OD –1

ORDER SHEET
WPO/1552/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

LAKSHMAN PRASAD GARWAL
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 21st September, 2023.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Anujit Mookherji, Adv.
...For the Petitioner
Mrs. Smita Das De,Adv.
...For the respondents

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned orders under Section 147(under the Old unamended Act) of the Income Tax Act, 1961 relating to assessment year 2017-18 on the ground of violation of principles of natural justice by denying the petitioner his right to cross-examine one witness named Rajal Ashar on whose statement the respondent Income Tax Authority has relied in passing the impugned assessment order. It appears that in compliance of the order of the Division Bench of this Court in petitioner's own case though respondent Authority have furnished the complete documents which petitioner has asked for, before passing the impugned assessment order and from which petitioner came to know that the respondent has relied on the aforesaid witness and whose statement is adverse to the interest of the petitioner but he has not been allowed to cross-examine and as basic principles of natural justice, petitioner is entitled to cross-examine the said witness.

Ms. Das De, learned advocate appearing for the respondent Income Tax Authority submits that since the impugned order under Section 147 of the Act has already been passed and which is an appealable order, as such on the ground of availability of alternative remedy, this writ petition should not be entertained but she failed to satisfy this Court from record that petitioner was granted opportunity to cross-examine the aforesaid witness upon whose statement petitioner has relied. It is not a case under the newly amended Act relating to assessment order under Section 147 and 148A where petitioner after the order under Section 148A(d) of the Act had the scope in asking for cross-examination. Under the Old Act, there is no such scope. Contention of Ms. Das De that right to cross-examine the aforesaid witness cannot be considered in this case since the said witness resides beyond 500 kilometer from the respondents' office which is something absurd in this modern electronics age when computer and internet facilities are available globally.

Considering the facts and circumstances of the case and in view of the discussion made above, this writ petition being WPO 1552 of 2023 is disposed of by setting aside the aforesaid impugned assessment order under Section 147 of the Act and the matter is remanded back to the assessing officer concerned to pass a fresh order after providing the petitioner opportunity to cross-examine the aforesaid witness.

It is clarified that the aforesaid impugned order has been set aside only on the ground of violation of principles of natural justice by denying the petitioner his right to cross-examine the aforesaid witness and not on other merits of the assessment order.

(MD. NIZAMUDDIN, J.)

TR/