Item No.10.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 16.12.2022

DELIVERED ON:16.12.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T No.406 of 2019
with
I.A. No.CAN 1 of 2019 (Old CAN 3177 of 2019)
with
I.A. No.CAN 2 of 2019 (Old CAN 3178 of 2019)

Dr. Satyajit Bose.
Vs.
Deputy Commissioner of Income Tax, Circle - 22 & Ors.

Appearance:-

Mr. Ananda Sen,
Mr. Sabyasachi Mandal ... for the appellant.

Mr. Vipul Kundalia,
Ms. Uneaza Ali,
Ms. Aditi Singhania .... for the Income Tax Authorities.

<u>JUDGMENT</u>

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

Re: I.A. No.CAN 1 of 2019 (Old CAN 3177 of 2019)

1. This is an application to condone the delay of 13 days in filing the instant appeal.

2. We have heard Mr. Ananda Sen, learned counsel appearing for the appellant duly assisted by Mr. Sabyasachi Mandal, learned Advocate and Mr. Vipul Kundalia, learned counsel appearing for the respondents.

3. 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.

4. The application for condonation of delay being I.A. No.CAN 1 of 2019 (Old CAN 3177 of 2019) is allowed.

5. There shall be no order as to costs.

Re: MAT 406 of 2019

6. Supplementary affidavit filed by the appellant is taken on record.

7. This intra-Court appeal is directed against the order dated 31st January, 2019 in W.P. No.2693(W) of 2018. The appellant

filed the writ petition praying for a direction upon the respondents to condone the delay in making the third payment under the Income Declaration Scheme, 2016 (for short, "the scheme"). The appellant also prayed for issuance of a writ of mandamus to direct the respondents to regularise the third payment, which was made on 16th October, 2017 together with interest. The appellant also prayed for a direction upon the respondents to issue a certificate in form – 4 of the said scheme and to restrain the assessing officer from proceeding further with the assessment framed on 26th December, 2017. The learned Single Bench had dismissed the writ petition on the ground that the appellant did not comply with the terms of the scheme within the time permitted. Challenging the said order, the appellant has filed the present appeal.

8. We have heard Mr. Ananda Sen, learned counsel appearing for the appellant duly assisted by Mr. Sabyasachi Mandal, learned Advocate and Mr. Vipul Kundalia, learned counsel appearing for the respondents.

9. The appellant seeks to assail the correctness of the order passed in the writ petition based on a subsequent development, which took place after the dismissal of the writ petition. We cannot be called upon to test the correctness of the order

passed in the writ petition based on a material, which was never placed before the learned Writ Court. In any event, if the subsequent development has a beneficial effect on the assessee, then the Court can consider as to what would be the appropriate direction that can be issued to the authorities in the given facts and circumstances.

10. Admittedly, under the scheme, the third installment of income tax ought to have been remitted by the appellant not later than 30th September, 2017 but was remitted on 16th October, 2017. Since the scheme did not provide for any extension of time, the authorities could not have reckoned payment of the third installment to be in compliance with the terms and conditions of the scheme. Interestingly, there was an amendment to the scheme by Finance (No.2) Act of 2019. By the said amendment, if there was a delay in payment of the amount, the same can be accepted subject to payment of interest provided, such payment is made within the date notified by the Central Government. The said amendment was given retrospective effect from 1st June, 2016. In terms of the said amendment, notification dated 13th December, 2019 was issued by the Ministry of Finance by which the payment could be made on or before 31st January, 2020. Since this amendment has been given

retrospective effect and the appellant having paid third installment well before the notified date, this Court is of the prima facie view that the benefit of such amendment can be extended to the assessee. However, it appears that the representation given by the appellant to the Principal Commissioner of Income Tax – 8 (Kolkata) dated 13th January, 2020 was not answered and stated to be still pending before the authority. Even much earlier, the assessing officer had completed the assessment. Thus, the assessee is left in a piquant situation and is before this Court for necessary relief.

11. Considering the peculiar facts and circumstances of the case, while upholding the view taken by the learned Single Bench, we are inclined to grant liberty to the appellant to approach the respondent authorities by way of fresh representation in which the amendment made by Finance (No.2) Act of 2019 as well as notification dated 13th December, 2019 can be placed before the concerned authority. Added to the fact that the third installment had been paid by the appellant well before the cut off date together with interest and if such representation is given to the appropriate authority, the same shall be considered and a speaking order be passed on merit and

in accordance with law within a period of three weeks from the date of receipt of server copy of this order.

12. In the meantime, the assessing officer is directed not to initiate any coercive step against the appellant for recovery of the tax and penalty pursuant to the assessment, which was framed on 26th December, 2017.

13. The appellant is directed to enclose a copy of the representation dated 13th January, 2020 along with the said fresh representation, which has been directed to be submitted in terms of the above order.

14. The appeal and the connected application are disposed of.

15. There shall be no order as to costs.

16. 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)