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ORDER SHEET

WPO/2449/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

IVORY FINVEST LIMITED
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 14th September, 2022.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Brijesh Kumar Singh, Adv.
...For the Petitioner
Mr. Smarajit Roy Chowdhury, Adv.
...For the Respondents

The Court: Heard learned counsel appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 4th July, 2022 under Section 148A(d) of the Income Tax Act, 1961 relating to assessment year 2018-19 on the ground that the same has been passed arbitrarily, illegally and in total non-application of mind. Generally this Court is very reluctant to interfere with the order under Section 148A(d) of the Act but in view of exceptional and unusual facts and circumstances as appears from record in this case, I am inclined to interfere with the aforesaid impugned order for the reason that initial notice under Section 148A(b) was issued on 17th March, 2022 annexing the reason given by the assessing officer for issuance of notice under Section 148A(b) of the Act which is that the petitioner has received an amount of Rs. 25,00,000/- from Romanchak Merchandise Pvt. Ltd. during financial year 2017-18. Thereafter strangely a second notice dated 23rd May, 2022 was issued under Section 148A(b) of the Act by calling it as a subsequent proceeding and in that notice the assessing officer changed its reasoning from the earlier notice and here by saying that the petitioner has received accommodation entry of a sum of Rs. 1,56,00,279/- from Jama Kharch Company namely, Kamalraj Housing Private Limited and thereafter in the final order under Section 148A(d) of the Act has given another reason different from earlier two reasoning and here he has recorded that a sum of Rs. 1,56,00,279/- was received by the petitioner as an accommodation entry from companies M/s. Gurumukh Mercantile Pvt. Ltd., M/s. Lifewood Advisory Pvt. Ltd., M/s. Mangalvani Overseas Pvt. Ltd., M/s. Neelgagan Suppliers Pvt. Ltd. and M/s. Vidyalaxmi Fabrics Pvt. Ltd.

Finding such inconsistency of the stand/reasoning by the assessing officer from time to time and taking total different view in the final order under Section 148A(d) of the Act from the view and reasoning taken in the initial notice under Section 148A(b) of the Act dated 17th March, 2022, I am of the view that the impugned order is arbitrary, unreasonable and in total non-application of mind and not sustainable in law and accordingly the impugned order under Section 148A(d) of the Act dated 4th July, 2022 and subsequent notice under Section 148 of the Act are quashed.

However, quashing of this impugned proceeding will not be a bar for the assessing officer to initiate any fresh proceeding in future in accordance with law.

Accordingly, this writ petition being WPO 2449 of 2022 is disposed of.

(MD. NIZAMUDDIN, J.)

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