OD – 2

ORDER SHEET
WPO/1975/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SHASHI AGARWAL
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 20h June, 2022.

Appearance:
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Samit Rudra, Adv.
...For the Petitioner

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

The Court : Heard learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned assessment order dated 22nd March, 2022, under Section 147 read with Section 144 read with Section 144B of the Income Tax Act, 1961 on the ground that the same is in violation of principles of natural justice and is bad in law for the reason that the petitioner was denied opportunity to file objection/response to the draft assessment dated 14th March, 2022 by which he was asked to give response through registered e-mail by 23.59 hours of 16th March, 2022. It is the case of the petitioner as appears at page 104 of the writ petition that on 16th March, 2022 around 12 noon when petitioner made attempt to submit response to the aforesaid draft order, official portal of the department displayed that the proceeding status was closed by the officer and as a result petitioner could not file any submission and this fact of fault in the official portal of the department was brought to the notice of the respondent Authorities concerned vide representation dated 16th March 2022 at 3.31 p.m. by e-mail. It is the further case of the petitioner that by disregarding this representation of the petitioner raising his grievance, respondent assessing officer passed impugned assessment order dated 22nd March, 2022.

Mr. Roy Chowdhury, learned advocate appearing for the respondent Income Tax Authorities could not produce any satisfactory document to contradict the allegation of the petitioner and the document which he has produced is not satisfactory to contradict the allegation of the petitioner that at the time of filing response to the draft assessment there was technical glitches in the official portal of the department. The document produced by the respondent is kept with the record.

Considering the submissions of the parties, and facts as appear from record, I am of the view that in this case there is a violation of principle of natural justice by denying the petitioner to avail opportunity to submit response to the draft assessment for no fault of him, since it appears from record that before the time granted by the respondent to file the response to the draft assessment, petitioner has made attempt to submit the response which is a part of the record. Accordingly the assessment order dated 22nd March, 2022 along with the demand notice and subsequent penalty notice are set aside and the matter is remanded back to the assessing officer to pass a fresh assessment order after giving opportunity to the petitioner to file objection/response to the draft assessment order in question and such objection/response shall be filed by the petitioner within seven days from date and if such objection is filed by the petitioner within the time stipulated herein, the same shall be considered and disposed of in accordance with law and by passing a reasoned and speaking order after giving opportunity of hearing to the petitioner or his authorised representative.

It is recorded that the impugned assessment order and subsequent orders have been set aside without going into the merit of the same and have been set aside only on the ground of violation of principles of natural justice and fresh assessment order will be passed by the assessing officer on merit and strictly in accordance with law.

With these observations and directions, this writ petition being WPO 1975 of 2022 stands disposed of.

(MD. NIZAMUDDIN, J.)

TR/