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

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Date of Decision : 29.05.2025+ **W.P.(C) 3405/2023 & CM APPL. 13157/2023**

MANJEET KAUR DUGGAL

.....Petitioner

Through: Mr Gaurav Jai, Mr Shubham Gupta,
and Ms Shalini, Advocates.

versus

INCOME TAX OFFICER WARD 52 1 DELHI

.....Respondent

Through: Mr. Debesh Panda, SSC Ms. Zehra
Khan, Mr. Vikramaditya Singh, JSCs
Ms Anaunta Shankar and Ms
Ravicha Sharma, Advocates.**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 the order dated 15.07.2022 [**impugned order**] passed under Section 148A(d) of the Income Tax Act, 1961 [**the Act**] and consequential notice dated 15.07.2022 [**impugned notice**] issued under Section 148 of the Act in respect of the Assessment Year [**AY**] 2013-14. The petitioner also prays that the Assessing Officer [**AO**] be restrained from taking any steps pursuant to the impugned notice.

2. The present petition was listed on 20.03.2023 and this Court passed the interim order that the proceedings pursuant to the impugned notice may continue, however, any adverse order if passed, shall the same would not be



given effect to till further directions of the Court. There is no cavil that assessment order, which was passed subsequently would be subject to the outcome of the petitioner's challenge in the present petition.

3. The petitioner has assailed the impugned order on several grounds including that the impugned notice was barred by limitation. This challenge is founded on two grounds. First, that the impugned order was issued beyond the prescribed period of limitation. The said order holding that it is a fit case for issuance of notice under Section 148 of the Act was issued pursuant to the notice dated 06.04.2021, which was directed to be deemed to be a notice under Section 148A(b) of the Act by virtue of the directions issued by the Supreme Court in *Union of India & Ors. v. Ashish Agarwal: (2022) 444 ITR 1*. The petitioner contends that even after taking into account the exclusion/extension of the time period, and the benefit of extension of time under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (**TOLA**), the impugned order and impugned notice was beyond the time as prescribed.

4. The second ground urged on behalf of the petitioner is that the income alleged to have escaped assessment neither exceeded ₹50.00 Lacs nor was likely to exceed ₹50.00 Lacs. The time period for issuance of the notice under Section 149(1)(a) of the Act was three years from the end of the relevant assessment year. Thus, the initial notice dated 06.04.2021 was also beyond the prescribed period of three years.

5. The original notice dated 06.04.2021 issued under Section 148 [which was deemed to be a notice under Section 148A(b) of the Act] did not contain



any reason or material which is suggestive of income escape assessment. In terms of the decision of the Supreme Court in *Union of India & Ors. v. Ashish Agarwal (supra)*, the AO had thirty days' time to provide the relevant material, which is required to be accompanied a notice under Section 148A(b) of the Act. In compliance of the said decision, the AO issued the supplementary notice dated 21.05.2022. The said notice alleged that the AO had information to the effect that Long Term Capital Gain [LTCG] was booked by the beneficiary in lieu of the commission in respect of the purchase and sale of penny stocks – 1,00,000 shares of M/s Gemstone Investment Limited [Gemstone] and M/s Priti Mercantile Private Limited [PMPL].

6. The information as available with the AO as set out in the supplementary notice dated 21.05.2022 reproduced below: -

“3. In this regard, in compliance with the subject order of the Hon'ble Supreme Court, you are hereby provided with information and material relied upon by this office for issue of the show cause notice. The details of which is provided as under: -

“As per the information received, an enquiry was initiated in the case of M/s PMC Fincorp Ltd. During the investigation it was found that it is listed in BSE and has facilitated bogus LTCG to the tune of Rs. 1328 Crores. The Scrip price was rigged and managed to provide accommodation entry of LTCG to various beneficiaries in lieu of Commission. During the year under consideration, you have booked fictitious profits of Rs.15,15,000/- from trade in



Gemstone Investment Limited and Rs.37,09,250/- from trading in PMC Fincorp Ltd. As per the e-filing records, the ITR for A.Y. 2013-14 has been filed declaring the income of Rs.33,60,950/- under the head of salary, Income from house property, PGBP and income from other sources (including agriculture income of Rs.2,55,000/-). Therefore, the fictitious profit in equity/derivative trading amounting to Rs.52,24,250/- remains unexplained.”

7. The petitioner responded to the said notice disputing the aforesaid contention. Further, the petitioner amongst other material also forwarded the following: -

- a) Purchase contract note for shares of Gemstone;
- b) Finance ledger;
- c) Sale contract note for sale of Gemstone;
- d) Financial letter indicating sale of the subject shares;
- e) Income tax return of the petitioner; and
- f) Purchase and sale contract notes regarding shares of PMPL.

8. However, the said reply was not accepted and the AO passed the impugned order holding that it was a fit case for issuance of notice under Section 148 of the Act.

9. The material provided by the petitioner indicates that the petitioner paid an aggregate amount of ₹9,08,887/- through banking channel as purchase consideration for the shares of two entities – Gemstone and PMPL. The petitioner contends that the purchase consideration, which is reflected in



the income tax return is required to be reduced from the gross sale consideration of ₹52,24,250/-. However, this contention was rejected by the AO in the following words: -

“7. The submission of the assessee has been considered carefully and found not tenable since aim behind opting penny scrip cases is to introduce unaccounted cash into books of accounts without paying the due taxes. In penny stock cases beneficiary provisions of the I.T.Act, 1961 have been misused by the syndicates to arrange accommodation entry of bogus LTCG/LTCG and bogus short term capital loss/bogus business loss. As per the report of investigation wing in the penny scrip opted by the assessee – there was no real business, no change in the fundamentals of the company to explain the share rise and consequent fall in the share price, no block of asset and never performed well financially. The assessee is not denying the information. The transactions has to seen by the department as a whole. Apart from this the department given information to assessee as per Apex Court decision by treating the case falling under category exceeding 50 lacs.

8. The payment through banks(purchase/sale), transaction through stock exchange and other features are only apparent features and real feature are the manipulated and abnormal price of off-loan and sudden dip thereafter. The transaction would fall within the realm of suspicious and dubious transaction. When transactions are through cheque it looks like real transaction but the authority is entitled to look behind the transactions and ascertain the motive behind the transaction. The short term capital gain as bogus since derived from rigging of the scrip prices and invariably accommodation entry in collusion with concerned entry operator. The payment through bank for purchase of penny scrip also required verification of source which requires deep scrutiny in this case.”



10. We consider it apposite to set out the relevant extract of the computation of the income, which was filed with the income tax returns. The same is set out below: -

“Statement of Long Term Capital Gain [Transaction Act, Exempt under Section 10(38)]

Name of Company	Date of Sale	Sales Price	Tr Exp.	Net Sale Price	Purchase date	Purchase cost	Capital Gain
Gemstone Investment (100000)	30.01.2013	1510000	0	1510000	29.07.2011	908887	601113
Priti Mercantile Pvt Ltd (25000)	07.03.2013	3696186	0	3696186	25.10.2011	0	3696186
TOTAL		5206186		5206186		908887	4297299

11. It is apparent from the above that the petitioner had computed the exempt income – LTCG on the sale of shares in the previous year relevant to AY 2013-14 as ₹42,97,299/-. The petitioner had not claimed exemption regarding any other income. The information provided by the AO related to taxing the income claimed as exempt and not that any payment made by the petitioner in the prior year (previous year relevant to AY 2012-13) was required to be taxed as income escaping assessment.

12. It is the Revenue’s case that the said transaction of purchase and sale of shares of Gemstone and PMPL is a sham transaction for the purpose of booking LTCG, which was exempted under Section 10(38) of the Act. The stand of the Revenue also draws support from the report by the investigation conducted by the Stock Exchange Board of India [SEBI] in the trading of shares of Gemstone and PMPL.

13. It is not apposite for this Court to examine the merits of the allegations of purchase and sale as bogus transaction and therefore, income



which has escaped the assessment pursuant to the said transaction is required to be assessed and the proceedings for assessment of the said information is required to be initiated.

14. The only question, which needs to be considered is whether the information available with the AO and as furnished to the petitioner, suggested that income of the petitioner has escaped or likely to be escaped assessment exceeds ₹50.00 Lacs.

15. According to the petitioner, the only net income, which is claimed as exempted would be considered as income that has escaped assessment on the basis of transaction of sale and purchase of stock of Gemstone and PMPL as disclosed by the petitioner. However, according to the Revenue, it is not only the income which was claimed as exempt under Section 10(38) of the Act as also the purchase consideration of the said shares, which is likely to be included in the income that has escaped assessment.

16. Mr Panda, learned counsel for the Revenue referred to the counter affidavit filed on behalf of the Revenue contended that consideration paid by the petitioner through banking channel would have received back by the petitioner in cash by way of separate transaction. According to the AO, this assumption would flow from the finding that the transaction of sale and purchase of sales in Gemstone and PMPL were bogus transaction to book LTCG.

17. In our view, the contentions advanced by the Revenue are *ex facie* erroneous. We say so for the following reasons. There is no dispute that the payments were made through banking channel, which were reflected as



purchase consideration, aggregating ₹9,08,887/-. Mr Panda submits that the particulars of only ₹9,00,000/- has been reflected in the bank statement furnished by the petitioner. However, there is no dispute that the purchase consideration was reflected as paid in the prior period. We note that it is the AO's assumption that the money had been paid through banking channel has been received back in cash. Therefore, there appears to be no cavil that the consideration of shares of Gemstone and PMPL was paid by the petitioner. Second that these payments had been made and reflected during the Financial Year [FY] 2011-12 relating to AY 2012-13.

18. Even if it is accepted – which we do not – that no purchase consideration in fact had been paid and the money was received back in cash. There is no material to indicate that said transaction was conducted in the FY 2012-13 [relating to AY 2013-14].

19. It is also necessary to bear in mind that any purchase consideration reflected by the petitioner in the books of accounts would necessarily be from the disclosed sources. Thus, the only income that could possibly escape assessment in transaction of sale and purchase of shares to book exempt income would be the difference between the purchase consideration and the sale consideration.

20. The transaction of making payment in cheque and receiving the money in cash is a separate transaction. There was no such allegation in the notice issued to the petitioner that there was information as to any such separate transaction. There is also no material on record which would suggest that the amount of purchase consideration paid in cash for



acquiring the shares have been received back by the petitioner in cash through another transaction. And, in any event the said transaction is not in the previous year relevant to AY 2013-14 as the purchase consideration paid for the shares in question was paid in the previous year. The only transaction in the previous year relevant to AY 2013-14 is the sale of shares of Gemstone and PMPL. Thus, there is no material with the AO to indicate that the gross sale consideration had escaped assessment in AY 2013-14.

21. Thus, if the information as available with the AO was verified to be correct, the income which the petitioner had claimed as exempt under Section 10(38) of the Act would be the income that was chargeable to tax under the Act and had escaped assessment.

22. Concededly, this amount of ₹42,97,299/- is below the threshold limit of ₹50.00 Lacs for attracting the provision of Section 149(1)(b) of the Act.

23. In view of the above, we find merit in the contentions of the petitioner that the impugned notice has been issued beyond the period of limitation as prescribed under Section 149(1)(a) of the Act and the conditions as specified so as to attract the provisions of Section 149(1)(b) of the Act are not satisfied.

24. The petition is, accordingly, allowed. The impugned order and impugned notice are set aside. Consequently, any order passed pursuant to the impugned notice or impugned order is also set aside as well.



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25. The pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 29, 2025

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Click here to check corrigendum, if any