IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-03-2015

Coram :

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P. No. 5637 of 2015

I. Jaheer Ali
Proprietor
M/s. J.A. Electrical Engineering Works
No.59/0, Meenakshi Nagar
Near Central Jail
Salem - 636 007 .. Petitioner

Versus

1. Commissioner of Income Tax (Appeals)
   O/o. Commissioner of Income Tax (Appeals)
   No.3, Gandhi Road
   Salem - 636 007

2. The Assistant Commissioner of Income Tax
   Circle 1, Salem - 636 007 .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent dated 30.12.2014 bearing Order in I.T.A. No. 284/2010-11 and to quash the same with the consequential direction to the first respondent to provide an opportunity of hearing for the disposal of appeal on merits in accordance with law.

For Petitioner : Mr. H. Nazirudeen
For Respondents : Mr. Pramod Kumar Chopda

ORDER

The petitioner seeks to quash the order dated 30.12.2014 of the first respondent, in and by which, the first respondent dismissed the appeal preferred by the petitioner, exparte.

2. Admittedly, the appeal filed by the petitioner was taken up for hearing by the first respondent on 06.09.2012, 24.09.2012, 22.01.2013 and 20.08.2014. In all those hearings, there was no representation for the petitioner. Therefore, the first respondent came to the conclusion that the petitioner is not interested in prosecuting the appeal and consequently dismissed the appeal on 30.12.2014 for non-prosecution.

3. The learned counsel appearing for the petitioner would contend that as against the order dated 24.12.2010 of the second respondent, the petitioner has preferred the appeal under Section 143 (3) of the Income Tax Act before the first respondent. According to the learned counsel for the petitioner, the first respondent, in exercise of powers conferred under Section 251 of the Income Tax Act may confirm, vary, reduce or enhance an order of assessment as contemplated under Section 251 (2) of the Act. However, the first respondent has no power to dismiss the appeal for non-prosecution. However, it is submitted by the learned counsel for the petitioner that the non-appearance of the petitioner or their representative on the hearing dates is neither wilful nor wanton. Therefore, in the interest of justice, one more opportunity shall be given to the petitioner to adjudicate the appeal on merits before the first respondent.

4. On the above contention, this Court heard the learned standing counsel for the respondents, who supported the order dated 30.12.2014 of the first respondent and prayed for dismissal of the writ petition.

5. I heard the learned counsel for both sides and perused the materials placed on record. Even though Section 251 of the Income Tax Act imposes an obligation on the appellate authority/the first respondent to dispose of an appeal filed before it on merits, in the given facts and circumstances of the case, it cannot be said that the order dated 30.12.2014 passed by the first respondent is in violation to the said provisions of the Income Tax Act. It is not as though the first respondent passed the order dated 30.12.2014 without affording sufficient opportunity to the petitioner. The appeal was posted for hearing on 06.09.2012, 24.09.2012, 22.01.2013 and 20.08.2014 and in all those hearings, there was no representation for the petitioner. Therefore, the first respondent has rightly passed the order dated 30.12.2014 dismissing the appeal preferred by the petitioner for non-prosecution. When the appellant did not turn up to agitate the appeal on merits, the first respondent can only conclude that the assessee is not interested to prosecute the appeal. Therefore, this Court is not inclined to interfere with the order passed by the first respondent. However, taking note of the fact that the petitioner has no occasion to challenge the validity of the order passed by the second respondent on 24.12.2010 and as the appeal was dismissed by the first respondent for non-prosecution, I feel that in the interest of justice, one more opportunity shall be given to the petitioner.

6. In the light of the above, the writ petition is disposed of by setting aside the order dated 30.12.2014 of the appellate authority/first respondent. No costs. The first respondent is directed to take up the appeal preferred by the petitioner for hearing on 24.04.2015 on which date, the petitioner shall appear before the first respondent without fail. The first respondent shall thereafter hear the petitioner and pass orders on merits and in accordance with law, as expeditiously as possible. It is made clear that if the petitioner did not appear before the first respondent on 24.04.2015, this order shall stand revoked automatically without reference to this Court and consequently the

order dated 30.12.2014 passed by the first respondent shall stand restored .

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. Commissioner of Income Tax (Appeals)
   O/o. Commissioner of Income Tax (Appeals)
   No.3, Gandhi Road
   Salem - 636 007

2. The Assistant Commissioner of Income Tax
   Circle 1, Salem - 636 007

+1 cc to Mr.H.Nazirudeen, Advocate,SR.15024

+1cc to Mr.T.Pramodkumar chopala, Advocate,SR.15310.

sk(co)
krd 9/4

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