

### **Primary allegation cannot be added to the SCN by issuing Supplementary Notice**

The Hon'ble Delhi High Court ("**the High Court**") in the case of *M/s. Usha Rani Girdhar v. Income Tax Officer [W.P. (C) 16090 of 2022]* dated November 25, 2022, held that Assessing officer ("**the AO**") cannot add primary allegation in Notice by issuing Supplementary Notice.

#### **Facts:**

M/s. Usha Rani Girdhar ("**the Petitioner**") had sold the immovable property in the Assessment Year 2017-18 and the long-term capital gain arose by such transaction was not disclosed in the Income Tax Return ("**ITR**") of same period.

The AO issued a Notice to the Petitioner under Section 148A(b) of the Income Tax Act, 1961 ("**the IT Act**") dated May 21, 2022 ("**Notice**") by relying on information received from Income Tax Officer ("**ITO**") alleging non-disclosure of long-term capital gain by the Petitioner.

Subsequently, the AO passed an Order dated July 29, 2022 under Section 148A(d) of the IT Act, ("**the Order**") and the issued a SCN dated July 30, 2022 under Section 148 of the IT Act, for initiating proceeding for the Assessment Year 2017-18.

Petitioner contended that the Notice and the Order were for two different immovable properties. The Notice was for the property of Kingsway Camp, Delhi and the Order was issued for the property of Rohini Section-34, Delhi.

The Revenue ("**the Respondent**") accepted the mistake of issuance of the Notice and the Order related to distinct immovable properties and prayed before the High Court to rectify mistake by issuing a Supplementary Notice under Section 148A(b) of the IT Act.

#### **Issue:**

Whether the tax authorities can issue Supplementary Notice for incorporating primary allegation which was not present in the Notice?

**Held:**

The High Court held that:

- Held that the intent of issuing Notice under Section 148A(b) of the IT Act is to inform the Petitioner of the allegations against him with sufficient particulars so that he can put forward his defence.
- Relied upon the case of ***Catchy Prop-Build Private Ltd. Vs. Assistant Commissioner of Income Tax & Anr., [2022] 448 ITR 671 (Del)*** and held that if the foundation allegation is missing in the notice issued under Section 148A(b) of the IT Act, the same cannot be incorporated by issuing a supplementary notice.

The High Court set aside the SCN, the Order and the Notice issued by the AO for the Assessment Year 2017-18.

**Relevant Provisions:**

***Section 148 of the IT Act***

*Before making the assessment, reassessment or re-computation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:*

*Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.*

*Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section.*

**Section 148A(b) of the IT Act**

*The Assessing Officer shall, before issuing any notice under section 148,-*

*(b) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);*

**Section 148A(d) of the IT Act**

*The Assessing Officer shall, before issuing any notice under section 148,-*

*(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires.*

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