OD –15

ORDER SHEET

WPO/867/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

HARISH KUMAR SINGHANIA
VS
ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 32, KOLKATA AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 27th April, 2023.

Appearance:
Mr. Saurabh Bagaria, Adv.
Mr. Saumya Kejriwal, Adv.
Ms. Ananya Rath, Adv.
...For the Petitioner

Mr. Soumen Bhattacharjee, Adv.
...For the Respondents

The Court : 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 31st March, 2023 relating to assessment year 2019-20 on the ground of violation of principle of natural justice by depriving the petitioner access to the materials and information upon which the assessing officer has relied and which was made available to the assessing officer through insights portal and the case of the petitioner is that in spite of specifically asking for the said materials and information, neither the same was made available to the petitioner nor the assessing officer has disclosed in his impugned order under Section 148A(d) of the Act why the same could not be made available to the assessee/petitioner. It is the case of the petitioner that since the materials and information upon which the assessing officer has relied while passing the impugned order could not be made available to the petitioner it could not give proper and effective response to the notice under Section 148A(b) of the Act. It is the basic principles of natural justice that any authority using any material against a person, before passing an order adverse to the interest to that person, he must be provided or supplied those materials and informations. Fact remains that though at the time of passing the impugned order under Section 148A(d) of the Act the materials which were available to the assessing officer through insight portal has been disclosed in the order under Section 148A(d) of the Act, the same should have been supplied to the petitioner, now it should be treated as an information to the petitioner for the purpose of giving additional response to the notice under Section 148A(b) of the Act.

Considering the facts and circumstances of this case and submissions of the parties and taking into consideration the principles of natural justice, the aforesaid impugned order under Section 148A(d) of the Act and all subsequent proceedings are set aside and the matter is remanded back to the assessing officer to pass a fresh order after receiving additional response to notice under Section 148A(b) of the Act which is to be filed by the petitioner within 10 days from date and such fresh order is to be passed by the assessing officer after giving opportunity of hearing to the petitioner or its authorised representative and after considering and discussing the additional response to be filed by the petitioner within the time stipulated herein and in case of default in filing the additional response within the time stipulated herein, the impugned order under Section 148A(d) would automatically stand revived.

With these observations and directions, this writ petition being WPO 867 of 2023 stands disposed of.

(MD. NIZAMUDDIN, J.)

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