OD –3

ORDER SHEET

WPO/118/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

NITIN AGARWAL
VS
INCOME TAX OFFICER, WARD-46(1), KOLKATA AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 20th March, 2024.

Appearance:
Ms. Sutapa Roy Choudhury, Adv.
Mr. Abhijat Das, Adv.
Ms. Aratrika Roy, Adv.
Mr. Anirban Chatterjee, Adv.
...For the Petitioner

Mr. Prithu Dudhoria, Adv.
...for the respondents

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order in original dated 29th December, 2023 passed under Section 148A(d) of the Income Tax Act, 1961 relating to assessment year 2019-20 and subsequent notice under Section 148 of the Act. This is the second round of litigation according to the petitioner. Petitioner submits that while passing the aforesaid impugned order under Section 148A(d) of the Act, the assessing officer has recorded that some of the documents which are relevant to the impugned assessment proceeding were not produced by the petitioner. Petitioner submits that he should have been given an opportunity to produce documents indicating the impugned order which are alleged to have been not produced.

This Court in exercise of Constitutional Writ Jurisdiction under Article 226 of the Constitution of India cannot act as an assessing Authority and decide which documents are relevant for the purpose of assessment and the assessing officer is the competent authority to decide which are the documents which has got some relevance for the purpose of assessment. Furthermore, this is not the case where impugned proceeding has been initiated by an authority having inherent lack of jurisdiction and that the impugned order has been passed without giving any opportunity of personal hearing or that the impugned order has been passed contrary to any specific provision of law. The documents indicated in the impugned order which alleged to have been not produced by the petitioner, petitioner has still scope to produce the same in course of further subsequent proceeding to the notice under Section 148 of the Act and there is no bar on the part of the assessing officer to consider those documents if produced by the petitioner in course of subsequent proceeding before passing any final assessment order.

Considering the facts and circumstances of the case and submissions of the parties, this writ petition being WPO 118 of 2024 is disposed of by granting liberty to the petitioner to produce the relevant documents as has been indicated in the impugned order under Section 148A(d) of the Act which were alleged to have been not produced and if the petitioner files those documents in course of subsequent proceeding, the assessing officer shall consider the same in accordance with law before passing any final assessment order under Section 147 of the Act.

Needless to mention that the final assessment order will be passed strictly in accordance with law.

With these observations and directions, this writ petition stands disposed of.

(MD. NIZAMUDDIN, J.)

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