Item No.6.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 08.09.2022

DELIVERED ON:08.09.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

M.A.T. No.445 of 2020

Udayan Large Sized Multipurpose Co-op Society Ltd. & Anr.
Vs.
The Income Tax Officer, Ward-3(4)/Balurghat & Ors.

Appearance:-
Mr. Vinay Shraff
Mr. Himangshu Kr. Ray,
Ms. Sangita Paul ... **for the appellants.**

Mr. Vipul Kundalia ..... **for the Union of India.**

JUDGMENT

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

1. This intra-Court appeal at the instance of the writ petitioners is directed against the order dated 21st April, 2020 passed in W.P. No.5350(W) of 2020, which was disposed of by an interim order along with two other writ petitions.

2. The appellants, Udayan Large Sized Multipurpose Co-op Society Ltd., aggrieved by the action of the first respondent, the Income Tax Officer, Ward 3(4)/Balurghat, Ministry of Finance, Department of Revenue, Dakshin Dinajpur. Though the challenge in the writ petition was to an assessment order passed by the first respondent, the grievance was that the appellants could not have been treated as an assessee in default and the bank account of the appellants could not have been attached and the amount, which was quantified in the assessment order could not have been recovered since the appellants have filed an appeal before the second respondent, namely, the Commissioner of Income Tax (Appeals), Jalpaiguri along with a stay application and the stay application is yet to be disposed of.

3. It is the submission of Mr. Shraff that in the given facts and circumstances, the appellants /assessee could not have been treated as an assesseee in default. In this regard, reliance has been placed on the decisions in the case of ***Sanjay Kumar Sahu Vs. Income-Tax Officer*** reported at ***[2013] 40 taxmann.com 242 (Madhya Pradesh), Khandelwal Laboratories (P.) Ltd. Vs. Deputy Commissioner of Income-tax 6(3)(2), Mumbai*** reported at ***[2016] 68 taxmann.com 171 (Bombay)*** and other judgments on the said point.

4. The learned Single Bench by the impugned order had directed the lifting of the attachment of the appellants' bank account. However, the appellants were not satisfied with the said relief and seeks for refund of the money, which was recovered from the appellants' bank account and therefore, they are before us by way of this appeal.

5. At the time when the writ petition was disposed of, none appeared for the department as we are informed that the writ petition was heard through video conferencing during the lockdown period.

6. We have directed Mr. Vipul Kundalia, learned senior standing counsel appearing for the Income Tax Department to accept notice on behalf of the respondents and the Ministry / Department shall regularise his engagement.

7. So far as the prayer sought for by the appellants to refund the amount, which was recovered by way of back attachment, such prayer cannot be considered at this juncture as the statutory appeal filed by the appellants as against the order of assessment is now pending before the second respondent, namely, the Commissioner of Income Tax (Appeals), Jalpaiguri and there is also a stay application pending. Further, we note that the assessment order was passed on 19th December, 2019, the writ petition was disposed of on 21st April, 2020 and the present appeal was filed before this Court on 11th May, 2020 and after removal of the defects, which were directed to be done by order dated 5th June, 2020, the appeal is listed for admission for the first time today. Thus, by efflux of time, the question of now issuing a positive direction for refund of the amount recovered from the appellants by way of bank attachment cannot be granted at this juncture. However, we are conscious of the fact that the appellate remedy available to the appellants/assessee before the second respondent is an effective and efficacious remedy where the assessee would be entitled to urge all factual and legal issues. In fact, the assessee can also seek for appropriate direction from the first appellate authority for refund of the amount, which was recovered based on the submission, which have been made before us. Therefore, ends of justice would be met, if the following directions are issued:-

8. Accordingly, the appeal stands disposed of by directing the second respondent to take up the appeal filed by the appellants as agaisnt the assessment order, which is stated to have been filed on 18th January, 2020 and decide the same on merits and in accordance with law after affording an opportunity of personal hearing to the appellants or their authorised representative.

9. In the event the Commissioner of Income Tax (Appeals), Jalpaiguri cannot immediately dispose of the appeal, the stay application can be taken up for consideration in which we grant liberty to the appellants to seek for appropriate direction for refund of the amount, which was recovered pursuant to the bank attachment. In any event, since the matter is a long pending matter, it would be advisable for the first appellate authority to dispose of the appeal petition not later than 28th November, 2022.

10. With the above directions, the appeal stands disposed of.

11. No order as to costs.

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,

(SUPRATIM BHATTACHARYA, J.)

NAREN/PALLAB(AR.C)