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

% *Date of Decision : 25.04.2025*

+ **W.P.(C) 4196/2025 & CM APPL. 19451/2025**

MOHD ATHAR ANJUMPetitioner
 Through: Mr Paritosh Jain with Mr Divyansh
 Jain and Mr Abhishek, Advocates.
 versus
 ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL
 CIRCLE 28, DELHIRespondent
 Through: Mr Yojit Pareek, JSC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition, *inter alia*, impugning an assessment order dated 21.03.2025 [**impugned order**] passed by the Assessing Officer [**AO**] under Section 147 of the Income Tax Act, 1961 [**the Act**]. The impugned order was passed pursuant to the proceedings initiated for reassessment of the petitioner's income for Assessment Year [**AY**] 2018-19.
2. The petitioner had filed his return of income for AY 2018-19 under Section 139 of the Act on 21.11.2018 declaring an income of ₹19,11,290/-.
3. A survey was carried out under Section 133A of the Act on 01.09.2022 in the case of Mahajan Group of Industries and Fertility IVF Clinics Pvt. Ltd.
4. Apparently, on the basis of the information found during the said



survey, the AO issued a notice dated 27.01.2024 under Section 148A(b) of the Act. The information as enclosed with the said notice indicates that the AO had information regarding certain unexplained cash transactions, which suggests that the petitioner's income for the previous year relevant to AY 2018-19 had escaped assessment.

5. The AO alleged that the petitioner had entered into certain unexplained cash transactions amounting to ₹37,63,528/- during the AY 2018-19.

6. The petitioner responded to the said notice on 14.03.2024 and furnished his explanation regarding the transactions mentioned in the said notice, which was issued under Section 148A(b) of the Act. However, the AO was not satisfied with the explanation as provided and concluded that it was a fit case for issuance of a notice under Section 148 of the Act.

7. According to the AO, the assessment for AY 2018-19 could be reopened notwithstanding that the alleged transactions during the previous year relevant to AY 2018-19 was less than ₹50,00,000/-. Accordingly, the AO issued a notice under Section 148 of the Act. The proceedings culminated in the impugned order.

8. The principal controversy to be addressed in the present case is whether the issuance of notice under Section 148 of the Act is within the period of limitation as prescribed under Section 149(1) of the Act.

9. According to the petitioner, the alleged income, which had escaped assessment during financial year [FY] 2017-18 was less than ₹50,00,000/-; therefore, the assessments for AY 2018-19 could not be reopened after the expiry of three years from the end of the relevant assessment year, that is



from 31.03.18. However, it is noted that the AO had held to the contrary. The order dated 31.03.2024 issued under Section 148A(d) of the Act indicates that the AO had proceeded on the basis that the income that had allegedly escaped assessment during the AY 2018-19 was required to be considered along with the income that has escaped assessment for AY 2015-16, AY 2016-17, AY 2017-18, AY 2019-20 and AY 2020-21 for the purposes of determining whether the income escaping assessment exceeded the amount of ₹50,00,000/- as mentioned in Section 149(1)(b) of the Act.

10. Paragraph no.15 of the said order dated 31.03.2024, which articulates the AO's reasons for holding that the income alleged to have escaped assessment exceeds the value mentioned in Section 149(1)(b) of the Act, is relevant and is set out below:

“15. In view of the discussion above, it emerges that the case of the assessee satisfies conditions of Section 149(1)(b) as below:

In view of the above facts and circumstances of the case, the assessee has unexplained cash transactions amounting to Rs. 37,63,528/- which are in the form of assets for A.Y. 2018-19. This income is related to an event or occasion (of unaccounted cash transactions) in which income escaping assessment for AY. 2015-16 is Rs. 11,63,062/-, for A.Y. 2016-17 is Rs. 1,52,03,227/-, for A.Y. 2017-18 is Rs. 53,24,125/- for A.Y. 2019-20 is Rs. 61,56,889/- and for A.Y. 2020-21 is Rs. 20,59,956/-. Hence, as per Explanation of Section 149 of the Act, income escapement is with regard to same issue in different years where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years. Therefore, it is a fit case for issuance of notice u/s 148 of the Income-tax Act, 1961.”



11. Although, the AO had proceeded on the basis that the allegedly unaccounted cash transactions related to an event, there is no material on record to indicate that the income in various previous years, which is alleged to have escaped assessment is represented by ‘an asset’ or arises from one singular event or occasion which is spread over several previous years. Although the order passed under Section 148A(d) of the Act does allege that the income chargeable to tax that has escaped assessment is related to an event or occasion; there is no material to indicate the singular occasion or event to which the income that has escaped assessment over several years relates. There is also no asset that represents the income that has escaped assessment.

12. We consider it apposite to set out paragraph 9.2 of the said order that sets out certain transactions which, according to the AO, are suggestive of the petitioner’s income escaping assessment:

“9.2. In view of the above facts and circumstances of the case, the assessee has unexplained cash transactions amounting to Rs. 37,63,528/- (Credit entries of Rs. 9,00,000/- in bank accounts, Cash of Rs. 13,46,174/- received from Avinash kumar, Cash of Rs. 5,23,800/- paid during the renovation of property, Cash transaction of Rs. 9,93,554/- for purchase of land & flats), which are in the form of assets for A.Y. 2018-19. The corresponding amounts for AY. 2015-16 is Rs. 11,63,062/- (Cash of Rs. 11,63,062/- received from Avinash kumar) for A.Y. 2016-17 is Rs. 1,52,03,227/- (cash of Rs. 21,05,227/- received from Sh. Avinash Kumar, Cash of Rs. 1,25,000/ provided to Sh. Avinash Kumar, Cash transaction of Rs. 1,27,00,000/- for purchase of land & flats, Cash of Rs. 2,73,000/- paid during the renovation of property), for A.Y. 2017-18 is Rs. 53,24,125/- (cash of Rs. 306750 received from Sh. Avinash Kumar, Cash of Rs. 18,00,000/ provided to Sh. Avinash Kumar, Cash of Rs. 32,17,375/- paid during the renovation of property) for A.Y.



2019-20 is Rs. 61,56,889/- (Cash of Rs. 1735300/- received from Avinash kumar, Cash transaction of Rs. 44,21,589/- for purchase of land & flats) and for A.Y. 2020-21 is Rs. 20,59,956/- (Cash of Rs. 20,59,956/- received from Avinash kumar). Hence, addition proposed is with regard to same issue in different years where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years.”

13. We also consider it apposite to set out relevant extract of the assessment order. The same is reproduced below:

“4.6 From the evidences gathered it could be inferred that Mohd Athar Anjurn and Sh Avinash Kumar were receiving substantial cash amounts from frequent sale purchase of immovable properties. While doing these immovable transactions both Mohd Athar Anjum and Sh. Avinash Kumar generated substantial amounts in cash which they have not declared. Further, during the purchase of other immovable properties they need part of sale consideration through banking channel. To convert their unaccounted cash amounts they gave cash amounts to third persons and get back the equivalent amount through cheque i.e through banking channels.

Entries taken by the Mohd. Athar Anjum:

Narration	Date of Transaction	Amount (Rs.)
given by Athar to Avinash to get cheque from Roshan	---	3,00,000
given by Athar to Avinash to get cheque from Roshan	---	1,00,000
given by Athar to Avinash to get cheque from Roshan	---	1,00,000



Given to Mohitji by Athar to get cheque from his father	---	1,00,000
From Mayuresh account via cheque in Athars account before/on	01.07.17	3,00,000
Total		9,00,000

”

14. It is apparent from the above that the alleged cash transactions in different previous years do not relate to a singular event or occasion and are not represented by an asset.

15. The learned counsel for the Revenue submitted that by virtue of Sub-section (1A) of Section 149 of the Act it was permissible to aggregate the quantum of income that has escaped assessment in various assessment years to satisfy the value as mentioned under Section 149(1)(b) of the Act

16. It is thus relevant to refer to Sub-section (1A) of Section 149 of the Act. The same is reproduced below:

(1A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or amounts to or is likely to amount to fifty lakh rupees or more of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.”



17. Sub-section (1A) of Section 149 of the Act contains a non obstante provision, which mandates issuance of notice, for an assessment year falling within the period as referred to in clause (b) of Section 149(1) of the Act, notwithstanding that the income escaping assessment in the assessment year does not exceed the value as mentioned in that clause provided the following conditions are cumulatively satisfied:

(a) that the income chargeable to tax, which has escaped assessment in more than one previous years amounts to or is likely to amount to fifty lakh rupees or more; and

(b) that the said income, which has escaped assessment is represented by (i) an asset; or (ii) or expenditure in relation to such event or occasion has been made or incurred, which amounts to or is likely to amount to fifty lakh rupees or more.

18. In the present case, the aforesaid conditions, as set out in Sub-section (1A) of Section 149 of the Act, are not satisfied.

19. We also consider it apposite to refer to an order passed by this Court in *M/s L-1 Identity Solutions Operating Company Private Limited v. Assistant Commissioner of Income Tax, Central Circle-25: Neutral Citation No.: 2025:DHC:2690-DB* where this court had held as under:

“10. There is no cavil that the income alleged to have escaped assessment for the AY 2018-19 is under ₹50 lakhs. However, it is contended that the same would not preclude the AO from issuing a notice under Section 148 of the Act as cumulatively the income that is alleged to have escaped assessment is to the extent of 0.73 crores which is in excess of ₹50 lakhs. Mr Gupta, the learned counsel appearing for the Revenue has referred to Section 149(1A) of the Act in support of his contention.



11. Before proceeding further, it would be relevant to refer to Section 149 of the Act. The relevant extract of Section 149 of the Act is set out below:

“149. *Time limit for notice.* – (1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—

(i) an asset;

(ii) expenditure in respect of a transaction or in relation to an event or occasion; or

(iii) an entry or entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

(1A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.”

12. It is apparent from the opening sentence of Section 149(1) of the Act that a notice under Section 148 of the Act for an assessment year cannot be issued beyond the period of three



years unless the conditions under Section 149(1)(b) of the Act are satisfied. Thus, one of the said conditions is that the income alleged to have escaped assessment exceeds ₹50 lakhs or is likely to exceed ₹50 lakhs. Undisputably, the threshold amount of ₹50 lakhs of the income that has escaped assessment or is likely to escape assessment, is to be reckoned in respect of the specified assessment year. We say so because the conditions as set out in clause (b) of Section 149(1) of the Act are required to be read in conjunction with the opening sentence of Section 149(1) of the Act. The same is also made amply clear by use of the *non obstante* clause in Sub-section (1A) of Section 149 of the Act. A plain reading of Sub-section (1A) of Section 149 of the Act indicates that the condition of a minimum amount of ₹50 lakhs of income escaping assessment, may be satisfied by the cumulative amount that has escaped assessment or is likely to escape assessment in respect of more than one assessment year exceeding the said amount. However, the same is subject to the condition that the income chargeable to tax is represented in the form of an “asset” or “expenditure in relation to an event or occasion”. Thus, in cases where the income that has escaped assessment is represented by ‘an asset’, notwithstanding that the said asset is on account of income that escaped assessment for more than one previous years, the condition under Section 149(1)(b) of the Act would be satisfied, if the value of the asset exceeds ₹50 lakhs. The same would hold true if there is an expenditure in relation to an ‘event’ or ‘occasion’, which exceeds the value of ₹50 lakhs. In this case as well as notwithstanding that the expenditure has been incurred in different previous years, the condition under Section 149(1)(b) of the Act would be satisfied if the cumulative value of the expenditure exceeds ₹50 lakhs, provided that the same is related to an event or occasion.”

20. Concededly, the issue involved in the present case is covered by the decision of this court in *M/s L-1 Identity Solutions Operating Company Private Limited v. Assistant Commissioner of Income Tax, Central Circle-25 (supra)*. The petition is accordingly allowed and the impugned order dated 31.03.2024 passed under Section 148A(d) of the Act; the notice dated



31.03.2024 issued under Section 148 of the Act and the impugned assessment order dated 21.03.2025 are set aside.

21. Pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 25, 2025/tr

Click here to check corrigendum, if any