OD – 54

ORDER SHEET
WPO/1819/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S HIMADRI SPECIALITY CHEMICAL LTD
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 18th April, 2022.

Appearance:
Mr. J.P. Khaitan, Sr. Adv.
Mr. S. Kejriwal, Adv.
Ms. Ananya Rathi, Adv.
...For the Petitioner

Mr. Smarajit Roy Chowdhury, Adv.
...For the U.O.I.

The Court : Heard Learned Counsel appearing for the parties.

In this matter, petitioner has challenged the impugned assessment order dated 28th February, 2022, under Section 147 read with Section 143 (3) of the Income Tax Act, 1961 relating to assessment year 2017-18 on the ground of violation of principles of natural justice. Mr. Khaitan, learned senior advocate appearing for the petitioner also takes a point that his objection to the proceeding under Section 147 of the Act was not considered properly and by not dealing with the judgment relied upon by him, however, since after the rejection of the objection of the petitioner, matter was proceeded further and final assessment order was passed, I am not inclined to interfere with the impugned order of rejection of the petitioner's objection at this stage since final assessment order has already been passed. However, considering the submission of the petitioner that show cause notice dated 19th January, 2022 by which petitioner was asked to give response by 27th January, 2022, application for adjournment by the petitioner dated 27th January, 2022 was made as appears at page 239 of the writ petition which was neither considered nor rejected before passing the final assessment order and in the impugned assessment order also there is no reference to the aforesaid adjournment petition made by the petitioner, before the assessing officer, which should have been considered by the assessing officer before passing the assessment order.

Without going into the merit of the assessment order, solely on the ground of violation of principles of natural justice by not considering the adjournment petition and not affording the petitioner opportunity to make submission to notice under Section 147 of the Act which petitioner asked for, the assessment proceeding the impugned assessment order has been passed, the impugned assessment order dated 28th February, 2022 is set aside and the case is remanded to the assessing officer to pass a fresh assessment order after observing principles of natural justice by giving adequate opportunity to the petitioner to represent its case in the course of regular assessment proceeding. Petitioner will be entitled to take all the points in course of the assessment proceeding, before the assessing officer, which has been taken in this writ petition.

It is expected that assessing officer will pass the assessment order expeditiously without granting any unnecessary adjournment to the petitioner.

With these observations, this writ petition stands disposed of.

(MD. NIZAMUDDIN, J.)

TR/