10.01.2024
PB
Sl. No.1.

WPA 18407 of 2023

Gee Bee Nirman Co. Pvt. Ltd.
Vs
Income Tax Officer, Ward-5(1),
Kolkata & Ors.

Mr. Avra Mazumder,
Mr. Kousheyo Roy.
... For the Petitioner.
Mr. Aryak Dutt.
.......for the respondent no1.

Heard learned Advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned assessment order dated 22nd May, 2023, under Section 147/144B of the Income Tax Act, 1961, relating to the assessment year 2016-17, on the ground of violation of principle of natural justice by admittedly denying the petitioner its right to cross-examine the witness in question on whose statement the Assessing Officer has relied while passing the impugned assessment order.

Mr. Dutt, learned advocate for the respondent income tax authority could not deny such allegation of the petitioner that petitioner was denied to cross-examine the witness in question.

Petitioner in support of his case on the aforesaid contention, has relied on an order of Division Bench of this Court dated 2nd January, 2024, in the case of Gee Bee Nirman Co. Pvt. Ltd. Vs. Income Tax Officer, Ward – 5(1), Kolkata & Ors. in MAT No.1667 of 2023 and particularly paragraph 9 of the said order.

Considering the facts and circumstances of the case and submission of the parties and the aforesaid order of the Division Bench of this Court, this writ petition being WPA 18407 of 2023 is disposed of by setting aside the impugned assessment order dated 22nd May, 2023 and the matter is remanded back to the Assessing Officer concerned to pass a fresh assessment order after issuing summons to the witness in question and in case the said witness refuses to respond to the same or to cooperate the Assessing Officer in that event while passing the fresh assessment order, the statement of the said witness shall not be relied upon by the Assessing Officer. Needless to mention that the fresh assessment order shall be passed after giving opportunity of hearing to the petitioner or its authorized representatives, within a period of two months from the date of communication of this order.

**( Md. Nizamuddin, J.)**