13.07.2023.
PB
Sl. No.20.

WPA 15526 of 2023

Shanit Agarwala
Vs
Income Tax Officer, Ward 3(1),
Malda & Ors.

Ms. Manju Manot,
Ms. Anju Manot.
… For the Petitioners.
Mr. Smarajit Roychowdhury..
…….for the respondents.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 22nd May, 2023, under Section 147 read with Section 144B of the Income Tax Act, 1961, relating to the assessment year 2013-14, which is an appellable order under the statute, but the question of violation of statutory provision under Section 143(2) of the Act, a notice under the said section, petitioner is entitled which has not been issued in this case before passing impugned the order under Section 147 of the Act.

Mr. Roychowdhury, learned advocate appearing for the respondents is not a position to deny the allegation of non-issuance of notice under Section 143(2) of the Act and as such in spite of the impugned order being an appellable order, this writ petition is being entertained and in view of the admitted position of noncompliance of issuance of notice under Section 143(2) of the Act, by the Assessing Officer, no useful purpose will be served by keeping this writ petition pending and I am of the view that this can be disposed of at the motion stage without calling for affidavits.

In view of the admitted factual and legal position as discussed above, this writ petition being WPA 15526 of 2023 is disposed of by setting aside the aforesaid impugned assessment order dated 22nd March, 2023 and the matter is remanded back to the Assessing Officer to proceed from the stage where such irregularity of non-issuance of notice under Section 143(2) has been committed and pass a fresh speaking order in accordance with law after giving an opportunity of hearing to the petitioner or his authorized representative. In course of proceeding before the Assessing Officer, the assessee/petitioner shall be entitled to raise all the points which has been raised in this writ petition.

With this observation and direction, this writ petition being WPA 15526 of 2023 is disposed of.

(Md. Nizamuddin, J.)