04.12.2023
Item No.22
gd/ssd

WPA 25443 of 2023
Sitaram Sharma
Vs.
Union of India and Ors.

Mr. Suddha Satta Banerjee,
Mr. Jaydeep Chakraborty,
Mr. Anujit Mookherji,
Mr. Prithish Chandra
..for the petitioner.

Mr. Om Narayan Rai
..for the Respondent.

Heard learned Advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 5th April, 2023, under Section 148A(d) of the Income Tax Act, 1961, relating to the assessment year 2019-20 and subsequent notice under Section 148A(a) of the Act on the grounds, inter alia, that seven clear days' time was not granted to file objection/reply to the notice under Section 148A(d) of the Act and that there is a violation of principles of natural justice in passing the impugned order by denying the petitioner opportunity to cross-examine the person on whose statement Assessing Officer has relied in its order under Section 148A(d) of the Act.

So far as ground of seven clear days' time for filing objection/reply to the notice under Section 148A(d) of the Act is concerned, in the facts and circumstances of the case that the petitioner has replied/filed the objection to the same, and as such, now when the order has gone against the assessee-petitioner, he cannot challenge on that ground since his conduct of filing reply in spite of the time being given less than seven days' amounts to waiver. So far as the second allegation of violation of principles of natural justice by denying the petitioner, his right to cross-examine the person on whose statement Assessing Officer has relied in course of the impugned proceeding in passing the impugned order could not be denied by the learned Advocate representing the respondents-Income Tax Authority.

Considering the facts and circumstances of this case and submission of the parties, this writ petition being WPA 25443 of 2023 is disposed of by setting aside the impugned order dated 5th April, 2023 and subsequent notice under Section 148A(a) of the Act on the sole ground of violation of principles of natural justice by denying the petitioner, his right to cross-examine the person upon whose statement the Assessing Officer has relied in passing the impugned order and the matter is remanded back to the Assessing Officer concerned to pass a fresh speaking order after giving the petitioner an opportunity to cross-examine the person on whose statement the Assessing

Officer has relied, within a period of eight weeks from the date of communication of the order.

With this observation and direction, this writ petition being WPA 25443 of 2023 is disposed of.

(Md. Nizamuddin, J.)