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

% *Date of Decision: 01.04.2025*

+ **W.P.(C) 297/2023 and CM APPL. 18287/2025**

ANKIT KHANDELWAL

.....Petitioner

Through: Mr Rohit Jain and Mr Samarth
Chaudhari, Advocates.

versus

INCOME TAX OFFICER & ORS.

.....Respondents

Through: Mr Gaurav Gupta, senior standing
counsel with Mr Shivendra Singh and
Mr Yojit Pareek, 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 seeking various reliefs. However, the learned counsel appearing for the petitioner has confined the present petition to the first prayer, which is reproduced below:

“(I) Issue a writ in the nature of mandamus/ certiorari or any other appropriate writ, order or direction for quashing:

(a) **the notice dated 08.04.2021** issued under section 148, as it existed prior to substitution vide Finance Act, 2021 w.e.f. 01.04.2021, and now deemed to be notice under section 148A(b) of the Income Tax Act, 1961 (‘the Act’);

(b) **the letter/ notice dated 20.05.2022** issued by Respondent No.1 communicating the so-called information/ material forming the basis of proceedings under section 148/148A of the Act;



(c) **the order dated 22.07.2022** passed by Respondent No.1 [with the prior approval of Respondent No.2] under section 148A(d), and the consequent initiation of reassessment proceedings vide **notice dated 22.07.2022** issued under section 148 of the Act;

in the case of the Petitioner for assessment year 2014-15, and all proceedings/ actions consequent thereto;”

2. The petitioner, essentially, impugns a notice dated 22.07.2022 [**impugned notice**] issued under Section 148 of the Income Tax Act, 1961 [**the Act**] *inter alia*, on the ground that it has been issued beyond the period of limitation as specified under Section 149(1)(a) of the Act. Additionally, it is the petitioner’s case that there is no information that would lead to the conclusion that the petitioner’s income escaped assessment and therefore, the order dated 22.07.2022 [**the impugned order**] passed under Section 148A(d) of the Act, holding that it is a fit case for issuance of notice under Section 148 of the Act is *ex facie* erroneous and is liable to be set aside.

3. The petitioner is a resident individual and had filed its return of income for Assessment Year [**AY**] 2014-15 declaring a total income of ₹9,43,944/- on account of short term capital gain [**STCG**] derived from the trading of shares of a listed company – PMC Fincorp Ltd. The petitioner had also paid tax amounting to ₹1,20,337/- on the said declared income.

4. The Assessing Officer [**AO**] had issued a notice dated 08.04.2021 under Section 148 of the Act seeking to reopen the assessment for AY 2014-15. The said notice was issued under the provisions relating to reassessment (Sections 147 to 151 of the Act) as were in force prior to 01.04.2021. It is material to note that several petitions were filed challenging such notices,



which were issued after 31.03.2021 without following the procedure under Section 148A of the Act which were introduced with effect from 01.04.2021. A batch of such petitions was allowed by this court in – ***Mon Mohan Kohli v. Assistant Commissioner of Income Tax & Anr.: (2024) ITR 207 (Del.)*** and other connected matters. Several other High Courts had also set aside such notices and several petitions challenging similar notices were pending in various courts across the country.

5. The Revenue had preferred an appeal before the Supreme Court against orders setting aside such notices. In ***Union of India & Ors. v. Ashish Agarwal: (2023) 1 SCC 617***, the Supreme Court considered the controversy and issued directions under Article 142 of the Constitution of India upholding the initiation of reassessment proceedings and directing that notices issued under Section 148 of the Act be construed as notices under Section 148A(b) of the Act. The Supreme Court also directed the AO to furnish information which according to the AO had suggested that the Assessee's income had escaped assessment within the specified time. The directions issued by the Supreme Court were applicable not only to the appeals in the Supreme Court but all matters pan India.

6. In compliance with the directions, accordingly, the AO had also furnished the said information by a letter dated 20.05.2022.

INFORMATION SUGGESTIVE OF THE ASSESSEE'S INCOME ESCAPING ASSESSMENT

7. The Assessee was forwarded the information as available with the



portal of the AO. The said information is set out below:

“Information details							
S. No.	Source PAN	Source PAN Name	Information FY	Information Type	Information Value	Information Date	Remarks
1	AADCP1611J	PMC Fincorp Limited	2013-14	Fictitious Profits in Equity / Derivative Trading	6195000		Claimed Bogus LTCG”

ASSESSEE’S RESPONSE

8. The Assessee filed his response to the said information under cover of his letter dated 01.06.2022. The Assessee denied that he had entered into any bogus transaction that had resulted in long term capital gains. The Assessee explained that he had entered into a transaction for sale and purchase of ten thousand number of equity shares of PMC Fincorp Limited, which had resulted in STCG (short term capital gains). The same were purchased on 20.03.2014 at the rate of ₹523.65 and were sold on 26.03.2014 at the rate of ₹619.38. The same had resulted in short term capital gains of ₹9,57,220/-. The Assessee had also paid security transaction tax and other charges amounting to ₹13,276/- and therefore had made a net gain of ₹9,43,944/-. The tabular statement set out in the reply indicating the details of the sale and purchase transaction entered into by the Assessee is set out below:

Name of the Scrip	Qty	Date of Purchase	Rate	Amount	Date of Sale	Rate	Amount	Short Term Capital Gain
PMC Fincorp	10000	20.03.2014	523.65	5236580	26.03.2014	619.38	6193800	9,57,220
STT/OTHER CHARGES								13,276
NET GAIN								9,43,944

9. The Assessee also stated that the said transaction was conducted



through his broker (Integrated Master Securities Pvt. Ltd.) and the said broker had remitted an amount of net gain being ₹9,43,944/- by cheque dated 29.03.2014 bearing No.59503. The Assessee had also forwarded his statement of bank account to establish the deposit of an amount of ₹9,43,944.22 in his bank account. In addition to the above, the Assessee also forwarded the contract notes as evidence of the transaction entered into.

10. The Assessee furnished a copy of his income tax return, which indicates that he had declared his full value of consideration at ₹61,93,800/- and the costs of acquisition at ₹52,49,856/- thereby surrendering the balance amount of ₹9,43,944/- to tax. The Assessee claimed that since the income in respect of the said transaction was less than ₹50,00,000/-, the impugned notice was barred by limitation as stipulated under Section 149(1)(a) of the Act.

IMPUGNED ORDER

11. The AO passed the impugned order holding that it is a fit case for issuance of impugned notice under Section 148 of the Act. The AO also rejected the Assessee's contention that the amount alleged to have escaped assessment is less than ₹50,00,000/-. The relevant extract of the impugned order setting out the AO's reasoning for rejecting the Assessee's contention is set out below:

“ 5.(ii) The assessee has produced complete copy of ITR, bank statement, statement of broker account, scrip wise report and contract notes. On perusal of the same it is observed that during the year under consideration assessee has purchased 10,000 quantity shares of PMC Fincorp on 20.03.2014 amounting to Rs. 52,36,580/- and sold out the same of Rs. 61,93,800/- and thus gain short term capital gain of Rs. 9,43,944/- (after deduct STT/other charges). The reply of the



assessee is not tenable as the transaction of share does not found to be genuine because for doing the transaction the person has to keep margin money with the share broker which is not reflecting in the documents submitted by the assessee along with his reply. In this case the contract note filed shows purchase and sale of same quantity to square up the transaction and therefore gain of profit of Rs. 9,43,944/- from the bogus transaction. Thus the contention of the assessee that the gain amount of Rs. 9,43,944/- is bogus but the alleged amount is less than Rs. 50 Lakhs and does not fall under the definition of asset as per the provisions of Income Tax Act, 1961 and the same is duly reflected in his return of income is not acceptable and the whole transaction relate to sale & purchase of shares which is bogus. The information in this case received from DDIT/ADIT(Inv.)-1, Noida through Insight Portal.

6. It is also evident from information available with Assessing Officer that the income chargeable to tax for this year, which has escaped assessment, is more than Rs. 50 Lakhs and is represented in the form of asset i.e. “Sale of shares credited in bank account”. In view of the facts, stated in Para 5 above it emerges that the income to the extent of Rs.61,95,000/- which is exceeding Rs.50 Lacs representing asset has escaped assessment. Hence, the case of Sh. Ankit Khandelwal (PAN: AZJPK6628A) is a fit case for issuance of notice u/s 148 of the Act for A.Y. 2014-15.”

REASONS AND CONCLUSION

12. It is material to note that the information shared with the Assessee indicated the allegation that the Assessee had earned long term capital gains of a value of ₹61,95,000/-. Undisputedly, this information is not substantiated and there is no material to support the same. The Assessee has not claimed any long term capital gains, which are exempt from tax. Since it is established that the Assessee had not declared any Long Term Capital gains, the question of any income escaping on that account does not arise.



13. The Assessee has produced a copy of his return which establish beyond any pale of doubt that the Assessee had not made any claim on account of long term capital gains in respect of a transaction of sale and purchase of shares of PMC Fincorp Ltd. There is also no cavil that the Assessee had claimed that he had earned short term capital gains amounting to ₹9,43,944/- on which tax amounting to ₹1,20,337/- was paid.

14. The AO had observed that the transaction of sale and purchase of the shares of PMC Fincorp Ltd. was not genuine as the Assessee had not kept any margin money with the share broker. First of all, there is no allegation to the aforesaid effect in the information as provided by the Assessee under Section 148A(b) of the Act. Second and more importantly there is no material to indicate that the Assessee had received any amount of ₹61,93,800/- being the gross value of the sale proceeds. The Assessee's claim that he had only received sum of ₹9,43,944/- in his bank account remains unrebutted and there is no material suggesting to the contrary. Thus, even if the transactions for sale and purchase of shares of PMC Fincorp Ltd. are suspected to be a bogus transaction, the value of income that has escaped assessment cannot exceed ₹9,43,944/- as that is the only amount received by the Assessee in respect of the said transaction.

15. In terms of Section 148A(d) of the Act, the AO is required to examine the material on record as well as the response furnished by the Assessee to the notice under Section 143A(b) of the Act and take an informed decision. In the present case, the information available with the AO that the Assessee had earned long term capital gains of ₹61,93,800/- is admittedly incorrect.



The only transaction in respect of sale and purchase of shares of PMC Fincorp Ltd., as available on record, is represented by the contract note furnished by the Assessee which indicates STCG of ₹9,43,944/- and that is the only sum received by the Assessee. The said material on record cannot by any stretch lead to the conclusion that the income above ₹50,00,000/- has escaped assessment during the relevant assessment year.

16. It is contended by Mr Gupta, the learned counsel appearing for the Revenue that the value of information as set out must be accepted for the purpose of determining the period of limitation under Section 149(1) of the Act. This contention is without merit and is contrary to the scheme of the provisions for initiation of proceedings for assessment/reassessment of income that has escaped assessment under Section 147 of the Act. It militates against procedure prescribed under Section 148A of the Act. The purpose for sharing the information, which is construed as suggestive of the assessee's income escaping assessment is to enable the assessee to respond to the same and, for the AO to take an informed decision on the basis of the record including the assessee's response. Thus, the question as to the value of income that may have escaped assessment is required to be determined by the AO at the stage of passing of an order under Section 148A(d) of the Act and not at the stage of sharing the information with the Assessee in terms of Section 148A(b) of the Act.

17. In the present case, there can be no dispute that even if the transaction of sale and purchase of equity shares of PMC Fincorp Ltd. is held to be bogus, the only amount that could be brought under the net of tax is the sum



of ₹9,43,944.22. This is the only amount received by the Assessee from his broker on account of the said transaction and the AO has no information which suggests otherwise.

18. Undisputedly, the Assessee has surrendered the said amount of ₹9,43,944/- to tax as he had claimed the same as short term capital gains.

19. In view of the above, the impugned order is unsustainable on both the grounds – (i) the impugned notice is beyond the period of three years as stipulated under Section 149(1) of the Act; and, (ii) that there is no material to indicate that the Assessee's income has escaped assessment as the petitioner has declared the amount as received, chargeable to tax and has also paid the tax on the said amount.

20. The petition is accordingly allowed and the impugned notice is set aside. Pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 01, 2025
RK/GSR

Click here to check corrigendum, if any