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ITAT/384/2016

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

MSD NURNAHAR BEGAM

-Versus-

PRINCIPAL COMMISSIONER OF INCOME TAX-14, KOLKATA

Appearance:
Mr. Apurba Kumar Ghosh, Adv.
Mr. Rudranil Ghosh, Adv.
Ms. Annyasha Chakraborty, Adv.
...for the appellant.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 2nd August, 2022.

The Court : This appeal of assessee under Section 260A of the Income Tax Act, is directed against the order dated 13th June, 2016 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.2219/Kol/2013 for the assessment year 2009-10.

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

i) "Whether on the facts and in the circumstances of the case the learned Appellate Tribunal was justified in law by passing the order without considering the grounds of

Appeal which have been taken by the Appellate in the appeal before the Tribunal ?

ii) *Whether on the facts and in the circumstances of the case the learned Appellate Tribunal was justified in law without pursuing and without assigning any reasons of non-consideration of grounds as mentioned in the Appeal before the Appellate Tribunal, have passed the order which suffers from irregularity and hence improper in the eye of law ?"*

We have heard Mr. Apurba Kumar Ghosh, learned Advocate for the assessee. Though the respondent/department has been served, since no counsel had been engaged, we request Mr. Om Narayan Rai along with Mr. Prithu Dudheria, learned Advocates to accept notice on behalf of the respondent and the Ministry of Law & Justice is directed to regularize their appearance.

The assessee is aggrieved by the order passed by the tribunal dismissing the appeal for non-prosecution. On going through the order, we find that the learned tribunal has noted several decision of various High Courts as well as the Hon'ble Supreme Court for the proposition that a person who files an appeal must diligently and effectively pursue the same. There could be no quarrel on such proposition and the tribunal was right in taking note of the said decision. However, considering the fact that the assessee is an individual and also the fact that this Court had directed a sum of Rs.7500/- to be deposited as costs to the State Legal Services Authority (SLSA), which has been complied with by the assessee, we are of the view that one more opportunity can be granted to the assessee. Only for such reason, we are inclined to interfere with the impugned order.

Accordingly, the assessee’s appeal (ITAT/384/2016) is allowed and the order passed by the tribunal is set aside and the appeal in ITA No.2219/Kol/2013 for the assessment year 2009-10 is restored to the file of the learned tribunal to be heard and decided on merits after giving opportunity of hearing to the appellant as well as the department. Consequently, the substantial questions of law raised are left open.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/As.