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APOT/123/2022
IA No.GA/1/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

INTELLISYS TECHNOLOGIES AND
RESEARCH PVT. LTD.

-Versus-

ASSISTANT COMMISSIONER OF INCOME
TAX (TDS), CIRCLE 2/1, KOLKATA AND
ORS.

Appearance:

*Mr. Agnibesh Sengupta, Adv.
Mr. Indranil Banerjee, Adv.
Mr. subrata Mukherjee, Adv.
...for the appellant.*

*Mr. Vipul Kumdalia, Adv.
Mr. Amit Sharma, Adv.
Mr. Anurag Roy, Adv.
...for the respondent.*

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

Date : 6th September, 2022.

The Court : This intra-Court appeal filed by the appellant/writ petitioner is directed against the order dated 13th June, 2022 in WPO/2053/2022. The appellant had filed the writ petition challenging a notice issued by the respondent namely, Assistant Commissioner of Income Tax, Circle-2(1), Kolkata under Section 221 of the Income Tax Act, 1961. The writ petition was dismissed without going into the merits of the matter and giving

liberty to the appellant to go before the authority and agitate all points. The appellant is before us being aggrieved by such order.

The learned Tribunal appearing for the appellant would strenuously contend that the penalty notice issued under Section 221 of the Income Tax Act is ex facie unsustainable as it is barred by limitation. Secondly, it is contended that the authority has no jurisdiction to issue notice under Section 221 of the Act without declaring the assessee as an 'assessee in default'. Furthermore, the learned Advocate would submit that on merits they have substantially made a case and without considering this aspect, the learned single Bench had dismissed the writ petition. The learned standing counsel opposing the relief sought for, has drawn our attention to the conduct of the assessee and submitted that at least five communications have been sent to the assessee and, till date, the assessee has not given a proper response. On more than five occasions of that, the assessee has sought for adjournments. Further, it is submitted that the learned writ Court has sufficiently safeguarded the interest of the appellant by directing the appellant to go before the authority and raise all contentions.

Having elaborately heard the learned Advocates for the parties, we are in agreement with the view taken by the learned writ Court since the proceedings which are impugned in the writ

petition was only a show cause notice issued proposing to levy penalty under Section 221 of the Act. If according to the appellant, the authority who issued the notice does not have jurisdiction, and that the show cause notice is barred by limitation, nothing prevents the appellant from raising such contention before the very same authority who had issued the show cause notice who would be well within his jurisdiction to rule as to how the show cause notice is maintainable and how he has jurisdiction to issue the same and as to how it is not barred by limitation. Therefore, in such proceedings, the High Court should seldom interfere and interdict the process.

We find that after receipt of the show cause notice, the appellant has sent a reply on 16th February, 2022 wherein they have stated that the conditions precedent for invoking the power under Section 221 of the Act have not been satisfied and they have denied and disputed the liability to pay penalty. We find that the reply dated 16th February, 2022 does not clearly set out the factual position and appears to be a very brief reply. Therefore, we are of the view, that while affirming the order passed by the learned Single Bench by directing the appellant to go before the very same authority, we are inclined to issue certain other directions so that an effective adjudication is done by the concerned authority.

For the above reasons, the appeal (APOT/123/2022) stands disposed of by directing the appellant/assessee to submit a fresh reply to the show cause notice within a period of 15 days from the date of receipt of a server copy of this order. On receipt of the reply, the authority concerned shall fix a date for personal hearing either virtually or through physical mode for hearing the assessee or their authorized representative and thereafter pass a reasoned order on merits and in accordance with law. While taking a decision, the authority shall specifically deal with the issues relating to jurisdiction and limitation that is being canvassed by the appellant/assessee. Till such orders are passed in terms of the above direction, no coercive action shall be initiated against the appellant.

Consequently, the connected application for stay (IA No.GA/1/2022) also stands disposed of.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)