OD – 45

ORDER SHEET
WPO/1839/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SREI EQUIPMENT FINANCE LIMITED
VS
ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER OF INCOME TAX

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 13th April, 2022.

Appearance:
Mr. Somak Basu, Adv.
...For the Petitioner

Mr. Tilok Mitra, Adv.
...For the U.O.I.

The Court : Heard Learned Counsels appearing for the parties.

In this matter, petitioner has challenged the impugned show cause notice dated 23rd March, 2022, giving opportunity to the petitioner to file any objection to the draft assessment order before passing final assessment order under Section 143(3) of the Income Tax Act, 1961 in order to give effect to the order passed by the Commissioner under Section 263 of the Income Tax Act dated 4th March, 2021 and the petitioner did not avail the said opportunity. It has also filed a supplementary affidavit challenging the impugned final assessment order under Section 143(3) dated 30th March, 2022 which has been passed during the pendency of the writ petition. The impugned assessment order dated 30th March, 2022 which has been challenged by way of supplementary affidavit is an appealable order before the Commissioner of Income Tax (Appeal). It also appears that the aforesaid impugned order dated 30th March, 2022 was passed after following due procedure of law by issuance of notice and giving opportunity of hearing from time to time to the petitioner and it has been recorded in the assessment order that petitioner's reply dated 18th February, 2022 was also taken into consideration. It has been specifically recorded in the assessment order that a letter was issued on the petitioner on 19th January, 2022 but no reply was filed by the petitioner and further a notice under Section 142(1) of the Act was issued to the petitioner on 15th February, 2022 requiring it reply on or before 20th February, 2022.

So, this cannot be a case of violation of principles of natural justice and petitioner has participated in the assessment proceeding and now when it has gone against him he wants to challenge the assessment order before this Writ Court and want this Court to act as an appellate authority by going into the merit of the assessment which is the job of the CIT (Appeal).

This is not that categories of cases where the proceeding has been initiated by an officer having inherent lack of jurisdiction since in this case assessing officer being subordinate to the Commissioner is bound to give effect to the order by his higher authority which is the Commissioner of Income Tax who had passed order under Section 263 of the Act which is not even subject matter of challenge before this Court.

Considering these facts, I am not inclined to entertain this writ petition and the same is accordingly dismissed without going into the merit of the assessment only on the ground of availability of the alternative remedy.

This writ petition is dismissed with costs of Rs. 10,000/- upon Mr. Somak Basu, learned Advocate because of his rude behavior in Court and addressing to the chair in highly disrespectful manner.

(MD. NIZAMUDDIN, J.)

TR/