OD-13&14

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

ITAT/171/2018
IA NO:GA/1/2018 [OLD NO:GA/1217/2018]

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA
VS.
RATAN KUMAR SOMANI
....
ITAT/171/2018
IA NO:GA/2/2018 [OLD NO:GA/1224/2018]

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA
VS.
RATAN KUMAR SOMANI
....

PRESENT:
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
14th February, 2022.
[Video Conference]

Mr. S. N. Dutta, Adv...for appellant.

Mr. J. P. Khaitan, Sr. Advocate,
Ms. Swapna Das, Adv.,
Mr. Pityush Jhunjhunwalla, Advs. for respondent.

The Court: We have heard Mr. Dutta, learned senior standing counsel for the appellant/revenue and Mr. J. P. Khaitan, senior counsel assisted by Ms. Swapna Das and Mr. Pityush Jhunjhunwalla for the respondent.

There is a delay of 545 days in filing the appeal. An affidavit of service has been filed by the respondent/assessee. We have perused the averments set out in the condone delay petition and we find that there is no acceptable explanation for inordinate delay of 545 days in filing the appeal. Even going by the statements given by the deponent, who has sworn in the affidavit filed in support of the condone delay petition, the delay of nearly 17 months remains unexplained. We can take judicial notice of the fact that invariably, appeals filed by the revenue before this Court are grossly delayed. In certain cases when the assessee do not seriously raise objection to the delay in filing the appeal, we have exercised discretion and condoned the delay. However, in cases where the assessee raised objection by filing an affidavit in opposition, we are required to consider whether sufficient cause has been shown in not preferring the appeal within the period of limitation. We are of the view that the procedure adopted by the Income Tax Department in the matter of filing the appeal under Section 260A has substantially contributed to the delay in filing the appeals in several cases. We came to understand that in the other States in the matter of filing appeals by the Income Tax Department a separate machinery, has been created in the Income Tax Department, however, in the State of West Bengal it appears that the appeals are filed through Ministry of Law. This has invariably contributed to the delay. It is not clear as to why the uniform procedure adopted in the other States have not been followed in the State of West Bengal, by the Income Tax Department. Be that as it may, assuming what has been said to be correct in the affidavit filed in support of the condone delay petition, the Memorandum of Appeal, Stay Petition and condone delay petition was ready on 31.10.2017 and received by the Income Tax Department on 7.11.2012 but the appeal was filed only on 15.5.2018, which is more than six months after all the appeal documents were ready. This delay has not been explained as well as the delay, which has occasioned earlier, that is, for a period of six months. Therefore, we are of the view that diligent steps are not being taken by the department in preferring the appeal. Therefore, we find no reason to exercise discretion to condone the delay. Accordingly, the application, IA NO:GA/1/2018 [OLD NO:GA/1217/2018] is dismissed. Consequently, the appeal stands rejected.

Affidavit in opposition filed in court today be kept with the record.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

pkd/spal
AR(CR)