OD-9

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

ITAT/139/2022
IA No.GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-5, KOLKATA
VS.
SMT. SARLA DASSANI

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 23rd November, 2022

Appearance :
Mr. Tilak Mitra, Adv.
...for the appellant

Ms. Namrata Jha, Adv.
...for the respondent

The Court : We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant/revenue and Ms. Namrata Jha, learned counsel for the respondent/assessee.

Revenue has filed this appeal under section 260A of the Income Tax Act, 1961 (the Act) challenging an order dated 30th January, 2019 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolkata in ITA No. 1505/Kol/2018 for the assessment year 2013-14.

The appeal is barred by limitation and there is a delay of 1105 days in filing the appeal. The respondent/assessee has filed a detailed affidavit-in-opposition to the condone delay petition. A reply has also been filed by the department to the said affidavit-in-opposition.

After hearing the learned Advocates for the parties and carefully perusing the averments set out in the respective affidavits, we find that the period of limitation for filing the appeal by the appellant department expired on 5th July, 2019. The appeal was e-filed before this Court on 14th July, 2022. Large part of the delay is attributed to the Covid pandemic and also the department seeks to take umbrage under the orders passed by the Hon'ble Supreme Court. For the sake of argument, if we exclude the period from 15th March, 2020 to 28th February, 2021, yet the appeal is hopelessly time barred. In the affidavit filed in support of the condone delay petition, there is no explanation given for the inordinate delay between the period 5th July, 2019 to 15th March, 2020.

As rightly pointed out by the learned counsel for the respondent in the reply affidavit, the appellant department seeks to explain the delay by stating that there was reorganization in the office of the Principal Commissioner, Income Tax-12 and this resulted in dislocation. It is not clear as to when the reorganization took place and what was the nature of dislocation. This averment is contrary to what have been stated in the affidavit filed in support of the condone delay petition wherein it is admitted by the appellant department that as early as on 13th January, 2020 the Principal Commissioner of Income Tax-12, Kolkata accorded approval for filing of appeal under Section 260A of the Act. That apart, the appeal filed by the revenue was to be mandatorily e-filed before this Court with effect from 1st January, 2022. However, it has taken more than seven months for the appellant department to e-file the appeal before this Court, which was filed only on 14th July, 2022.

Thus, we find that there is no sufficient cause shown by the appellant department for exercising discretion in their favour.

Consequently, the petition filed for condonation of delay is dismissed and the appeal stands rejected.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/SN.