OD –18

ORDER SHEET
WPO/883/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BISHWANATH SEKSARIA
VS
ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 32, KOLKATA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 1st May, 2023.

Appearance:
Mr. Saurabh Bagaria, Adv.
Mr. Saumya Kejriwal, Adv.
Ms.Ananya Rath, Adv.
Mr. Gauri Shankar Gupta, 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 11th April, 2023 relating to assessment year 2019-20 on the ground of violation of principle of natural justice by depriving the petitioner 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 by the petitioner 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 as to why the same could not be made available to the assessee petitioner. It is the case of the petitioner that the materials and information upon which the assessing officer has passed the impugned order since could not be made available to the petitioner it could not give proper and effective response to the notice under Section 148A(d) of the Act. It is the basic principles of natural justice that any authority using any material against a person and passing an order causing prejudice to the interest to that person he must provide or supply the said material/information to the person against whom the adverse order is going to be passed which has not been done in this case. Now, the fact remains that though before passing the impugned order under Section 148A(d) of the Act the materials which were available to the assessing officer has been disclosed in the order under Section 148A(d) of the Act, the same should not be supplied again and now it should be treated as an information to the petitioner.

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 the 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 by considering and discussing the additional response to be filed by the petitioner within the time stipulated herein and in case of default in filing additional response, the impugned order under Section 148A(d) would automatically stand revived.

With these observations and directions, this writ petition being WPO 883 of 2023 stands disposed of.

(MD. NIZAMUDDIN, J.)

TR/