OD –4

ORDER SHEET
WPO/931/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MUSTAFA HUSENICHUNAWALA
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 10th May, 2023.

Appearance:
Mr. R. Lakhmani, Adv.
Ms. Pooja Sah, Adv.
Mr. S. Makvar, 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 impugned order dated 31st March, 2023 passed by the assessing officer relating to assessment year 2018-19 that the impugned order under Section 148A(d) of the Income Tax Act, 1961 and subsequent order under Section 148 of the Act dated 31st March, 2023 are bad in law for the reason that before passing the impugned order under Section 148A(d) of the Act already approval has been taken for issuance of notice under Section 148 of the Act as appears from record according to the petitioner.

On perusal of the relevant record annexed to the writ petition, I find that the impugned order is not a final order under Section 148A(d) of the Act rather it is a draft assessment order and Mr. Bhattacharjee very fairly submits that due to inadvertence before final assessment order under Section 148A(d) of the Act no opportunity to file objection was given to the petitioner against the draft assessment order. If that is the case and admitted position then I am of the view that the impugned notice under

Section 148 of the Act cannot sustain in law since before passing the final assessment order under Section 148A(d) of the Act and issuance of notice under Section 148 of the Act, an assessee petitioner must have been given an opportunity to file any objection to the draft assessment if assessee petitioner wants any modification in the draft assessment order which has not been provided to the petitioner in this case.

Considering the facts and circumstances of this case, the impugned notice under Section 148 of the Act and final assessment under Section 148A(d) of the Act dated 31st March, 2023 which has already been passed according to Mr. Bhattacharjee are quashed by granting liberty to the petitioner to file objection to the draft assessment order dated 31st March, 2023 within seven working days from date and if such objection is filed, the same shall be considered by the assessing officer concerned and disposed of by passing a reasoned and speaking order after providing opportunity of personal hearing to the petitioner or his authorised representative and further order and proceedings will depend upon the outcome of the order to be passed on such objection and in case of default in filing objection to the draft assessment within stipulated time, assessing officer will be free to proceed further in accordance with law.

With these observations and directions, this writ petition being WPO 931 of 2023 stands disposed of.

Instruction filed by Mr. Bhattacharjee be kept with the record.

(MD. NIZAMUDDIN, J.)

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