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W.P.A 10033 of 2021

(via video conference)

M/s. Parvati Resources Pvt. Ltd.
-Vs-
Income Tax Officer, Ward- 12(3)/Kolkata & Ors.

Mr. Avra Mazumder
... for the petitioner

Mr. Dhiraj Kr. Trivedi
Mr. M.N. Bandopadhyay ....for the Respondents

Heard learned Advocates appearing for the parties. In this writ petition, the petitioner has challenged the impugned order dated 29.3.2021 passed by the Principal Commissioner of Income Tax, (PCIT), Kolkata-2 under section 264 of the Income Tax Act, 1961, on the ground that before passing the impugned order, learned Commissioner has not considered the objection of the petitioner dated 26th March, 2021 received by him and it is submitted by the petitioner that his objection has got strong material which goes to the root of the case and non-consideration of the same before passing the impugned order is a gross violation of principles of natural justice.

Learned counsel appearing for the respondent Income tax authority has submitted on a written instruction dated 9th June, 2021 received by him from his client that in spite of receiving show-cause notice on 17th March, 2021 fixing the time limit for uploading counter comments on 19th March, 2021, no reply was received from the petitioner till 26th March, 2021 and the draft order under Section 264 of the Income Tax Act was approved for uploading after incorporating all the materials available on 26th March, 2021 and being a time barring matter the impugned order was uploaded on 29th March, 2021.

Considering the submission of the parties and on perusal of record, I find that the contention of the respondents that it was time barring matter is not acceptable in view of the fact that the relevant assessment order to be revised was received by the petitioner on 4th February, 2020 and as per the statute, limitation is two years from the date of receipt of such assessment order, so, the time for passing the impugned order was becoming barred on 3rd February, 2022 and in view of this fact, the respondent Commissioner could have easily considered the aforesaid objection of the petitioner on 29th March, 2021. There was enough time available to the Commissioner but hastily he passed the impugned order on 29th March, 2021.

The impugned order dated 29th March, 2021 passed by the Commissioner is set aside on the ground of violation of principles of natural justice by not considering the aforesaid objection dated 26th March, 2021 of the petitioner before passing the impugned order in spite of having enough time for passing the impugned order, order dated 29th March, 2021 being Annexure-P/5 to the writ petition, with a direction upon the Ld. Commissioner/respondent no. 2 to consider afresh the case of the petitioner and pass a reasoned and speaking order and strictly in accordance with law after giving opportunity of hearing to the petitioner or its authorised representative, within eight weeks from the date of the communication of this order.

Let it be recorded that this court has not gone into the merits of the case and the respondent commissioner is free to decide the aforesaid objection by applying his judicial mind.

The writ petition is disposed of accordingly.

(Md. Nizamuddin, J.)