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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15223 of 2016

Sri Ashok Kumar Shaw .... ***Petitioner***
Mr.R.P. Kar, Advocate

-versus-

Principal Chief Commissioner, Income Tax, Bhubaneswar and others .... ***Opp. Parties***
Mr. S.S. Mohapatra, Sr. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

ORDER
31.03.2022

Order No.

Dr.S. Muralidhar, CJ.

07. 1. The challenge in the present petition is to an order dated 22nd March, 2016 passed by the Commissioner of Income Tax (Appeal), Cuttack dismissing the Petitioner's Appeal No.0061/ 2014-15 for non-prosecution on account of non-appearance of the Petitioner.

2. On 30th October, 2017 while issuing notice to the Opposite Parties in the present petition, this Court passed the following order:

> "Heard.
>
> Issue notice.
>
> Extra copies of the brief of the writ petition shall be served on learned counsel for the Income Tax Department.
>
> Mr. D. Pati, learned counsel for the petitioner raises an issue as to whether petitioner's statutory appeal before the CIT (Appeals) could have been disposed of on the ground of default without entering into and/or adjudicating merit of the case of the assessee/appellant in the body of the appeal.

> In this respect, reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Bajali Steel Re-Rolling Mills Vs. C.C.E. and Customs,* reported in 2014 (310) ELT 209 (SC) as well as the judgment of Madras High Court in the case of *Southern Steel Industries Vs. Appellate Assistant Commissioner (CT), Kancheepuram & another,* reported in 1996(101) STC 273.
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> Counter, if any, be filed within two weeks. List this matter thereafter."

3. The Court heard the submissions of Mr. R.P. Kar, learned counsel for the Petitioner and Mr. S.S. Mohapatra, learned Senior Standing Counsel for the Department.

4. In ***Commissioner of Income-tax (Central), Nagpur V. Premkumar Arjundas Luthra (HUF) (2016) 69 taxmann.com 407 (Bom)****,* the Bombay High Court answered a similar question in favour of the assessee and against the Department by holding that on a collective reading of Section 250(6) of the Income Tax Act, 1961 (Act) read with Section 251 (1)(a) and (b) thereof, the CIT(A) is not empowered to dismiss an appeal for non-prosecution. The Explanation to Section 251(2) was held to make it clear that the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in the appeal filed, even if the issue is not raised by the Appellant.

5. Mr. Kar, learned counsel for the Petitioner draws the attention of the Court to Rule 24 of the Income Tax Appellate Tribunal Rules, 1963 which does not permit even the ITAT to dismiss an appeal for default. While the main portion of Rule 24 requires the ITAT, even in the absence of the appellant, to hear and decide the appeal on merits after hearing the respondent, the proviso thereto permits the appellant subsequently file an application before the ITAT

explaining the reason for non appearance and for the ITAT to again hear the appeal on merits after hearing such party.

6. Be that as it may, in view of aforementioned decision of the Bombay High Court in *(supra)*, with which this Court concurs, the CIT(A) could not have by the impugned order proceeded to dismiss the appeal in default for non-appearance of the Petitioner. The CIT (A) was thus obliged to have heard the appeal on merit.

7. For the aforementioned reasons, the impugned order dated 22nd March, 2016 of the CIT(A) is hereby set aside and the ITAT Appeal No.0061/2014-15 filed by the present Petitioner for the Assessment Year 2011-12 is restored to file of CIT(A) for hearing and disposal on merits. For the above purpose, the appeal will be listed before the CIT(A) on 12th May, 2022 on which date the present Petitioner will appear along with a downloaded copy of this order. The CIT (A) will, after hearing the Petitioner and the Department, pass a fresh order on merits.

8. The writ petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

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