OD –2

ORDER SHEET
WPO/1065/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

KRUSHANA INFRA PROPERTY PRIVATE LIMITED
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 21st June, 2023.

Appearance:
Mr. A.K. Upadhyay, Adv.
Mrs. Shobha Upadhyay, Adv.
...For the Petitioner
Mr. Amit Sharma, 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 relating to the relevant assessment year on the ground that the statutory obligation of taking approval from the "specified authority" as per Section 151(ii) of the Act which has not been taken since in the instant case and the approval has been taken for passing the order under Section 148A(d) of the Act from the Principal Commissioner while in the instant case admittedly the "specified authority" is Principal Chief Commissioner of Income Tax which could not be disputed by Mr. Kundalia, learned advocate appearing for the respondents. Though Mr. Kundalia submits that as per instruction of the CBDT being instruction no. 101/20-22 dated 11th May, 2022 para 6.2 II in case of assessment year 2016-17 and 2017-18 for the purpose of issuance of notice under Section 148 of the Act approving authority will be the "specified authority" under Section 151(ii) of the Income Tax Act, 1961. But in this case admittedly notice has been issued after the expiry of three years from the end of the relevant assessment year and even if the argument of Mr. Kundalia is accepted that the time to issue the notice under Section 148 of the Act was extended by TOLA (Taxation and Other Laws) by converting notice under Section 148 into 148A(b) of the Act, statutory compliance of the formalities under Section 151(i) & (ii) with subsequent notice under Section 148 of the Act has not been specifically dispensed with and I am of the view that by any circular or notification or instruction statutory obligation under an Act cannot be waived or dispensed with and it can be done only by way of legislation or statute. Purpose of any notification, Circular is to supplement a statutory provision and not to supplant a statutory provision.

In view of discussion made above and admitted factual and legal position that statutory obligation under Section 151(ii) has not been fulfilled in this case the impugned order under Section 148A(d) of the Act and subsequent proceedings are set aside and the case is remanded back to the assessing officer to proceed afresh from the stage when such irregularity has been committed and pass a fresh order under Section 148A(d) of the Act in accordance with law after taking approval from the "specified authority" under Section 151(ii) of the Act and such final order under Section 148A(d) shall be passed after following due procedure of law, within a period of eight weeks from the date of communication of this order and proceeding subsequent to fresh order under Section 148A(d) of the Act will depend upon the final outcome of the fresh order to be passed under Section 148A(d) of the Act.

With these observations and directions, this writ petition being WPO 1065 of 2023 stands disposed of.

(MD. NIZAMUDDIN, J.)

TR/