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ORDER SHEET

WPO/3359/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

DEBRAJ DEALERS PRIVATE LIMITED
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 11th January, 2023.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Anuj Kr. Mishra, Adv.
Mr. Balaram Patra, Adv.
Mr. Ankit Agarwal, Adv.
Ms. Viyushi Rawat, Adv.
...For the Petitioner

Mr. Om Narayan Rai, Adv.
...For the Revenue

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 29th July, 2022, relating to assessment year 2017-18 being not satisfied with the reasons given by the respondent assessing officer on the objection/reply filed by it in response to the notice issued under Section 148A(b) of the Act. The respondent assessing officer has not accepted the explanation given by the assessee petitioner relating to alleged escapement of income in the form of transaction of sale of shares to the tune of Rs. 50 lakhs received by the petitioner from one M/s. Runicha Merchants Gems Pvt. Ltd. through non-banking channels and the assessing officer has held in the impugned order that the assessee petitioner has received accommodation entry of Rs. 50 lakhs in the banking account as manifested in certain forms of assets in the account and the assessing officer has come to the finding that the said account as undisclosed escaped income chargeable to tax. This is not a case which falls under those categories of cases where the allegation of any violation of principles of natural justice is involved or that the impugned order has been passed by an authority having inherent lack of jurisdiction or that there is a specific allegation of contravention of any specific provision of the Income Tax Act or there is any procedural irregularity in course of impugned proceedings.

Sole case of the petitioner in this writ petition is that its objection / response to the notice under Section 148A(b) has not been properly dealt with and discussed and that the impugned order is not a speaking one and according to petitioner the reason given by the assessing officer in not accepting the explanation of the petitioner is not sufficient and satisfactory which inn my considered opinion cannot be a ground for invoking Constitutional Writ Jurisdiction of this Court under Article 226 of the Constitution of India.

I find on perusal of the impugned order that the assessing officer has considered the material available and written submission provided by the petitioner and has given the reason for not accepting the same.

The Writ Court should not in exercise of its writ jurisdiction should substitute the findings of an assessing officer in his order with its own. In addition, I am of the considered view that the order under Section 148A(d) of the Income Tax Act, 1961 in itself is not a final assessment order or demand and petitioner will still have scope of making out a case on merit for dropping the reassessment proceeding after issuance of notice under Section 148 of the Act subsequent to the order under Section 148A(d) of the Income Tax Act. In each and every order except in exceptional circumstances if writ Court starts interfering with order under Section

148A(d) and subsequent notice under Section 148 of the Income Tax Act, 1961, the very purpose and object of legislation relating to proceedings subsequent to the order under Section 148A(d) of the Act will beco-me otiose.

In view of the reasonings and discussion made above, I am not inclined to entertain this writ petition being WPO 3359 of 2022 and the same is dismissed.

However, it is clarified that any finding and observation made by this Court in this order will not have a bearing on the merit of the final assessment order to be passed subsequent to notice under Section 148 of the Act.

(MD. NIZAMUDDIN, J.)

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