OD –9

ORDER SHEET

WPO/58/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

ABHISHEK PRAKASH SHARMA
VS
NATIONAL FACELSSS ASSESSMENT CENTRE, INCOME TAX DEPARTMENT, MINS OF FINANCE, GOI DELHI AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 17th January, 2023.

Appearance:
Mr. J.P. Khaitan, Sr.Adv.
Mr. Sanjoy Bhowmik, Adv.
Mr. A. K. Dey, Adv.
...For the Petitioner

Mr. Aryak Dutt, Adv.
Mr. Soumen Bhattacharjee, Adv.
...For the Revenue

The Court: Heard learned counsel appearing for the parties.

By this writ petition, petitioner has challenged the impugned assessment order dated 13th December, 2022, under Section 143(3) read with Section 144B of the Income Tax Act, 1961, relating to assessment year 2021-22 on the ground of violation of principles of natural justice by not granting adjournment to the petitioner as well as not considering the reply to the show cause notice at the time of passing the impugned order. This Writ Court is very reluctant to interfere with any order passed under Section 143(3) of the Income Tax Act 1961 which is an appealable order under the statute but in view of the exceptional circumstances like violation of principles of natural justice or the order being without jurisdiction or patently contrary to any provision of the Act, this Court can interfere with such order. Facts in short as appears from record is that a show cause notice was issued on 23rd November, 2022 as appears at page 61 of the writ petition by which petitioner was asked to give its response by 30th November, 2022. It appears from page 68 of the writ petition that on 28th November, 2022 which is before the expiry of the time granted by the assessing officer to give response, petitioner made an adjournment petition through e-filing making prayer for extension of time to give response by 14th December, 2022. Petitioner submits that nothing was heard from the side of the assessing officer on the aforesaid adjournment. On 2nd December, 2022, petitioner filed its response through the grievance cell of the department since official portal of the department was closed. Thereafter petitioner filed further response on 8th December, 2022 to the aforesaid show cause notice through the grievance cell yet nothing was heard by the petitioner either from the side of the grievance cell or from the assessing officer as to the fate of the aforesaid responses. Without considering the petitioner's application for adjournment or its responses to the aforesaid show cause notices, respondent assessing officer passed the impugned assessment order on 13th December, 2022 wherein he has recorded that the assessee/petitioner has failed to give any response to the query made in the aforesaid show cause notice even after lapse of the date and time prescribed as per notice for compliance of the same which is contrary to record.

Mr. Dutt, learned advocate representing the respondent Income Tax Authority could not satisfy the Court from any record or submission as to whether the adjournment petition of the petitioner was considered or rejected and also on the issue that in spite of availability of the responses by the petitioner against the aforesaid show cause notice though through grievance cell, why the same were not considered while passing the aforesaid impugned assessment order.

Considering the facts and circumstances of this case I am of the considered view that there is a clear violation of principles of natural justice by the respondent assessing officer in not considering the aforesaid adjournment petition of the petitioner as well as by not taking into consideration the responses filed by the petitioner against the aforesaid show cause notice in spite of same being available with the grievance cell at the time of passing of the impugned assessment order.

In view of the discussion made above, this writ petition being WPO 58 of 2023 is disposed of by setting aside the impugned assessment order dated 13th December, 2022, under Section 143(3) of the Income Tax Act, 1961, being annexure P-11 to the writ petition and the matter is remanded back to the assessing officer concerned to reconsider and pass a fresh assessment order after taking into consideration the response filed by the petitioner against the aforesaid show cause notice by giving opportunity of hearing to the petitioner or its authorised representative, within a period of twelve weeks from the date of communication of this order.

(MD. NIZAMUDDIN, J.)

TR/