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ORDER SHEET
WPO/1096/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

NITIN AGARWAL
VS
INCOME TAX OFFICER WARD 46(1) KOLKATA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 8th June, 2023.

Appearance:
Ms. Rita Mukherjee, Adv.
Ms. Sutapa Roy Choudhury, Adv.
Mr. Abhijat Das, Adv.
Ms. Aratrika Roy, Adv.
Mr. Anirban Chatterjee, Adv.
...For the Petitioner
Mr. Prithu Dudhoria, Adv.
...For the Respondents

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 13th April, 2023 under Section 148A(d) of the Income Tax Act, 1961 relating to assessment year 2019-20.

I have perused the aforesaid impugned order from which it appears that there is an allegation of bogus purchase made by the petitioner amounting to Rs. 2,08,87,819/- during the financial year 2019-20. It also appears from the aforesaid impugned order that the opportunity of being heard was provided to the petitioner along with the copy of information and material relied upon and the assessee petitioner was asked to explain as to why the aforesaid transaction should not be treated as income chargeable to tax which is an escaped assessment. It also appears from the aforesaid impugned order that notice along with annexure was duly served upon the assessee petitioner through speed post to the registered address of the petitioner and the petitioner was asked to furnish reply to the same before 10th April, 2023 and pursuant to the same assessee has filed reply also and the assessing officer has considered the said reply. It may be that the assessing officer has come to a different conclusion but that does not mean that the assessing officer has not given the petitioner any opportunity of hearing or the assessing officer will have to agree with the contention of the petitioner. Findings against the petitioner based on material evidence cannot be re-appreciated and scrutinised by the Writ Court in exercise of its jurisdiction under Article 226 of the Constitution of India by acting as an assessing officer or an appellate authority. Furthermore petitioner has still ample scope after passing of the order under Section 148A(d) of the Act to make out any case if he has in his favour subsequent to the notice under Section 148 of the Act before passing of the final assessment order under Section 147 of the Act.

Furthermore I am of the considered opinion that order under Section 148A(d) of the Act is neither final assessment order nor any demand arises out of the same and even if the order is passed under Section 147 of the Act that itself is also appealable under the statute. In view of the facts and circumstances of the case and nature of allegation I do not find any illegality in the impugned order and accordingly this writ petition being WPO1096 of 2023 is dismissed.

(MD. NIZAMUDDIN, J.)

TR/