OD –5

ORDER SHEET

WPO/1010/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

HARI MOHAN BERIWALA AND ORS. HUF
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 4th July, 2023.

Appearance:
Mr. Avra Mazumder, Adv.
Mr. Suman Bhowmik, Adv.
Mr. Samrat Das, Adv.
…For the Petitioner
Mr. Vipul Kundalia, Adv.
Mr. Anurag Roy, Adv.
…For the respondents

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the legality and validity of the impugned order under Section 143(3)/147 of the Income Tax Act, 1961 dated 28th March, 2023 relating to assessment year 2015-16. The aforesaid impugned order is further appealable under the statute before the CIT (Appeals).

Mr. Kundalia, learned advocate appearing for the respondent Income Tax Authority was asked to take instruction in the matter as to whether there was any procedural irregularity in course of passing the aforesaid impugned order under Section 147 of the Act and as to whether before passing the aforesaid impugned order any notice under Section 142(1) and 143(2) of the Act were issued and served or not to which Mr. Kundalia on the basis of instruction based on record submits that though notice under

Section 142(1) was issued but from nowhere it appears from record any notice under Section 143(2) of the Act was issued in the matter before passing the impugned assessment order.

It is well-settled principle of law and statutory requirement that issuance of notice under Section 143(2) is mandatory before passing any order under Section 143(3)/147 of the Act which has not been complied with in this case which is an admitted position.

Considering the facts and circumstances of this case as appears from record and submissions of the parties, the aforesaid impugned order under Section 143(3) is not sustainable in law and is liable to be set aside and the matter is remanded back to the assessing officer concerned to proceed afresh from the stage where such irregularity has committed and pass a fresh order after observing due procedure of law. In course of further proceeding if the assessing officer feels to proceed in the matter he allow the petitioner to raise all the points in this writ petition before him and he shall pass a speaking order after considering the petitioner's objection/points raised in course of any fresh proceeding under Section 143(3)/147 of the Act.

With these observations and directions, this writ petition being WPO 1010 of 2023 stands disposed of.

(MD. NIZAMUDDIN, J.)

TR/