b' of the Prayer.

19. The writ petition is disposed of in the aforesaid terms.
20. Parties will act based on the digitally signed copy of the judgment.

**RAJIV SHAKDHER, J**

**GIRISH KATHPALIA, J**

**OCTOBER 5, 2023**

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