OD –5

ORDER SHEET

WPO/1478/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

ADWEALTH STOCK BROKING PRIVATE LIMITED
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 14th August, 2023.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Pradeep Kumar Jewrajka, Adv.
Ms. Pooja Jewrajka, Adv.
Ms. Anjali Tulsian, Adv.
...For the Petitioner
Mr. Om Narayan Rai, Adv.
...for Income Tax Authority

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 19th April, 2023 relating to assessment year 2016-17 which has been passed on the basis of impugned notice under Section 148A(b) of the Act dated 25th March, 2023 on the ground that the assessing officer has sought to reopen the assessment in question on the very same ground and on the very same issue which is the subject matter of the pending appeal in respect of the same assessment year. I have perused the grounds of appeal in the pending appeal in question filed on 17th January, 2019 which relates to two issues ; firstly addition of Rs. 25 lakhs as unexplained cash credit and secondly addition of Rs. 1,17,010/- as deemed expenditure. When Mr. Bag learned advocate appearing for the petitioner was asked to demonstrate from the annexure to the impugned notice under Section 148A(b) of the Act that the aforesaid issues pending before the appellate authority are also the grounds for issuance of notice under Section 148A(b) of the Act to which he could not satisfy this Court from the reasons annexed to the impugned notice under Section 148A(b) of the Act.

As such, the aforesaid ground of challenge by Mr. Bag is not sustainable in law for interfering with the impugned order under Section 148A(d) of the Act.

Mr. Bag raises another issue for challenging the impugned order under Section 148A(d) of the Act that the assessing officer has not considered its reply to the notice under Section 148A(b) of the Act before passing the impugned order under Section 148A(d) of the Act which on perusal of record I find that the same is not correct and it is not a case that after the issuance of notice under Section 148A(b) of the Act any procedural irregularity has been committed by the assessing officer or there is violation of principles of natural justice or that the impugned order has been passed in contrary to any provision of law and as such I am not inclined to interfere with the impugned order under Section 148A(d) of the Act. Accordingly, this writ petition being WPO 1478 of 2023 is dismissed.

However, petitioner will be at liberty to raise all the points raised in this writ petition before the assessing officer in course of proceeding subsequent to the order under Section 148A(d) of the Act and the assessing officer shall consider the same in accordance with law.

(MD. NIZAMUDDIN, J.)

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