25.09.2023
PB
Sl. No.17.

WPA 22456 of 2023

Sri Dilip Kumar Fogla
Vs
The Assistant Commissioner of Income Tax, Central Circle 3(1), Kolkata & Ors.

Mr. Avra Mazumder,
Ms. Alisha Das,
Mr. Samrat Das,
Mr. Suman Bhowmik.
... For the Petitioner.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 4th May, 2023, under Section 148A(d) of the Income Tax Act, 1961, relating to the assessment year 2016-17, on the ground that the Assessing Officer while passing the impugned order has not considered at all the documents which petitioner has filed in support of his case that the alleged transaction was made by the company and not by the Director who is the petitioner herein.

Mr. Dhudaria, learned advocate appearing for the respondent income tax authorities submits that the impugned order under Section 148A(d) of the Act has been passed by recording the reasons and considering the facts and documents.

Considering the facts and circumstances of the case, I am of the view that it is not a case where any violation of principle of natural justice by denying the petitioner any opportunity of hearing has been committed nor the impugned order is without jurisdiction or the same is contrary to any specific provision of law. There is a difference between non-consideration of a document at all and not properly considering a document. The present case is not properly considering of the documents which are matters of facts based on evidence which cannot be scrutinized by the writ court in exercise of its jurisdiction under Article 226 of the Constitution of India. Yes, of course, petitioner will have ample opportunity to make out a case by relying on the relevant documents and make out a proper submission in the proceeding subsequent to the proceeding under Section 148A(d) of the Act and which the Assessing Officer will be bound to consider and to pass a reasoned and speaking order upon the same after giving an opportunity of hearing to the petitioner or his authorized representatives.

Accordingly, this writ petition being WPA 22456 of 2023 is disposed off.

(Md. Nizamuddin, J.)