OD –5

ORDER SHEET
WPO/1302/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S. MOVEMENT TRADERS PRIVATE LIMITED
VS
THE PRINCIPAL COMMISSIONER OF INCOME TAX, (PCIT) AND ANR.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 25th July, 2023.

Appearance:
Ms. Nilanjana Adhya, Adv.
Mr. Abhishek Agarwal, Adv.
Mr. Amir Ali, Adv.
...For the Petitioner
Mr. S. Roy Chowdhury, 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 dated 26th April, 2023 relating to assessment year 2019-20 on the ground that petitioner should be allowed to cross-examine the witnesses on whose statement assessing officer has relied before passing the order under Section 148A(d) of the Act.

I have perused the aforesaid impugned order under Section 148A(d) of the Act containing 47 pages and which is a very detailed lengthy order recording reasons and findings based on materials, documents and evidence. I also find that the aforesaid impugned order under Section 148A(d) of the Act has neither been passed by officer having inherent lack of jurisdiction nor there is any procedural irregularity nor the aforesaid impugned order is contrary to any specific statutory provision of law. It is to be remembered that the order under Section 148A(d) of the Act is neither a final assessment order like any adjudication order under Customs Act or any other Act out of which any demand arises. If right to cross-examine is allowed to each and every assessee just at the stage of passing order under Section 148A(d) of the Act like a trail Court in a civil suit or in criminal case by asking the assessing officer to act like a Trial Court, in absence of any of the conditions or criteria referred hereinabove for entertaining the writ petition, it will make the whole proceeding subsequent to proceeding under Section 148A(d) of the Act like issuance of notice under Section 142(1) and 143 of the Act and again giving an opportunity of hearing to the petitioner before passing the final assessment order under Section 147 of the Act, and all subsequent proceeding under the relevant provisions will become only a piece of paper and all proceedings under the statutory provisions for passing order under Section 147 of the Act subsequent to passing the order under Section 148A(d) of the Act will be frustrated. Order under Section 147 of the Act which is an appealable order under the statute can be interfered by writ Court under Article 226 of the Constitution and writ petition only under exceptional cases indicated herein above and this case does not fall under those exceptions.

In view of the discussion made above, I am not inclined to entertain this writ petition being WPO 1302 of 2023 and accordingly the same is dismissed.

(MD. NIZAMUDDIN, J.)

TR/