OD –11

ORDER SHEET
WPO/929/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SHRI SHYAM SUNDAR DHANUKA
VS
OFFICE OF THE INCOME TAX OFFICER WARD 8(1), KOLKATA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 8th May, 2023.

Appearance:
Mr. Saurabh Bagaria, Adv.
Mr. Saumya Kejriwal, Adv.
Ms. Ananya Rath, Adv.
Mr. Gauri Shankar Gupta, Adv.
...For the Petitioner
Mr. Tilok Mitra, Adv.
Mr. Amit Sharma, Adv.
...For the Respondents

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the legality of the impugned order under Section 148A(d) of the Income Tax Act, 1961 dated 7th April, 2023 relating to assessment year 2016-17. Main allegation of the petitioner in challenging the impugned order while passing the aforesaid impugned order the assessing officer has relied on some investigation report from the office of the DGIT (Investigation) where some remarks was made as "potential borrower/lender" and it is the case of the petitioner that impugned proceeding on the basis of the alleged remarks of "potential borrower/lender" without naming or disclosing anything in detail against the petitioner, is legally not sustainable.

I have perused the aforesaid impugned order and I find that such allegation of learned advocate appearing for the petitioner that the assessing officer has proceeded merely on the basis of remarks "potential borrower/lender" is not correct since in the later part of the order assessing officer has clarified that on verification of the document the assessing officer has found credible evidence of actual borrowings and not potential in nature. It has also been recorded by the assessing officer in the impugned assessment order that it is evident that the assessee has availed cash loan to the tune of Rs. 40,70,00,000/- through finance broker named Kaseras from different lenders namely Uma Shankar Kasera and it has also been recorded that there is a huge unexplained expenditure within the meaning of Section 69C of the Act and that the cash loan and repayment in cash comes within the crux of provision 269SS and 269T and other relevant provisions of penalty under the aforesaid Act. I find on perusal of the aforesaid impugned order under Section 148A(d) of the Act that the same is based on huge materials and evidence regarding the alleged transaction and that Court in exercise of Constitutional Writ Jurisdiction cannot act as an assessing officer and scrutinize those facts and evidence and substitute the same with its own. I find that aforesaid impugned order is neither a non-speaking order nor any violation of principles of natural justice nor any procedural irregularity has been committed during the proceeding nor the impugned order has been passed by an officer having inherent lack of jurisdiction which is based on facts and findings and materials evidence. The aforesaid factors should not be ignored. In addition the order under Section 148A(d) of the Act is neither a final assessment order nor any demand arises out of such order and petitioner still will have ample opportunity and scope to make out a case in its favour in proceeding subsequent to the order passed under Section 148A(d) of the Act.

In view of the discussion made above, this writ petition being WPO 929 of 2023 stands disposed of.

It appears from record that this writ petition has been affirmed by one Ravi Kumar Agarwal describing himself as a businessman residing at 69, S.K. Deb Road, Jyotimill, Lake Town, SreeBhumi, Kolkata-700048 at Ujaas on behalf of the petitioner who is the resident of 29, Ballygunge Park, Kolkata-700019 by virtue of being a constituted attorney of the petitioner though the deponent is neither an employee of the petitioner nor related to the petitioner in any manner.

Mr. Bagaria representing the petitioner shall provide a copy of the pan card to Mr. Tilok Mitra appearing for the respondent Income Tax Authority and the department will enquire about the business activity of this deponent, Ravi Kumar Agarwal and verify from his return about the nature of business and transaction this deponent dealt with and the assessing officer concerned shall file a report to this Court on 18th May, 2023 when this matter will come up as 'To Be Mentioned'.

(MD. NIZAMUDDIN, J.)

TR/