Item No.2 & 3.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 04.05.2022 and 12.05.2022

DELIVERED ON:12.05.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

RVW 62 of 2022
With
MAT 329 of 2022

Bahin Samabay Krishi Unnayan Samity Ltd. & Anr.
VERSUS
The Union of India & Ors.

Appearance:-
Mr. Himangshu Kumar Ray .....for the applicants.

Mr. Om Narayan Rai .. for the respondents.

JUDGMENT

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

1. This review application has been filed to review the judgment and order in MAT 329 of 2022 dated 23rd March, 2022.

2. We have heard Mr. Himangshu Kumar Ray, learned advocate for the applicants and Mr. Om Narayan Rai, learned advocate appearing for the respondents.

3. The learned Advocate appearing for the review applicants would submit that there are certain errors, which are apparent on the face of the judgment and order which needs to be reviewed. Firstly, it is pointed out that in the first paragraph of the judgment, the date of the order of assessment has been wrongly recorded as 22.09.2021 instead of 27.09.2021 and the officer, who passed the order has not been mentioned and assessment year has also not been mentioned. Further, it is pointed out that in the writ petition, the review applicants had also challenged the order imposing penalty under Section 271(1)(c) of the Act dated 30.01.2022 passed by the third respondent. Therefore, it is submitted that these mistakes need to be rectified in the judgment.

4. Further, it is pointed out that in page 5 of the order, there is reference to Section 292B of the Act whereas the correct provision of the Act would be Section 292BB of the Act. Nextly, it is submitted that during the course of argument, the learned senior standing counsel has produced a screen shot to

show that on what date the transfer of the case took place. The learned Advocate appearing for the review applicants would submit that the said screen shot was not produced before the learned Writ Court and was produced before this Court for the first time during the course of argument for which he could not advance argument on the said screen shot.

5. Further, it is submitted that the review applicants have several ground to urge on the effect of the screen shot, which opportunity the review applicants was denied because such document was produced for the first time during argument. Therefore, it is a submission that the judgment has to be reviewed. Nextly, it is contended that the learned senior standing counsel had referred to an order passed by the CBDT dated 22.09.2021 with regard to the time limit for completion of the proceedings under the Act, more particularly in cases to be done under Section 147 of the Act. It is submitted that the order dated 22.09.2021 will have no application to the case of the review applicants and in this regard, the learned Advocate submitted that there are other orders passed by the CBDT much earlier, i.e. on 06.09.2021 and another on 29.06.2021.

6. The learned Advocate would further submit that without reference to the other orders passed by the CBDT, the revenue

could not have relied upon the order dated 22.09.2021. Therefore, it is submitted that this is also one more ground to review the judgment.

7. The learned senior standing counsel submitted that the Court has not gone into the merits of the matter but relegated the review applicants to prefer a statutory appeal and the grounds urged are not grounds of review.

8. After we have elaborately heard the learned Advocates appearing for the parties, we are of the view that the attempt of the review applicants is to reargue the appeal, which is impermissible. The settled legal position is that a review is not an appeal in disguise. Furthermore, we had made it clear that the appellate authority shall consider the appeal to be filed by the review applicants on merits and in accordance with law without being influenced by any of the observations and findings recorded by us in the judgment dated 23.03.2022. Therefore, the grounds, which have been urged by the learned Advocate for the review applicants can very well be urged before the appellate authority in the appeal, which has been directed to be filed and if the review applicants raise those grounds, it is needless to say that the appellate authority shall consider the same on merits and in accordance with law. So far as the

other minor mistakes, which have been pointed out by the learned Advocate appearing for the review applicants, the same can be corrected and if done so, it would not amount to reviewing the judgment but it would be correcting the typographical errors or details, which have been inadvertently not referred to.

9. For the above reasons, the review application is dismissed with the following direction:-

> In the first paragraph of the judgment dated 23.03.2022, the following sentence may be substituted "*the order of assessment dated 27.09.2021 for the assessment year 2013-2014 passed by the second respondent under Section 147 read with Section 1444 of the Income Tax Act, 1961 (in short "the Act") and the penalty order passed under Section 271(1)(c) of the Act by the third respondent dated 30.01.2022*" instead of "the order of assessment dated 22.09.2021 passed under Section 147 read with Section 144 of the Income Tax Act, 1961 (in short 'the Act')".

10. This order shall form part of the judgment and order dated 23.03.2022.

11. After we have dictated the above order, the learned Advocate appearing for the review applicants submitted that the time granted by this Court in the judgment and order dated 23.03.2022 to prefer the appeal may be extended. We accordingly extend the time for preferring the appeal in terms of the liberty granted in our judgment and order dated 23.03.2022 by a period of 30 days from the date of receipt of the server copy of this order.

12. 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)