Item No.4 & 5.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 06.12.2022

DELIVERED ON:06.12.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 244 of 2020
With
I.A. No.CAN 1 of 2020 (Old CAN 2510 of 2020)
With
I.A. No.CAN 2 of 2020 (Old CAN 2511 of 2020)

Great Barter Private Limited
Vs.
Assistant Commissioner of Income Tax, Circle-1(1), Kolkata & Ors.

And

M.A.T. 245 of 2020
With
I.A. No.CAN 1 of 2020 (Old CAN 2504 of 2020)
With
I.A. No.CAN 2 of 2020 (Old CAN 2506 of 2020)

Great Barter Private Limited
Vs.
Assistant Commissioner of Income Tax, Circle-1(1), Kolkata & Ors.

Appearance:-

Mrs. Manju Agarwal,
Ms. Anju Manot ... for the appellant.

Mr. Smarjit Roychowdhury .... for the respondents.

JUDGMENT

(Judgment of the Court was delivered by* T.S. SIVAGNANAM, *J.)

1. Since the issues involved in these appeals are common and germane, both the appeals are disposed of by this common judgment and order. For the sake of convenience, we take up MAT 244 of 2020 for discussion.

Re: I.A. No.CAN 1 of 2020 (Old CAN 2510 of 2020)

2. This is an application to condone the delay of 469 days in filing the instant appeal.

3. We have heard Mrs. Manju Agarwal, learned counsel appearing for the appellant and Mr. Smarajit Roychowdhury, learned counsel appearing for the respondents.

4. We are satisfied with the reasons assigned in the affidavit filed in support of the application. Accordingly, the delay in filing the instant appeal is condoned.

5. The applications for condonation of delay being I.A. No.CAN 1 of 2020 (Old CAN 2510 of 2020) and I.A. No.CAN 1 of 2020 (Old CAN 2504 of 2020) are allowed. There shall be no order as to costs.

Re: MAT 244 of 2020

6. This intra Court appeals have been filed both against a common order dated 26th September, 2018 passed in W.P. No.4717(W) of 2018 and W.P. No.4719 of 2018. There was one other writ petition, which was also dismissed in the said order, i.e. W.P.4720 of 2018.

7. The appellant had filed a separate appeal, which appears to have been dismissed for default and the appellant has filed an application for restoration of such appeal.

8. The challenge in the writ petition was to an order passed by the assessing officer, namely, the Assistant Commissioner of Income Tax, Central Circle-I(1), Kolkata by which the said assessing officer disposed of the said petition by directing the appellant to deposit 20% of the tax as determined in the order of assessment. Various grounds have been urged by the appellant in the said petition filed before the assessing officer as well as in the writ petition. The grounds, which have been raised by the appellant, have been noted by the learned Single Bench. However, the learned Single Bench had dismissed the writ petitions on the ground that the appellant had not pleaded hardship in the said application and therefore, no fault can be attributed to the order of the assessing officer, which in the opinion of the appellant, was devoid of reasons.

9. Admittedly, the assessments are high pitched assessments and when such high pitched assessments are appealed against and an order of stay is sought for either before the assessing officer by filing an application under Section 220(6) of the Income Tax Act, orders are passed by the assessing officer either keeping the notice of recovery in abeyance and not treating the assessee as an assessee in default till the appeal is disposed of.

10. There are yet another set of cases where the assessing officer for reasons to be recorded imposes certain conditions as a condition for grant of stay. The appellant's case falls under the second category where the assessing officer has directed 20% of the demand to be paid by the assessee for being entitled to grant of stay.

11. It is an undisputed fact that as against the impugned assessment order, appeal has been filed before the Commissioner of Income Tax (Appeals), second respondent on 25th January, 2018. It is not clear as to why the appeal is pending before the Commissioner (Appeals) for more than two years. Identical issues have come up for consideration before various High Courts and we would refer to two of the decisions of the High Court of Delhi, namely, **Valvoline Cummins Limited – Vs. – Deputy Commissioner of Income Tax, Dfelhi & Ors**. reported at **2008 (103) DRJ 567 (DB) and Soul Vs. Deputy Commissioner of Income Tax** reported at **(2010) 323 ITR 305.**

12. In both these cases, the Hon'ble Division Bench of the High Court of Delhi has considered high pitched assessments and has also taken note of the instruction issued by the CBDT and have held that when the assessments are unreasonably high pitched, the notices of recovery should remain stayed till the disposal of the appeal by the first appellate authority. In cases on hand, the return filed by the assessee was a loss return. However, the assessing officer has assessed the income and it is definitely a high pitched assessment. That apart, we find that the appeal was filed before the Commissioner of Income Tax

(Appeals) well within the period of limitation and is pending since 25th January, 2018.

13. That apart, we are informed by the learned Advocate appearing for the appellant that till date the notice of demand has not been enforced on the assessee. Thus, considering the peculiar facts and circumstances of the case, we are of the view that the appeal itself should be directed to be disposed of by the Commissioner of Income Tax (Appeals) at an early date and until then, recovery proceedings should be kept in abeyance.

14. In the light of the above, the appeals are allowed and the order passed in the writ petitions is set aside with a direction to keep the recovery notices issued by the assessing officer kept in abeyance and direct the Commissioner of Income Tax (Appeals), the appellate authority, to disposed of the appeals on merits and in accordance with law after affording an opportunity of personal hearing to the authorised representative of the assessee as expeditiously as possible preferably within a period of 45 days from the date of receipt of the server copy of this judgment and order.

15. We make it clear that we have not gone into the merits of the matter and it will be well open to the assessee to canvass all factual and legal issues before the Commissioner of Income Tax (Appeals).

16. There shall be no order as to costs.

17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)