OD-16

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE

WPO/2273/2022

RAKHI NANDY
VERSUS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 27th June, 2022

<u>*Appearance:*</u>
Mr. D. Banerjee, Adv.
Mr. Abir Das, Adv.
... for the petitioner.

Mr. Vipul Kundalia, Adv.
Mr. Prithu Dudheria, Adv.
... for the respondent.

The Court :- Heard learned Advocates appearing for the parties. By this writ petition, petitioner has challenged the impugned order dated 30th April, 2022 under Section 148A(d) of the Income Tax Act, 1961 and subsequent notice under Section 148 of the Act, on the basis of a notice dated 30th March, 2022 under Section 148A(b) of the Act by which petitioner was given an opportunity to give a response to the same. It appears from the record which is annexed to the writ petition that in response to the aforesaid notice under Section 148A(b) of the Act, has filed response on 6th April, 2022. Petitioner submits that the basis of reopening under Section 148 of the Act relates to transaction of sale of a flat which according to the petitioner was Rs.40 Lakhs but according to the Assessing Officer it was Rs.80 Lakhs. First of all these are matters of evidence and question of fact and secondly, this issue has been already discussed by the Assessing Officer in the impugned order under Section 148A(d) of the Act and this Court in this writ jurisdiction cannot go into these matters of facts and evidence and substitute the finding of the Assessing Officer in its order under Section 148A(d) of the Act. An order under Section 148A(d) of the Act which is not a final assessment order and petitioner still has scope to make out his case during the proceeding under Section 147 of the Act after issuance of notice under Section 148 of the Act.

I find that the impugned order under Section 148A(d) of the Act is neither contrary to any statutory provision nor there is violation of Principles of Natural Justice and the Assessing Officer may not agree with the objection raised by the petitioner in its objection under Section 148A(b) of the Act and may take a different view while passing under Section 148A(d) of the Act, but that cannot be a ground to invoke the writ jurisdiction for interference of the same. For these reasons, I am not inclined to entertain this writ petition and accordingly, this writ petition being WPO/2273/2022 is dismissed.

However, dismissal of this writ petition will not prevent the petitioner from taking all the points raised in this writ petition, before the assessing officer during the course of re-assessment proceeding and who will consider the same in accordance with law.

(MD. NIZAMUDDIN, J.)

mg