OD–7

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

ITAT/76/2022
IA No.GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 5, KOLKATA
VS.
SHRI SUNIL KUMAR GUPTA

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th December, 2022

Appearance :
Mr. Soumen Bhattacharjee, Adv.
....for appellant

Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
...for respondent

The Court : We have heard Mr. Soumen Bhattacharjee, learned standing counsel appearing for the appellant and Ms. Swapna Das assisted by Mr. Siddhartha Das, learned Advocates for the respondent.

There is a delay of 966 days in filing the appeal. The respondent/assessee has filed their affidavit-in-opposition to which the department has filed their reply affidavit.

After elaborately hearing the learned Advocates for the parties and carefully perusing the materials placed on record, we find that the delay of 966 days has not been explained. The order passed by the learned Tribunal was received by the department on 30th June, 2019 and the last date for filing the appeal within the period of limitation expired on 22nd November, 2019 and the appeal has been filed before this Court on 20th June, 2022 with a delay of 966 days. The department is seeking to take advantage of the lockdown on account of Covid pandemic. However, on perusal of the dates and events as mentioned in the affidavit filed in support of the condone delay petition, we find that at every stage of the matter there has been no seriousness in prosecuting the appeal. This could be seen from the averments set out in paragraphs 4 to 8 of the affidavit filed in support of the condone delay petition.

As rightly pointed out by the learned advocate for the assessee that until 21st January, 2022 the department did not take any steps to pursue the appeal which obviously goes to show that there was no diligence on the part of the department. Though it is submitted by the learned standing counsel for the revenue that the substantial question of law which has been raised before this Court in this appeal was considered in a batch of cases and decided in favour of the department in the case of Principal Commissioner of Income Tax-5 vs. Swati Bajaj in ITAT 6 of 2022, dated 14th June, 2022, in the absence of any proper explanation for the inordinate delay of 966 days, we are unable to convince ourselves to exercise any discretion in favour of the department.

For the above reasons, the application is dismissed.

Consequently, the appeal stands rejected.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

pkd/SN.