OD –6

ORDER SHEET

WPO/1193/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

EXCEL COMMODITY AND DERIVATIVE PRIVATE LIMITED
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 5th July, 2023.

Appearance:
Ms. Arati Agarwal, Adv.
Ms. Rosy Banerjee, Adv.
...For the Petitioner
Mr. Aryak Dutt, Adv.
...For the respondents

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 19th April, 2023 under Section 148A(d) of the Income Tax Act, 1961 relating to assessment year 2019-20 on the ground that petitioner's objection/response to the notice under Section 148A(b) of the Act was not properly considered. There is a difference between non-consideration at all and improper consideration of a response. It is not a case where objection of the petitioner has not been considered at all though assessing officer has come to a different conclusion. Further, ground of challenge of the aforesaid impugned order as appears from the argument and submission of learned advocate appearing for the petitioner that it revolves around the merit of the impugned order which is based on facts and material evidence and this Writ Court cannot act as an assessing officer or as an appellate authority to scrutinize or re-appreciate those evidence on the basis of which the assessing officer has come to such conclusion. Furthermore I am of the view that any findings and conclusion in an order under Section 148A(d) of the Act is not a final findings and conclusion and the same will be again subject to final outcome of the order under Section 147 of the Act which has not yet been passed and assessing officer while taking the final view and before conclusion in passing the order under Section 147 of the Act will have to follow all the procedures like a regular assessment proceeding by issuing notice under Section 142(1), 143(2) of the Act and service of draft assessment order to the petitioner.

In view of the discussion made above, I am not inclined to interfere with the aforesaid impugned order under Section 148A(d) of the Act. Petitioner will be at liberty to take all the points raised in this writ petition in course of the proceedings subsequent to the order under Section 148A(d) of the Act. Furthermore, the ground of the petitioner challenging the notice under Section 148 of the Act that after the order under Section 148A(d) of the Act which was issued by the jurisdictional assessing officer in case the same should be issued faceless, this is a hyper-technical ground since mode and manner of service of a notice does not affect contents, substance and merit of a notice unless petitioner makes out a case that notice was not served at all or he has not received the notice. It is not a case that no notice has been issued at all and in all proceedings subsequent to the impugned order under Section 148A(d) of the Act department will have to follow the procedure laid down for faceless assessment.

In view of the discussion made above, this writ petition being WPO 1193 of 2023 is dismissed.

(MD. NIZAMUDDIN, J.)

TR/