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

+ W.P.(C) 13466/2022 & CM APPL/ 40955/2022 (for stay)
KUSUM GUPTA Petitioner
Through: Mr. Anand Chaudhuri, Advocate.
versus

ITO WARD 70(1) Respondent
Through: Mr. Puneet Rai, Sr. Standing Counsel
for Revenue with Ms. Adeeba
Mujahid, Jr. Standing Counsel & Mr.
Nikhil Jain, Advocate.

% Date of Decision: 28th September, 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. The present writ petition has been filed seeking setting aside of the notice dated 30th June, 2022 issued under Section 148 of the Income Tax Act, 1961 ('the Act'), order dated 30th June, 2022 passed under Section 148A(d) of the Act.
2. The learned counsel for the petitioner states that the impugned notice issued with respect to Assessment Year ('AY') 2013-14 is statutorily time barred vide 1st proviso to Section 149(1) of the Act (as amended by the Finance Act, 2021) and the impugned order is vitiated on account of absence of information as mandated by 1st proviso to Section 148 of the Act (as amended by the Finance Act, 2021).
3. Learned counsel for the petitioner states that the assessee is an



individual tax payer who duly filed her Return of Income ('ITR') for the subject AY 2013-14, declaring a total income of Rs.1,20,540/- and the said ITR was processed under Section 139(1) of the Act. He states that the petitioner was served with a Section 148 notice dated 19th April, 2021 seeking to assess the petitioner under Section 147 of the Act and the petitioner in due compliance of the said notice re-filed her ITR dated 18th May, 2021. He states that the said notice and consequential proceedings initiated thereon were subsequently quashed by this Court by its judgment dated 24th March, 2022 in **W.P.(C) 4795/2022** following its previous decision in **Mon Mohan Kohli v. ACIT**. He states that relying upon the judgment of the Supreme Court in **Union of India v. Ashish Agarwal, 2022 SCC Online SC 543**, the respondent has issued the petitioner with a notice dated 17th May, 2022 under Section 148A(b) of the Act, alleging the following information/material :

"As per information provided by the Directorate of Investigation through Income tax Insight Portal, during the financial year 2012-13 relevant to assessment year 2013-14, you have entered into financial transactions of Rs.4,84,52,944/- claimed bogus LTCG/STCL (Sell trades quantity is higher than buy trades quantity) with penny script namely Mahanivesh (India) Limited."

4. He states that no documents in support of the aforesaid allegations and no specific details of the trades undertaken by the petitioner resulting in the said Long Term Capital Gain ('LTCG') has been provided to the petitioner in contravention of the proviso to Section 148 of the Act. He states that the petitioner vide reply dated 31st May, 2022 and 25th August, 2022 objected to the issue of the impugned notice dated 30th June, 2022 and



initiation of the proceedings under Section 147 of the Act on various grounds including the absence of information against the petitioner suggesting that the income chargeable to tax has escaped assessment. He states that the petitioner verily believes that no information exists which expressly links the present assessee to any enquiry undertaken against Mahanivesh (India) Limited ('Mahanivesh') with respect to the financial transaction in the latter's scrip.

5. He states that the respondent vide its impugned order has rejected the petitioner's objection on jurisdictional error and it is silent with respect to the petitioner's objection with respect to absence of information. He states that since the impugned order passed under Section 148A(d) of the Act is based on no substantial information and the proceedings are time barred, the notice issued under Section 148 along with the consequential proceedings are without legal jurisdiction.

6. Issue notice. Mr. Puneet Rai, learned Senior Standing counsel for Revenue accepts notice. This matter was first listed on 16th September, 2022, when the respondent was directed to produce the information available with it, which forms the basis of the reassessment notice. The learned counsel produced a copy of the report prepared by the Income Tax Department's Investigation Wing with respect to Mahanivesh ('Report') on 17th September, 2022, a copy whereof was handed over to the learned counsel for the petitioner for his perusal and thereafter the matter was adjourned for today.

7. Learned counsel for the respondent relies upon the Report. He has drawn our attention to relevant portions of the Report wherein the Investigation Wing has concluded that the share price of Mahanivesh has



been manipulated and bogus profits and losses have been booked in the names of beneficiary by trading in the scrip. The Report concludes that bogus profits to the tune of Rs.26,00,00,000/- have been booked through trading in the scrip and simultaneous bogus losses amounting to Rs.70,00,00,000/- have been booked for the said scrip. He states that the Report specifically identifies the petitioner herein as the seller of 88,508 shares to Allied Nippon Limited and Lawrence Cold Storage Private Limited, at internal page 36 of the Report. He states that in the ITR filed by the petitioner for the relevant AY, the LTCG from transactions, as disclosed in Schedule E-1, evidences that though the assessee earned Rs.4,76,77,390/- the same was claimed as an exempt income and it was not offered to tax. He states that the petitioner earned LTCG of Rs.4,84,52,944/- through her transactions in the scrip.

8. He states that as per the Report, an analysis of the trading data of the scrip of Mahanivesh was carried out and it is noted that large scale manipulation of trade and fabricated trading activity has taken place in the scrip which has led to generation of fictitious profit and loss derived by various traders which are pre-determined and not genuine. With respect to the objection of limitation, he relies upon the judgment of this court in ***Touchstone Holdings Private Limited vs. Income Tax Officer, Delhi, W.P.(C) 13102/2022 dated 9th September, 2022.***

9. Learned counsel for the petitioner in rejoinder states that this Report was admittedly not provided to the petitioner along with notice dated 17th May, 2022 issued under Section 148A(b) of the Act and therefore, the petitioner was denied the opportunity to explain the transactions undertaken by her with the two entities i.e. Allied Nippon Limited and Lawrence Cold



Storage Private Limited. He states that further a perusal of the Report does not in any manner suggest that the petitioner had any role in either influencing the rigging of the closing price of the scrip or that she was a party to any bogus transactions.

10. He states that the petitioner has not denied that she traded in the scrip of Mahanivesh but the petitioner denies that the transactions undertaken by her are bogus.

11. The petitioner further states that paragraph Nos. 6 and 7 of the impugned order dated 30th June, 2022 passed under Section 148A(d) of the Act does not disclose any live link between the information received and its connection with the petitioner and therefore, the initiation of the present proceedings is without legal jurisdiction. He relies upon the judgment dated 26th March, 2021 of this court in ***W.P.(C) No. 12544/2018 in Synfonia Tradelinks Pvt. Ltd. v. Income Tax Officer, Ward-22 (4)***.

12. We have heard the learned counsel for the parties and have perused the Report produced by the respondent. The petitioner admits that she has transacted in the scrip of Mahanivesh and earned LTCG for an amount of Rs.4,84,52,944/- which was claimed as an exempt income. The AO in the notice issued under Section 148A(b) has categorically asserted that the LTCG earned by the petitioner through her financial transactions in the shares of Mahanivesh are bogus. The petitioner in her reply dated 31st May, 2022 had denied the allegations and sought the material which forms the basis of the said allegations and sought further time of two weeks from the date of receipt of the said material to file an additional reply.

13. With respect to the issue of limitation, this Court in ***Touchstone Holdings Pvt. Ltd. v Income Tax Officer, Delhi and Others*** (supra) held as



under:

“Consequently, since the time period for issuance of reassessment notice for assessment year 2013-14 stood extended until 30th June, 2021, the first proviso of Section 149 (as amended by the Finance Act, 2021) is not attracted in the facts of this case. It would be relevant to refer to the said proviso, which reads as under:

“Time Limit for notice.

Section 149. (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 asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

....”

(Emphasis Supplied)

As noted above, the time limit for initiating assessment proceedings for AY 2013-14 stood extended till 30th June, 2021. The petitioner does not dispute the said facts, consequently, the reassessment notice dated 29th June, 2021, which has been issued within the extended period of



limitation is not time barred.”

14. In this case as well, the petitioner admittedly was served with a reassessment notice dated 19th April, 2021 within the extended period of limitation and therefore, the first proviso of Section 149 (as amended by Finance Act, 2021) is not attracted in the facts of this case. Further, the income alleged to have escaped assessment is more than Rs. 50 Lakhs and therefore, the rigour of Section 149(1)(b) of the Act (as amended by Finance Act, 2021) is satisfied.

15. The learned counsel for the petitioner's sole argument was that the notice under section 148A(b) and the impugned order passed under Section 148A(d) does not show any live link between the information received and formation of belief. We cannot accept this contention of the assessee as both the notice under Section 148A(b) and the notice under Section 148A(d) specifically identify the financial transactions undertaken by the petitioner in respect of Mahanivesh. The financial value of the transaction is also expressly provided in the notice and the impugned order. The basis for initiation of the inquiry being that, the scrip of Mahanivesh is a penny scrip is also stated in the notice dated u/s 148A(b). The petitioner was therefore sufficiently informed that the initiation of reassessment proceeding was due to the fact that the AO had reasons to believe that the petitioner has earned bogus LTCG by trading in the penny scrip of Mahanivesh.

Pertinently, in her reply dated 31st May, 2022, the petitioner has not responded to the allegation in the notice that Mahanivesh is a penny scrip.

The report sets out detailed facts leading to the conclusion that Mahanivesh is a penny scrip and the trade was undertaken between limited persons at pre-determined prices.



16. However, it has come on record that the detailed report of the Investigation Wing on the suspicious trading activity of Mahanivesh was not provided to the petitioner. We are of the considered view that the AO should have provided this Report in the first instance with the notice issued under section 148A(b), especially when the assessee had requested for this information in her reply dated 31st May, 2022. We, therefore, find merit in the submission of the petitioner that the assessee has been denied an effective opportunity to answer the findings made in the Report with respect to the transactions undertaken by the assessee with Allied Nippon Limited and Lawrence Cold Storage Pvt. Ltd.

17. We set aside the order dated 30th June, 2022 issued under Section 148A(d) and notice dated 30th June, 2022 issued under Section 148 with a direction to the petitioner to file its additional reply, responding to the findings of the Report within two weeks. The AO shall after considering the reply of the petitioner pass an order under Section 148A(b) within a period of eight weeks thereafter, in accordance with law.

18. It is clarified that the AO shall decide the matter on its own merits without being influenced by any observations made in this order except the issue of limitation.

19. With the above directions, the writ petition and application stand disposed of.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

SEPTEMBER 28, 2022

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