OD –6

ORDER SHEET

WPO/186/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

EMAMI LIMITED
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 8th February, 2023.

Appearance:
Mr. J.P. Khaitan, Sr. Adv.
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Mrigank Kejriwal, Adv.
...For the Petitioner
Mr. Om Narayan Rai, Adv.
...For the Respondents

The Court: Heard learned counsel appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 29th July, 2022 under Section 148A(d) of the Income Tax Act, 1961 relating to assessment year 2016-17 on the ground that while passing the aforesaid impugned order the assessing officer has taken into consideration some extraneous facts relating to different assessment order and as such according to Mr. Khaitan, learned senior advocate such action of the assessing officer is without jurisdiction. I am not agreeable to accept such contention of him since this case does not fall under those categories of cases where the order has been passed by the authority having inherent lack of jurisdiction or there is a patent violation of principles of natural justice or the order is contrary to any specific provision of law or the constitutional validity of any provision of law is involved in this case. Facts which Mr. Khaitan has pointed out in the impugned assessment order as whether it has relevancy or not for the purpose of assessment or reassessment has to be considered after the proceeding to be commenced after subsequent notice under Section 148 of the Act and in that proceeding the assessee petitioner will have ample scope and opportunity to make out its case for demolishing the case of the assessing officer and for dropping of the impugned assessment proceeding. Order under Section 148A(d) of the Act itself is neither the final assessment order nor it is a demand and doors for an assessee is not finally and fully closed after the order passed under Section 148A(d) of the Act particularly in such type of cases.

In view of the discussion made above, this writ petition being WPO 186 of 2023 is dismissed.

However, dismissal of this writ petition will not be a bar on the part of the petitioner to raise all the point before the assessing officer concerned in course of assessment proceeding subsequent to notice issued under Section 148 of the Act and the assessing officer will be at liberty to consider the same without being influenced by any observation made in this order.

(MD. NIZAMUDDIN, J.)

TR/