OD –3

ORDER SHEET
WPO/255/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SHRI KAUSTUV RAY
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 8th April, 2024.

Appearance:
Mr. Somabrata Datta, Adv.
Mr. Biswajit Kumar, Adv.
Mr. Victor Chatterjee, Adv.
...For the Petitioner
Mr. Om Narayan Rai, Adv.
Mr. Soumen Bhattacharjee, Adv.
...For the Respondents

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned assessment order dated 26th December, 2022, under Section 143(3) read with Section 144B of the Income Tax Act, 1961, relating to assessment year 2021-22 on the ground of violation of principles of natural justice by contending that petitioner could not properly represent his case since his legal consultants was taken into custody by Enforcement Directorate Authority and he expired in jail custody on 2nd February, 2024. It appears from record annexed to the writ petition that the impugned assessment order passed on 26th December, 2022 was initiated by a notice under Section 148 of the Act issued on 14th February, 2023 which was duly received by the petitioner.

Mr. Rai, learned advocate representing the respondent Income Tax Authority submits that the case petitioner has tried to make out in this writ petition is quite new and it is for the first time petitioner has intended to make out in this writ petition while before the Authority concerned this defence of petitioner's tax consultant's custody and his expiry was never brought to the notice of the Income Tax Authority concerned and furthermore petitioner in spite of receiving the impugned notice under Section 148 of the Act, dated 14th February, 2023, never responded to the same neither prayed for any adjournment nor any response to the said notice petitioner filed return which is a statutory obligation on the part of the petitioner.

In addition, the impugned order is an appealable order under the Income Tax Act which I find that the same is neither without jurisdiction nor is contrary to any specific provision of law and furthermore the assessment order is based on facts and findings on material evidence and this Writ Court in exercise of its Constitutional Writ Jurisdiction under 226 of Constitution of India shall not act as an appellate authority and scrutinise those material evidence and findings which is the job of an appellate authority under the statute.

I also find that the impugned assessment order has not been passed by an authority having inherent lack of jurisdiction or the impugned order there is procedural irregularity. Furthermore, it is not a case that issues raised in this writ petition cannot be adjudicated by the appellate authority having any legal bar.

Considering the facts and circumstances of the case, submission of parties and in view of the discussion made above, I am not inclined to interfere with the impugned assessment order and accordingly the writ petition being WPO 255 of 2024 is dismissed.

However, dismissal of this writ petition will not be a bar on the part of the petitioner to avail statutory alternative remedy and to take all the points raised in this writ petition before the appellate authority concerned.

Leave is granted to the petitioner to correct the typographical error in the prayer portion of the writ petition.

(MD. NIZAMUDDIN, J.)

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