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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/47/2021
IA NO. GA/1/2021, GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX – 1, KOLKATA
VS.
M/s. THAKUR PRASAD SAO & SONS PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : AUGUST 22, 2022.

Appearance:
Mr. Smarajit Roychowdhury, Adv.
...for appellant
Mr. Abhratosh Majumder, Sr. Adv.
Mr. Avra Mazumder, Adv.
Mr. Binayak Gupta, Adv.
Mr. K. Roy, Adv.
...for respondent

The Court : We have heard Mr. Smarajit Roychowdhury, learned standing Counsel for the appellant and Mr. Abhratosh Majumder, learned Senior Advocate duly assisted by Mr. Avra Mazumder, learned Advocate for the respondent.

There is a delay of 1179 days in filing the appeal.

When the matter came up before the court on 26th July 2022 we found that an enormous delay in filing the appeal has not been explained. It was noted that decision was taken to file an appeal as on 28th December, 2017, but the appeal was filed only on 3rd March, 2021. The explanation which was offered was that there was a mistake in calculation of the tax effect and only after receiving the status report from the assessing officer the amount was identified and thereafter the decision was taken to prefer an appeal.

Since the Court was not satisfied with the averments set out in the affidavit we directed the matter to be brought to the notice of Principal Commissioner of Income Tax of West Bengal and Sikkim so as to enable him to nominate an officer to examine the papers and to file a supplementary affidavit. In terms of the said direction a supplementary affidavit has been filed by the Chief Commissioner of Income Tax.

On perusal of the affidavit we find that as early as on 17th February 2020 decision was taken by the Ministry of Law to close the file due to the delay. It is thereafter, once again the matter has been resurrected and the concerned folder was being passed from one officer to another and the net result the appeal was preferred only on 3rd March, 2021.

In our considered view, the reason given by the department for not being able to prefer the appeal within the period of limitation is far from satisfactory. Unless and until the department has shown the sufficient cause for not being able to prefer the appeal within the period of limitation the Court cannot exercise its discretion. The revenue cannot plead for preferential treatment when it comes with a prayer for condonation of delay especially when the delay is inordinate as in the case in hand that is to say an enormous delay of 1179 days.

For the above reason we are of the view that no case has been made out by the revenue for condonation of delay.

Accordingly, the application for condonation of delay stands dismissed.

Consequently the appeal stands rejected.

The application for stay also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH