WPA 17312 OF 2023

02.08.2023
Sl no. 20
Ct no. 2
P.M.

Girdhar Gopal Dalmia

- Vs –

Union of India & Ors.

Mr. Ranjeet Kumar Murarka, Sr. Adv.
Mr. Vivek Murarka,
Mr. Dibanath Dey
... for the petitioner

Mr. Prithu Dudhoria
... for the respondent/

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order under Section 148A(d) of the Income Tax Act, 1961 dated 12th April, 2023 relating to assessment year 2019-2020 and subsequent notice under Section 148 of the Act dated 12th April, 2023, on the ground that in spite of specifically asking for opportunity of personal hearing by his response/objection dated 4th April, 2023 no opportunity of personal hearing was given to the petitioner before passing the aforesaid impugned order and issuance of notice.

It appears from record that the notice under Section 148A(b) of the Act was issued on 21st March, 2023 by which petitioner was asked to file his response/objection by 27th March, 2023 but petitioner has filed the response on 4th April, 2023 after the expiry of the time by which petitioner was asked to give response to the notice under Section 148A(b) of the Act.

Mr. Murarka, learned advocate appearing for the petitioner submits that petitioner had prayed for an adjournment and for extension of time to file reply/response to the notice under Section 148A(b) of the Act and it was granted to the petitioner till 9th April, 2023 and this fact has been recorded by the assessing officer himself in paragraph 2.6 of the aforesaid impugned order under Section 148A(d) of the Act.

Mr. Dudhoria, learned advocate appearing for the respondents Income Tax authority submits that the response/objection of the petitioner which was filed on 4th April, 2023 was considered and discussed in the impugned order but he could not satisfy this Court on the allegation of the petitioner that opportunity of personal hearing was given to the petitioner which was specifically asked for by the petitioner by its response dated 4th April, 2023.

On perusal of the aforesaid impugned order I do not find anywhere that petitioner's request for personal hearing was considered or if at all rejected, it has also not been recorded in the impugned order and as such there is a clear violation of principle of natural justice by denying the petitioner opportunity of personal hearing and also by not recording as to why the personal hearing could not be given to the petitioner in this case.

Considering the facts and circumstances of this case and submission of the parties I am of the considered view that the aforesaid impugned order dated 12th April, 2023 and subsequent notice under Section 148 of the Act is not sustainable in law for the reason of violation of principle of natural justice by denying the petitioner opportunity of personal hearing and accordingly the aforesaid impugned order dated 12th April, 2023 under Section 148A(d) of the Act and subsequent notice under Section 148 of the Act are set aside and the matter is remanded back to the Assessing officer concerned to pass a fresh order under Section 148A(d) of the Act by affording personal opportunity of hearing to the petitioner in accordance with law, within a period of eight weeks from the date of communication of this order.

With this observation and direction this writ petition being WPA 17312 of 2023 stands disposed of.

(Md. Nizamuddin, J.)