OD-87 & 88

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

ITAT/4/2021
IA No.GA/1/2021

PRINCIPAL COMMISSIONER OF INCOME TAX, SILIGURI
-Versus-
NITU AGARWAL

ITAT/4/2021
IA No.GA/2/2021

PRINCIPAL COMMISSIONER OF INCOME TAX, SILIGURI
-Versus-
NITU AGARWAL

Appearance:
Mr. P. K. Bhowmick, Adv.
...for the appellant.

Mr. Subash Agarwal, Adv.
...for the respondent.

BEFORE:
The Hon’ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon’ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 10th December, 2021.

The Court : This petition has been filed by the revenue to condone the delay of 331 days in filing the appeal.

We have heard Mr. P. K. Bhowmick, learned counsel appearing for the appellant/revenue and Mr. Subash Agarwal, learned counsel appearing for the respondent/assessee.

Under normal circumstances, the Court will definitely exercise its discretion and take a lenient approach and very often would condone the delay in filing appeal by the revenue.

However, in the case on hand, we are compelled to take a different view on account of prejudice which has been caused to the assessee due to this belated filing of appeal by the revenue. The period of limitation for filing the appeal lapsed on 21st January, 2020. Had the appeal been preferred by the department within the said time, the assessee had an option to go under the Director Tax Vivad-se-Biswas Act, 2020 and file an application before the concerned authority. On account of the delay in filing the appeal, the assessee was not in a position to exercise such an option. That apart, we have perused the affidavit filed in support of the application for condonation of delay and we find that there is absolutely no reason assigned by the revenue to condone the inordinate delay of 331 days in filing the appeal.

Thus, both on the ground that no sufficient cause has been shown by the appellant/department and also on the ground that the assessee has been put to prejudice which cannot be remedied, we are not inclined to condone the inordinate delay in filing the appeal.

Accordingly, the petition for condonation of delay (IA No.GA/1/2021) is dismissed. Consequently, the appeal (ITAT/4/2021) stands rejected.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Das