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ORDER SHEET
WPO/2540/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

GUPTA TRADING CO
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 9th September, 2022.

Appearance:
Mr. Hemant Tiwari, Adv.
...For the Petitioner
Mr. Prithu Dudhoria, Adv.
...For the Respondents

The Court: Heard learned counsel appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 30th June, 2022, under Section 148A(d) of the Income Tax Act, 1961 relating to assessment year 2016-17 and the notice dated 28th June, 2022 passed under Section 148 of the Act, on the ground that the same is in total non-application of mind and is not tenable in the eye of law by contending that after the issuance of notice under Section 148A(b) of the Act on 24th May, 2022, without passing any order under Section 148A(d) of the Act which is dated 30th June, 2022, the assessing officer has issued the impugned notice under Section 148 of the Act on 28th June, 2022 which is prior to the passing of order under Section 148A(d) of the Act which is contrary to law. As per law after passing order under Section 148A(d) of the Act as a consequence and subsequent to the order under Section 148A(d) of the Act notice under Section 148 can be issued but how notice under

Section 148 can be issued before passing the notice under Section 148A(d) of the Act.

Mr. Dudhoria, learned counsel appearing for the respondent Income Tax Authority could not defend and justify the aforesaid impugned order and the admitted aforesaid factual and legal position.

Considering the facts and circumstances of this case, this writ petition being WPO 2540 of 2022 is disposed of by quashing both the aforesaid notice under Section 148 and the order under Section 148A(d) of the Act.

However, quashing the aforesaid notice and the order will not be a bar for the assessing officer to initiate any fresh proceeding in accordance with law.

(MD. NIZAMUDDIN, J.)

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