Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:
The Hon'ble Justice T.S.Sivagnanam
And
The Hon'ble Justice Bivas Pattanayak

M.A.T. 781 of 2022
with
IA no. CAN 1 of 2022

Chowdhury Medine Agency & Ors.
Vs.
Union of India & Ors.

For the Appellants	Mr. Himangshu Kr. Ray Mr. Mohan Kumar Sanyal Mr. Dwaipayan Sanyal Mr. Arunesh Pathak
For the Respondents /Income Tax	Mr. Vipul Kundalia Mr. Anurag Roy

Heard on : 05.07.2022.

Judgment on : 05.07.2022.

T.S.Sivagnanam:

This intra Court appeal by the appellants is directed against the order dated 27.04.2022 in W.P.A. 6805 of 2022. The appellants had filed the writ petition challenging the assessment order passed under Section 144 of the Income Tax Act, 1961 (for short "the act") for the assessment year 2017-18. Though several grounds were raised in the writ petition, challenging the assessment order, some of them touched upon the merits. Consequently, ground of challenge was raised by contending that there is violation of principles of natural justice inasmuch as notices were sent to the wrong address.

Learned advocate appearing for the appellants made elaborate submission and referred to various materials to impress upon this Court that the procedure to be adopted in assessment under Section 144 of the Act had not been adhered to. However, we cannot embark upon the fact finding exercise in a Writ Court challenging the order of assessment.

The learned single Bench was right in its approach, noting the conduct of the appellants as in the opinion of the learned single Bench, the appellants were running away from the problem without facing the queries raised by the Income Tax authorities. Mr. Kundalia, learned advocate for the Department would submit that records placed by the appellants before the Writ Court will clearly show that each of the context now advanced before the Court are factually incorrect and the appellants had full knowledge of the procedures. Furthermore, it is submitted that it is incorrect to state that notices were sent to the wrong address and to support the same, screenshot of the details available with the department was produced before us.

As mentioned above, in a writ petition we cannot undertake a fact finding exercise. Though we agree with the observations made by the learned single Bench while dismissing the writ petition, we are unable to pursue ourselves to agree with the ultimate conclusion arrived at by the learned single Bench by which the appellants were denied remedy in the writ petition. We say so because as on date, the appellants cannot file a statutory appeal as it is barred by limitation. Going by dates and events, we find that between 15th March 2020 and 28th February 2022, the Hon'ble Supreme Court has extended the limitation period under various statutes for filing appeals, revisions, etc. Though such order passed by the Hon'ble Supreme Court cannot be applied to the case of the appellants, yet considering certain family circumstances as pleaded by the learned advocate for the appellants, we are of the view that the appellants should not be left remediless.

Clearly so, we also bear in mind the interest of revenue as mentioned, the assessment is for the year 2017-18. The assessment order was passed on 12th December 2019 demanding a tax of Rs.26,75,206/- and the total demand inclusive of surcharge, education cess, interests under Sections 234A and 234B of the Act is rounded off to Rs.53,23,550/-. Apart from that, penalty notices have been issued and separate proceedings have been initiated. Considering the complex situation to which the appellants have been pushed, particularly attributable to the own conduct and probably some of which was on account of wrong address, we are of the view that the appellants should not be prevented from pursuing remedy which may be available to them under the law. We are of the opinion that if the appellants are granted an opportunity to file a revision before the concerned revisional authority under Section 264 of the Act subject to certain conditions, interest of justice would be protected, thereby the appellants will have an opportunity and on account of the condition to be imposed, the interest of revenue shall also be protected.

In the light of the above, following order is passed.

The appeal is **allowed** and the order passed in the writ petition is set aside and there shall be a direction upon the appellants to deposit a sum of Rs.10 lakhs before the appellate authority within six weeks from date. On production of the deposit receipt, the appellants would be entitled to file a revision under Section 264 of the Act before the Commissioner which shall be entertained without rejecting the same on the ground of limitation and the appellants will be at liberty to move for stay of the penalty proceedings before the Commissioner or before the appellate authority as may be advised for which the appellants are granted 30 days time from the date of receipt of the server copy of this order to deposit the amount in terms of the aforesaid directions.

If the appellants comply with the above conditions within the time stipulated, the revisional authorities should consider the revision on merit and in accordance with law. In the event, the appellants fail to comply with the above directions within the time stipulated, this order will not apply to the appellants and the appeal will stand automatically dismissed without further reference of this Court.

Consequently, the connected application stands disposed of.

(T.S.Sivagnanam, J.)

(Bivas Pattanayak, J.)

Saswata/Amitava Nag (AR CT.)