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ORDER SHEET

WPO 179 of 2011
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

THE SOUTH POINT EDUCATION SOCIETY & ANR
Vs.
CHIEF COMMISSIONER OF INCOME TAX, KOLKATA-III & ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 3rd February, 2022

(Via Video Conference)

Mr. J.P. Khaitan, Sr. Adv.
Mr. Swapna Das, Adv.
Mr. Agnibesh Sengupta, Adv.
... for the Petitioner
Mr. P.K. Bhaumik,
Mr. Manabendranath Bandyopadhyay, Advs.
...for the respondents

The Court: Heard learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned order dated 28/29th January, 2010 rejecting the application of the petitioner for grant of exemption under Section 10(23C)(xi) which was passed on the basis of the show cause notice dated 22nd January, 2010 against which petitioner had made an objection on 27th January, 2010 which appears at page 182 of the writ petition.

On perusal of the impugned order, on the face of it, it appears that the impugned order is non-speaking and there is no discussion and consideration on the objection of the petitioner raised against the impugned show cause notice dated 22nd January, 2010 and there is just one line in the impugned order that the written submission of the petitioner was considered and rejected.

Learned advocate appearing for the respondents have filed affidavit-in-opposition and Mr. Khaitan, learned senior advocate appearing for the petitioner points out paragraph 3(iv) and paragraphs 6, 7, 10 and 11 of the affidavit and contends that respondents themselves have admitted that there is no objection about investments in question made in mutual funds on the ground of which petitioner's application for exemption was rejected. Mr. Khaitan, learned senior advocate appearing for the petitioner in support of his contention relies on a circular dated 27th October, 2010 which appears at page 189 of the writ petition.

Considering the submissions of the parties and on perusal of relevant records, I am of the view that the impugned order dated 28/29th January, 2010 is not sustainable in law in view of the fact which appears from the impugned order itself that impugned order does not reflect at all consideration of the objections/points raised by the petitioner in its written submission against the impugned show cause notice and on this ground alone the impugned order is set aside and is remanded to the authority concerned to reconsider and pass a fresh order in accordance with law and by passing a reasoned and speaking order and after giving opportunity of hearing to the petitioner or its authorised representative within eight weeks from the date of communication of this order. At the time of hearing before the authority concerned, the petitioner shall be entitled to take all the points which has been taken in its writ petition and also shall be able to rely on the affidavit-in-opposition filed by the respondents in this writ petition on 3rd July, 2019.

With these observations and directions, this writ petition being WPO 179 of 2011 is disposed of.

(MD. NIZAMUDDIN, J.)

TR/