OD-10

ORDER SHEET

WPO 1917 of 2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

HARSHITA CHHAWCHHARIA
Vs
PRINCIPAL COMMISSIONER OF INCOME TAX,
KOLKATA-18 & ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 7th April, 2022

(Via Video Conference)

Mr. Sanjay Bhowmick,
Mr. Indranil Banerjee,
Mr. Pranav Sharma, Advs.
…for the petitioner
Mr. Tilok Mitra, Adv.
…for the respondents

The Court: In this matter, petitioner has challenged the impugned order of rejection of petitioner's application dated 20th January, 2022 under the Direct Tax Vivad Se Viswas Act, 2020, relating to assessment year 2009-10. On perusal of the same, I find that the view taken for rejecting the petitioner's aforesaid application that the pending appeal in question before this Court could not be deemed to be pending on 31st January, 2020, is contrary to law laid down by the Hon'ble Telangana High Court in the case of Boddu Ramesh vs. Principal Commissioner of Income-tax, Hyderabad reported in (2021)

128 taxmann.com 13 (Telangana), the decision of the Hon'ble Gujarat High Court in the case of Maheshbhai Shantilal Patel vs. Principal Commissioner of Income Tax, Central, Ahmedabad reported in (2021) 131 taxmann.com 1 (Gujarat) and unreported decision of the Hon'ble Rajasthan High Court dated 17th February, 2022 in D.B. Civil Writ Petition NO. 4178 of 2021 (Rakesh Garg vs. Principal Commissioner of Income Tax, Ajmer) and order of this Court dated 4th October, 2021 in WPA 12534 of 2021 (M/s. Ankur Vintrade Pvt. Ltd. vs. Chairman, Central Board of Direct Taxes & Ors.).

It may be recorded that the sole ground contained in the impugned rejection order is that the criteria of pendency of appeal at the time of filing the application under the said Scheme was not pending and not on any other ground which according to me is not sustainable in view of the decisions of the aforesaid High Courts and of this Court in view of the fact that when this Court has admitted the appeal of the petitioner by order dated 21st January, 2021 by condoning the delay in filing the appeal in question in exercise of discretion of this Court it should be construed that there was no delay in preferring the appeal within time and fulfilling of criteria of pendency of appeal at the time of making application under the said Scheme has been fulfilled in this case.

Accordingly, this writ petition being WPO 1917 of 2022 is disposed of by setting aside the impugned order dated 20th January, 2022 as appears at page 148 of the writ petition by directing the respondent concerned to accept the declaration of the petitioner under the aforesaid scheme subject to fulfilment of any other formalities under the law.

With these observations and directions, this writ petition stands disposed of.

(MD. NIZAMUDDIN, J.)

TR/