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ITAT/163/2022
IA No.GA/1/2022

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

ANIRUDH BHUWALKA

-Versus-

DY. COMMISSIONER OF INCOME TAX,
CIRCLE 4(1), KOLKATA AND ANR.

Appearance:
Mr. Anirudhya Dutta, Adv.
...for the appellant.

Ms. Smita Das De, 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 : We have heard Mr. Anirudhya Dutta, learned Advocate for the appellant and Ms. Smita Das De, learned standing counsel for the respondent to whom we have requested to take notice on behalf of the respondent and her appearance to be regularised by the Ministry/Department.

There is delay of 24 days in filing the appeal. We have perused the affidavit filed in support of the application and we find sufficient cause has been shown for not being able to prefer the appeal within time.

Accordingly, the application for condonation of delay (IA No.GA/1/2022) is allowed and the delay in filing the appeal is condoned.

This appeal filed by the assessee under Section 260A of the Income Tax Act, is directed against the order dated 31st January, 2022 passed by the Income Tax Appellate Tribunal, Kolkata 'SMC' Bench, Kolkata (the Tribunal) in ITA No.513/Kol/2021 and ITA No.514/Kol/2021 for the assessment years 2018-19 and 2019-20.

We have heard Mr. Anirudhya Dutta, learned Advocate for the appellant and Ms. Smita Das De, learned standing counsel for the respondent.

The assessee has raised the following substantial questions of law for consideration:

- "i) Whether the Tribunal was justified in law in disregarding the application made by the Appellant for adjournment of the hearing on January 31, 2022 and in proceeding with an ex parte hearing without giving the appellant an opportunity of being heard while passing the impugned order against the mandate of section 254 of the Income Tax Act, 1961?
- ii) Whether the Tribunal was justified in ignoring the provisions of section 205 of the Income Tax Act, 1961 which provides for a bar against a direct demand on the Assessee and further erred in

upholding the order passed by the CIT(A) under Section 250 of the Income Tax Act, 1961?

- iii) Whether the Tribunal erred in passing an unreasoned order which has prejudiced the Appellant here in the facts and circumstances of the instant matter, without considering the grounds as taken in the appeal by the appellant?
- iv) Whether the Tribunal has erred in upholding the order of the CIT(A) for the Assessment Years 2018-19 and 2019-20 whereby the said authority had remanded the matter to the Assessing Officer without considering that the Appellant could not be held liable for failure of M/s. AMW Motors Limited, if such entity failed to deposit the deducted sum to the Government exchequer and consequently failed to issue a certificate in favour of the Appellant as mandated by the Income Tax Act, 1961?

We have perused the order passed by the tribunal and we find that the assessee did not appear before the tribunal and the tribunal records that a request for adjournment was made. However, the tribunal was not convinced with the reasons cited for seeking an adjournment. Before us the learned advocate appearing for the applicant would submit that the appellant had prayed for adjournment of the hearing fixed by the tribunal on January 31,

2022 because of ill health of the appellant and this aspect ought to have been considered by the tribunal and a more liberal approach could have been adopted. Further, the learned advocate appearing for the appellant sought to canvas various grounds on the merits of the matter. In our considered view, the appeal being of the year 2021 and it appears that on the first hearing date, that is, 31st January, 2022 adjournment was sought for on the ground of ill health of the appellant. However, there is no medical certificate produced before us to justify such a stand. Nevertheless, we are of the view that since the alternative remedy available to the assessee before the learned tribunal is an effective and efficacious remedy more particularly because the learned tribunal is the last fact finding forum in the hierarchy of the authorities, therefore, we are of the view that one more opportunity should be granted to the assessee to contest the appeal on merits.

For all the above reasons, the appeal (ITAT 163/2022) is allowed and the order passed by the learned tribunal is set aside and the appeals are restored to the file of the learned tribunal to be heard and decided on merits in accordance with law. The appellant is directed to appear before the tribunal on the date fixed by the tribunal without seeking unnecessary adjournment and shall proceed to co-operate with the tribunal for expeditious

disposal of the appeal. Consquently, the substantial questions of law are left open.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

S.Das/As.