20.01.2022
Item No. 35
Court No.6.
S. De

<u>Through Video Conference</u>

C.O. 1063 of 2007

Bithal Das Agarwal & Another.
Vs
Union of India & Others.

Ms. Sutapa Roychoudhury,
...for the petitioners.
Mr. P.K. Bhowmick
...for the respondents.

In this civil revisional application, the petitioners have challenged an order dated February 15, 2002 passed by the Commissioner of Income Tax (Appeals) in Appeal No. 45/38(1)/CIT(A)-XXV/2001-02.

The short grievance of the petitioners is that by a letter dated February 1, 2002, the petitioner no.1 had written to the Commissioner of Income Tax for granting him some time for collection of certain data. The matter was adjourned by the Commission till February 21, 2002 as was endorsed on the letter of request. However, the impugned order was passed on February 15, 2002, without the petitioners having any knowledge that on that day, the final order would be passed although the matter had been adjourned till February 21, 2002. The petitioners say that the impugned order is vitiated by breach of the principles of natural justice.

Learned advocate for the department says that the order was passed in the presence of the petitioners' representative as is recorded in the order. In any event, the petitioners did not prefer statutory appeal nor approached this Court until after five years after the order was passed. Learned counsel strongly opposes this application.

I have considered the facts and circumstances of the case. It appears that the petitioners are correct in saying that the order was passed on February 15, 2002 in their absence. Although the ordersheet records presence on behalf of the petitioners, it is an unilateral act of recording. In any event, the petitioners would not have known that the matter having been adjourned till February 21, 2002, the same would be disposed of on February 15, 2002. The department has not been able to show that any notice was given to the petitioners that the hearing had been preponed.

However, it is also true that the petitioners slept over the matter. They could have preferred a statutory appeal. They did not. They waited for over five years before they approached this Court with the present application. This Court exercises equitable jurisdiction under Article 227 of the Constitution of

India. It is well-known that delay defeats equity. I am not inclined to interfere with the order impugned.

However, since there is no explanation as to how the final order impugned herein could be passed on February 15, 2002, when the matter had been adjourned till February 21, 2002, for the ends of justice and taking a lenient view of the matter, I direct the department to grant one hearing to the petitioner in connection with the aforesaid appeal. If the concerned Commissioner of Income Tax upon hearing the appellant finds reasons for altering the order only then he shall do so. Otherwise, the order impugned will remain as it is. Till such hearing is given to the petitioner, no effect be given to the order impugned.

With these observations C.O. 1063 of 2007 is disposed of.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)