OD –18

ORDER SHEET
WPO/1407/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

RAMDHANI JAISWAL
VS
COMMISSIONER OF INCOME TAX CIRCLE 2 AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 31st July, 2023.

Appearance:
Ms. Swapna Das, Adv.
Mr. Siddharth Das, 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 assessment order dated 22nd May, 2023, under Section 147 read with Section 144B of the Income Tax Act, 1961, relating to assessment year 2016-17. Petitioner submits that the aforesaid order has been passed in violation of principles of natural justice by not considering his application for adjournment on the show cause notice dated 15th May, 2023.

I have perused the writ petition from which it appears that the show cause notice as to why proposed variation should not be made was issued on 15th May, 2023 and by which petitioner was asked to give his response by 10.15 hours on 17th May, 2023. Petitioner submits that petitioner could not file his reply to the show cause notice which petitioner attempted to file on 19th May, 2023 though time was granted to submit the reply was within 17th May, 2023 at 10 a.m. Petitioner submits that petitioner had requested for adjournment on 20th May, 2023 but could not produce any document to show that any adjournment petition was filed by the petitioner before the assessing officer concerned against the show cause notice in question by which petitioner was asked to file reply/objection by 17th May, 2023.

Considering the facts and circumstances of the case, I am of the view that in this case it cannot be said that no opportunity to submit response/reply to the show cause notice was given to the petitioner and that the impugned assessment order was passed before the expiry of time granted to the petitioner which was by 17th May, 2023. In this case impugned order was passed on 22nd May, 2023. As such respondent Income Tax Authority cannot be faulted since neither any adjournment petition nor any objection was filed before the assessing officer on 17th May, 2023 which was the time granted to the petitioner. Furthermore, the impugned assessment order is an appealable order.

In view of the facts and circumstances of the case, I am not inclined to interfere with the impugned assessment order under Section 147 of the Act and accordingly this writ petition being WPO 1407 of 2023 is dismissed on the ground of availability of alternative remedy by way of appeal.

In view of payer made by the petitioner for extending the time to file appeal before the CIT (Appeals), time is granted to the petitioner to file appeal against the impugned assessment order within two weeks from date and if such appeal is filed within the time stipulated herein, the appellate authority shall consider the appeal on merit without raising the point of limitation.

(MD. NIZAMUDDIN, J.)

TR/