04.12.2019
Krishnendu/04
Ct. No.01

CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri

M.A.T. 17 of 2019
With
C.A.N.1 of 2019
With
C.A.N.2 of 2019

Sanjib Chakraborty
-Vs-
Principal Chief Commissioner of Income-Tax, West Bengal & Sikkim & Anr.

Mr. Hillol Saha Podder
... ... for the Appellant

Mr. Samir Paul
... ... for the Respondents

The present appeal has been preferred challenging an order dated 3rd October, 2018 passed by the learned single Judge in the writ petition, being W.P. No.11982 (W) of 2018.

The application, being CAN 1 of 2019, has been preferred praying for condonation of delay towards preference of the instant appeal.

Upon hearing Mr. Saha Podder, learned advocate appearing for the appellant/writ petitioner and Mr. Paul, learned advocate appearing for the respondents, we are satisfied with the explanation given towards the delay in preferring the present appeal.

Accordingly, the application, being CAN 1 of 2019, is allowed and the appeal along with the stay application being CAN 2 of 2019 are taken up for hearing.

Mr. Saha Podder, learned advocate appearing for the appellant/writ petitioner submits that the writ petition has been dismissed for non-compliance of the direction contained in the earlier order 18th July, 2018 passed in the said writ petition. By the said order the writ petitioner/appellant herein was directed to effect service upon the appropriate authorities since the vires of the Central Act was under challenge. In terms of the said order dated 18th July, 2018, service was effected upon the appropriate authorities but the affidavit of service could not be filed on 3rd October, 2018 and for such laches, the appellant cannot suffer.

He further submits that in the writ petition the vires of Section 234F of the Income Tax Act, 1961 was challenged on various grounds but the same were not considered.

Mr. Paul, learned advocate appearing for the respondents denies and disputes the contention of the appellant/writ petitioner and submits that no interference is called for since the earlier direction contained in the order dated 18th July, 2018 was not complied with.

A perusal of the writ petition, annexed to the stay application, reveals that vires of Section 234F of the Income Tax Act was challenged on various grounds. The same needs to be heard and decided finally on merits.

Accordingly, the impugned order dated 3rd October, 2018 is set aside and the writ petition is remanded for hearing on merits.

Mr. Saha Podder, appearing for the appellant/writ petitioner undertakes to serve copies of the writ petition upon the appropriate authorities immediately.

Let such service be effected within a period of three weeks from date.

With the aforesaid observations and directions, the appeal and the stay application, being C.A.N.2 of 2019, are disposed of.

There shall, however, be no order as to cots.

Photostat certified copy of this order, if applied for, be given to the learned advocates for the parties upon compliance of all necessary formalities.

(Rajarshi Bharadwaj, J.) **(Tapabrata Chakraborty, J.)**