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

\+ **W.P.(C) 5991/2025**

KAMAL KAPOOR .....Petitioner

Through: Mr Nitin Kanwar, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX AND ANR. .....Respondents

Through: Mr Abhishek Maratha, SSC, Mr Apoorv Aggarwal, Mr Parth Samwal, JSCs, Ms Nupur Sharma, Mr Gaurav Singh, Mr Bhanukaran Singh Jodha, Ms Muskan Goel, and Mr Himanshu Gaur, Advocates.

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

O R D E R

% **06.05.2025**

CM APPL. 27419/2025(Exemption)

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

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3. The petitioner has filed the present petition, *inter alia*, impugning the notice dated 25.03.2025 [**impugned notice**] issued under Section 148 of the Income Tax Act, 1961 [**the Act**] in respect of the Assessment Year [**AY**] 2021-22 and further proceedings initiated pursuant to the impugned notice.

4. The petitioner also challenges the constitutional vires of Explanation II to Section 148 of the Act, which contains a legal fiction imputing that the Assessing Officer [**AO**] has the information in search cases.

5. It is the petitioner’s case that no search was conducted in his case and

the impugned notice is patently illegal. He also refers to Clause 1 and 2 of explanation II to Section 148 of the Act as were in force during the material time. Additionally, it is contended that the AO has not forwarded any material on the basis of which the impugned notice was issued.

6. Insofar as the petitioner's contention that the impugned notice is patently illegal as no search was conducted in the case of the petitioner is concerned, we find no merits in the same. Clause 3 of explanation II to Section 148 as was in force at the material time, also contemplates that the AO has information, if he is satisfied with the prior approval of the Principal Commissioner of Income Tax or the Commissioner that the asset or anything seized or requisitioned under Section 132 of the Act or Section 132A of the Act in the case of 'any other person' on or before 01.04.2021, belongs to the Assessee.

7. Insofar as the petitioner's grievance that no material has been provided along with the impugned notice, the same is disputed. However, we consider it apposite to direct the AO to once again provide the material on the basis of which the impugned notice is premised.

8. The learned counsel for the petitioner also submits that no incriminating material had been found, therefore, the impugned notice could not have been issued. He further states that no satisfaction note has been recorded and, therefore, notice under Section 153C of the Act could not have been issued. On the strength of the said assumption, he submits that no notice could be issued under Section 148 of the Act by virtue of first proviso to Section 149 of the Act. The said contention is unmerited.

9. There is no requirement for recording the satisfaction note by the AO

in respect of searched person in cases where search has been conducted after 01.04.2021. For the purpose of computing the limitation to issue the notice under Section 149(1) of the Act, the date on which the AO takes a decision to initiate the proceedings is relevant as held by this court in ***Dinesh Jindal v. Assistant Commissioner of Income Tax, Central Circle 20, Delhi & Others: Neutral Citation:2024:DHC:4554-DB***, ***KAD Housing Private Limited v. Deputy Commissioner of Income Tax Central Circle-6, Delhi: Neutral Citation:2024:DHC:8214-DB*** and amongst others.

10. Insofar as the plea of lack of any incriminating material is concerned, the plea at this stage is premature as according to the petitioner, he has not been provided the material on the basis of which the impugned notice is premised. We consider it apposite to leave this question open for the petitioner to be agitated in an appropriate proceeding and at an appropriate stage.

11. The only challenge that remains to be addressed relates to the constitutional validity of explanation II to Section 148 of the Act. Thus, the present petition is confined to this question.

12. List along with connected petitions involving the identical issue on 03.07.2025.

CM APPL. 27418/2025(Stay)

13. Since the present petition is confined only to the constitutional vires of the statutory provision, we consider it apposite not to pass any stay order.

14. Needless to state that if the petitioner prevails in his challenge, the petitioner would be entitled to the consequential benefit and the further proceedings pursuant to the impugned notice would necessarily be subject to

the outcome of the present petition.

15. The application stands disposed of in above terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 06, 2025

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Click here to check corrigendum, if any