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

ITAT/249/2022
IA NO: GA/1/2022, GA/2/2022
KALYAN MUKHERJEE
VS
DCIT CIRCLE – 2, ASANSOL, KOLKATA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Dated : NOVEMBER 28, 2022.

Appearance:
Mr. Saurabh Bagaria, Adv.
…for appellant
Ms. Smita Das De, Adv.
…for respondent

The Court :- This appeal filed by the assessee in individual under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (Tribunal) dated March 30, 2022 in ITA/107/Kol/2021 read with M.A. No. 10/2022 for the assessment year 2012-2013.

It appears there is a delay of 106 days in preferring the instant appeal. We are satisfied with the reasons given in the affidavit filed in support of the condone delay petition. The delay in preferring the appeal is condoned. The application for condonation of delay being GA No.1 of 2022 is allowed.

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

i) Whether the Tribunal was justified in law in dismissing your petitioner's income tax appeal vide impugned Order dated March 30, 2022 exparte without giving adequate opportunity of hearings to your petitioner?

ii) Whether the impugned Order dated June 10, 2022 dismissing your petitioner's restoration application is legal and proper and is contrary to the mandate of Rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963 ?

We have heard Mr. Saurabh Bagaria, learned Advocate appearing for the appellant and Ms. Smita Das De, learned standing counsel for the revenue.

The learned Tribunal by the impugned order dismissed the assessee's appeal on the ground of non-appearance and also one paragraph of the order deals with the merits of the case. The assessee approached the Tribunal and filed M.A. No. 10/Kol/2022 to restore the appeal to the file of the Tribunal and to be heard and decided on merits. This application has been dismissed by the Tribunal and, therefore, challenging both the orders the appellant is before us by way of this appeal.

We have perused the order passed by the Commissioner of Income Tax (Appeals), Asansol [CIT(A)] dated 20th February, 2022. We find that in spite of several notices, the assessee nor his authorised representative appeared before the CIT(A). Therefore, left with no option the CIT(A) proceeded and decided the appeal on merits and dismissed the same. When the assessee carried the matter by way of appeal to the learned Tribunal, it appears that there was no change in attitude of the appellant and none appeared for the appellant before the learned Tribunal. After having faced with an order of dismissal of the appeal dated 30th March, 2022, the appellant appears to have been advised to make a prayer before the learned Tribunal to restore the appeal so that the matter can be heard on merits. This led to the filing of the miscellaneous application being MA/10/Kol/2022. The manner in which the assessee had dealt with the appeal which was filed by him before the CIT(A), shows that the assessee was not diligent in prosecuting the matter. However, promptly appeal was filed before the learned Tribunal which also met with the same fate since the assessee did not appear before the learned Tribunal.

The learned counsel appearing for the appellant was candid in his submission that conduct of the appellant in not appearing before the CIT(A) in spite of several notices cannot be appreciated, prays that the Court may consider the fact that the assessee is an individual, carrying on business of electrical contracting services and at the relevant point of time all his contracts stood extinguished and virtually the assessee had no business activity and for reasons which were beyond his control the assessee could not pursue the appeals in a proper manner. That apart, the learned Advocate appearing for the appellant submitted that on the first hearing date itself the learned Tribunal had dismissed the appeal.

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

As pointed out by us, the assessee should have been more diligent in prosecuting the matter nevertheless the appellate remedy being a very valuable right, that too before the learned Tribunal, which is the last fact finding forum.

We are of the view that one more opportunity can be granted to the appellant, more particularly, when the appellant/assessee is an individual. However, at this juncture we are not inclined to interfere with the order passed by the learned Tribunal dated 30th March, 2022 but would restore the miscellaneous application MA/10/Kol/2022 to the file of the learned Tribunal for being considered afresh taking note of the fact that the assessee is an individual and as of now it is stated that he does not have any business activity.

For such reason alone, we are not inclined to interfere with the order dated June 10, 2022.

Accordingly, the appeal is partly allowed and the order dated June 10, 2022 in MA/10/Kol/2022, arising out of ITA No.105/Kol/2021, is set aside and the miscellaneous application is restored to the file of the learned Tribunal to be heard and decided on merits and in accordance with law.

The stay application stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

sp./ GH/SN/A.Dey