CALCUTTA HIGH COURT IN THE CIRCUIT BENCH
AT JALPAIGURI

14
06.05.2022
adeb

<u>WPA 1002 of 2022</u>

(Samir Ghosh Vs. Income Tax Officer & Ors.)

Mr. Dhiraj Lakhotia
...for the petitioner

Mr. Ajoy Kumar Singhania
Mr. Sourab Kar
...for the UOI

In the present writ petition petitioner has questioned order dated 22nd January, 2020 passed by the Income Tax Officer, Ward 2(3), Matigara, Siliguri being the respondent no. 1 which has been passed on the application of the petitioner dated 9th January, 2020. By preferring such application petitioner has prayed for stay on recovery of demand of Rs. 2,67,53,367/- in connection with assessment year 2017-2018.

Mr. Dhiraj Lakhotia, learned advocate representing the petitioner has submitted that apart from the plea of preferring an appeal before the Commissioner of Income Tax (Appeal) under Section 246 (A) there are certain other points which were agitated by making an application dated 9th January, 2020 seeking stay on recovery of demand.

Attention of this Court has been drawn to page 32 of the writ petition from where it appears that respondent no. 1 passed impugned order on 22nd January, 2020 spurning the case of the petitioner.

It is argued on behalf of the petitioner that apart from issue relating to preferring an appeal under Section 246 (A) other points agitated in the application dated 9th January, 2020 were not delved into by the said respondent no. 1. Petitioner prays for reconsideration of his application dated 9th January, 2020 which has been disposed of vide order dated 22nd January, 2020.

Mr. Ajoy Kumar Singhania, learned advocate appears on behalf of the respondent authorities and has defended the order passed by the respondent no. 1 dated 22nd January, 2020. It has further been submitted that the issue of stay on recovery of demand as made by the respondent authorities does not depend upon preferring an appeal before the Commissioner of Income Tax (Appeal) under Section 246(A).

This Court has considered the submission made on behalf of the parties and considered the relevant materials available on record.

On perusal of the impugned order dated 22nd January, 2020 passed by the respondent no. 1 it appears that the respondent no. 1 chiefly on the point of preferring an appeal under Section 246 (A) decided the issue without taking note of other points which have been agitated by the petitioner in his application dated 9th January, 2020. Prima facie, it appears that the order dated 22nd January, 2020 is bereft of reasons and there has been non-application of mind on the part of the concerned respondent authorities while deciding the application of the petitioner seeking stay on recovery of Rs. 2,67,53,367/- in connection with the assessment year 2017-2018.

In view of above discussion, this Court directs Income Tax Officer, Ward 2(3), Matigara, Siliguri which has been re-designated as Income Tax Officer, Ward 1 (3), Matigara, Siliguri to revisit the issue based on the application of the petitioner dated 9th January, 2020 seeking stay on recovery of demand within a period of 4 (four) weeks from the date of communication of this order after granting opportunity of hearing to the petitioner or his representative and pass a reasoned order in accordance with law. The order to be passed in terms of the aforesaid direction shall be communicated to the petitioner within 1 (one) week thereafter.

Learned advocate representing the petitioner is granted leave to amend the cause title and add Income Tax Officer, Ward 1(3), Matigara, Siliguri as additional respondent by amending the cause title in course of this day.

The order dated 22nd January, 2020 passed by the respondent no. 1 stands set aside.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)