OD –11

ORDER SHEET

WPO/1341/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

THE ANANDA BAG TEA COMPANY LIMITED
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 26th July, 2023.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Pradeep Jewrajka, Adv.
Ms. Pooja Jewrajka, 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 assessment order under Section 147 of the Income Tax Act, 1961, dated 31st May, 2023 relating to assessment year 2014-15 on the ground that its objection to the notice under Section 148A(b) of the Act was not properly considered and discussed in the order under Section 148A(d) of the Act. But in this case petitioner has not approached this Court at the stage of passing of the order under Section 148A(d) of the Act, petitioner has approached this Court after the order under Section 148A(d) was culminated into the final assessment order under Section 147 of the Act by participating in the proceeding. What appears from the submission of Mr. Bag, learned advocate appearing for the petitioner that petitioner has challenged the merit of the assessment, reasonings and findings by the assessing officer in the assessment order and intends this Writ Court to scrutinise the impugned assessment order and findings therein based on material evidence. It also appears from the submission of Mr. Bag that petitioner is not satisfied with the reasonings and findings recorded by the assessing officer in the impugned assessment order which according to him is not sufficient. Mr. Bag has relied on a judgment of the Hon'ble Delhi High Court in the case of "SABH Infrastructure Ltd. vs. Assistant Commissioner of Income Tax" reported in (2018) 99 taxmann.com 409 (Delhi). I have considered the said judgment where the issue was relating to the notice under Section 148 of the Income Tax Act (under the Old Act) where there were no provisions like giving opportunity to an assessee to file objection to the notice which is mandatory to be issued under Section 148A(b) of the Act and that after considering the objection against under Section 148A(b) of the Act, the assessing officer was required to pass order under Section 148A(d) of the Act and only thereafter he will have to issue notice under Section 148 of the Act after approval from the specified authority and after issuance of notice under Section 148 of the Act the assessing officer will have to observe all the formalities of issuing notice under Section 142(1) and 143(2) like a regular assessment and only then order under Section 147 could be passed. These factors were not present under the Old Act.

It is a well-settled principles of law that the Writ Court cannot act as an assessing officer or an appellate authority to scrutinise the facts and findings based on evidence by the assessing officer in the final assessment order which is an appealable order and to substitute with its own findings and reasonings. This is not a case where the assessment order has been passed by an authority having inherent lack of jurisdiction or there is any procedural irregularity or that the impugned order has been passed in violation of principles of natural justice which are exceptions for entertaining the writ petition in spite of availability of alternative remedy.

In view of the discussion made above, I am not inclined to entertain this writ petition and accordingly, this writ petition being WPO 1341 of 2023 is dismissed.

However, dismissal of this writ petition will not be a bar on the part of the petitioner to raise all the points in this writ petition, before the appellate authority if it intends to file appeal against the impugned assessment order.

(MD. NIZAMUDDIN, J.)

TR/