OD – 47

ORDER SHEET
WPO/1841/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SUBHASH CHANDRA GUPTA
VS
UNION OF INDIA AND ORS.

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

Appearance:
Mr.Brijesh Kumar Singh, Adv.
...For the Petitioner

The Court : None appears for the respondents. Affidavit of service filed in Court be kept with the records.

In this matter, petitioner has filed supplementary affidavit as supporting document to show that final assessment order has not been passed in this matter, which may be kept with the records.

In this matter, petitioner has challenged the impugned notice under Section 148 of the Income Tax Act, 1961 which was issued after 31st March, 2021 with supporting documents on the ground that this case clearly falls under the newly amended act relating to proceedings under Section 147 of the Act and under which there is a mandatory obligation on the part of the assessing officer to issue notice under Section 148A of the Act before issuing any notice under Section 148 of the Act and which has admittedly not done by the assessing officer and the impugned notice under Section 148 of the Act has been issued violation of Section 148A of the Act.

Furthermore this case is directly covered by the orders of this Court in the case of Bagaria Properties and Investment Private Limited & Anr. vs. Union of India & Ors. reported in (2022) 134 taxman.com 196 (Calcutta) and also in the case of Monoj Jain vs. Union of India reported in (2022) 134 taxman.com 173 (Calcutta).

Considering these facts I hold the impugned notice under Section 148 of the Act and all subsequent proceedings are quashed. However, quashing of the impugned notice and subsequent proceedings will not debar the assessing officer concerned to issue any fresh notice in future in accordance with law.

With the above observations, this Writ Petition being **WPO No.1841/2022** is disposed of.

This writ petition is being entertained subject to payment of cost of Rs. 5000/- to the High Court Legal Services Committee since the impugned notice under Section 148 of the Income Tax Act, 1961, has been issued on 5th May, 2021 as appears from record and this writ petition has been filed in March, 2022, that is, almost after nine months from receipt of the impugned notices, without any explanation for such delay in filing this writ petition. Such cost has to be paid by the petitioner to the High Court Legal Services Committee within ten days from date and such cost will be utilised for the welfare of street children. Receipt of payment is to be produced by the petitioner before this Court.

List this matter as “To be Mentioned” on 27th April, 2022 for compliance.

Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(MD. NIZAMUDDIN, J.)

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