Item No.9.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 21.09.2022

DELIVERED ON:21.09.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

M.A.T. No.1485 of 2022
With
I.A. No.CAN 1 of 2022
With
I.A. No.CAN 2 of 2022

Ishan Information Services Private Limited.

Vs.

Union of India & Ors.

Appearance:-

Mr. Abhratosh Majumder, Sr. Adv.,
Mr. Sutirtha Das ..... for the appellant.

Mr. Vipul Kundalia,
Mr. Amit Sharma,
Mr. Anurag Roy ... for the respondents.

JUDGMENT

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

Re: I.A. CAN 1 of 2022

1. This application has been filed to condone the delay of 84 days in filing the instant appeal.

2. We have heard Mr. Abhratosh Majumder, learned senior counsel appearing for the appellant/assessee and Mr. Vipul Kundalia, learned senior standing counsel duly assisted by Mr. Mr. Amit Sharma, learned Advocate 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 being I.A. CAN 1 of 2022 is allowed.

Re: M.A.T. No.1485 of 2022

5. This intra Court appeal is directed against the order dated 18th May, 2022 in W.P.A. Nos.7908 of 2022, 7909 of 2022 and 7912 of 2022 by which the learned single Bench declined to grant any interim order and directed the respondents/department to file their affidavit in opposition. The appellant being aggrieved by the same is before us by way of this appeal.

6. The short question, which falls for consideration is whether the appellant had an adequate opportunity to put forth its submissions to the show cause notice issued by the respondents under section 144 of the Income Tax Act, 1961 (for short "Act") dated 17th March, 2022. The appellants had filed its response in the first case, which is taken as the sample case on March 19, 2022 and as could be seen from the date seal of the department, the said respondents received the same on March 21, 2022. However, in the assessment order dated 30th March, 2022 for the assessment year 2016-17, the assessing officer states that the assessee never complied with the notices and show cause notice issued and therefore, he has no other alternative but to complete the assessment under section 144 as per the materials available on record.

7. According to the appellant, no such assessment could have been made because the relevant PAN namely AAACI5619Q has been

cancelled by the department themselves. Apart from the same, other contentions were also raised in the reply dated March 19, 2022.

8. Mr. Majumder, learned senior counsel submitted that the assessee was not communicated with the notice issued under section 148 of the Act. If that be so, we grant liberty to the appellant to make a request before the assessing officer for serving a copy of the same together with the reasons recorded.

9. The learned senior standing counsel appearing for the respondents submitted that the contention of the assessee that the PAN has been cancelled is incorrect. In any event, we do not propose to go into those aspects as they all touch upon the merits of the matter. As we are satisfied that the appellant did not have adequate opportunity to put forth its submission and the reply to the show cause notice dated March 19, 2022 though received by the office of the respondents has not been considered, therefore on this short ground alone, we are inclined to remand the matter to the assessing officer for fresh consideration.

10. In the result, the appeal as well as the writ petition stand disposed of and the assessment order is set aside and the matter is remanded to the assessing officer for fresh

consideration. The assessing officer shall take into consideration the reply filed by the assessee to the show cause notice and all other documents as it may rely upon. The assessing officer shall provide an opportunity of personal hearing to the appellant or its authorised representative through video conferencing or physical mode and pass a fresh order on merits and in accordance with law.

11. We make it clear that we have not gone into the merits of the matter and all issues are left to be agitated before the assessing officer.

12. Accordingly, the appeal and I.A. No. CAN 2 of 2022 as well as the writ petition stand disposed of/allowed.

13. During the course of hearing, Mr. Vipul Kundalia, learned senior standing counsel for the respondents/department pointed out that this Court since December 2021 has been disposing of income tax appeals filed under section 260A of the Income Tax Act, 1961 when the case is yet to be assigned ITA number. It appears that on account of the same, the department has been treating such orders as orders passed on applications and consequently, the full fee payable to the learned standing counsels for the department is not paid and the disposal of the appeal by a final judgment is treated as if it is a disposal of

an application. The conduct of the Income Tax department needs to be deprecated. In order to ensure that the cases are not pending, the Court has taken up the appeals on merits even when the department or the assesee files the appeal and it is taken up for admission on the first date. When the appeal is being heard, all relevant documents are enclosed in the stay application and in many of the cases though the appeals were admitted, the Court has dispensed with filing of formal or informal paper books. It is rather surprising as to why the Ministry of Law and Justice and the Income Tax department have shut their eyes to reality. The learned standing counsels, who appear for the department come fully prepared in the matter either while appearing for the department as an appellant or defending the department in the appeals filed by the assessee. In any event, what is required to be seen by the Ministry of Law and Justice and the Income Tax department that this Court has finally disposed of the appeal and it is a judgment and therefore, fee payable to the learned standing counsels shall be as per the amounts fixed in the notification for final disposal of the appeal.

14. It appears that in several cases earlier, the Ministry of Law and Justice and the Income Tax department has taken such a

stand negating part of the claim made by the learned standing counsels. If that has been done, it is wholly illegal and not sustainable. Therefore, we direct all the learned standing counsels to re-submit their bills in all cases where the appeals stood disposed of finally even prior the stage when the appeal was assigned ITA number and such re-submitted bills shall be processed and full fee shall be paid to the learned standing counsels for final disposal of the appeal regardless of the fact that ITA number has been given or not.

15. A copy of this order be communicated to the Principal Commissioners of Income Tax, West Bengal and Sikkim for issuing appropriate directions to their departmental officers by way of a circular.

16. The learned senior Government Advocate, Ministry of Law and Justice, Branch Secretariat, Kolkata is directed to ensure strict compliance of the above directions and failure to do so may result in adverse consequences.

17. A copy of this order is directed to be placed before the Central Board of Direct Taxes by the Principal Commissioner of Income Tax, West Bengal and Sikkim so that the Hon’ble Board would be aware of the position prevailing in the High Court at

Calcutta qua the action of the Income Tax department and the Ministry of Law and Justice, Branch Secretariat, Kolkata.

18. With the above directions, the appeal and the connected application being CAN 2 of 2022 are disposed of.

19. No order as to costs.

20. 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)