IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 INCOME TAX APPEAL NO.9 OF 2022

GOPAL EXTRUSIONS PVT. LTD., THROUGH ITS DIRECTOR
SANJAY RAMGOPAL TAPARIA
VERSUS
THE INCOME TAX OFFICER WARD-1(2), JALGAON
...
Advocate for Appellant: Mr. Raviraj R. Chandak
Standing Counsel for Respondent/Sole:
Mr. Alok M. Sharma
...

CORAM: S. V. GANGAPURWALA &
S. G. DIGE, JJ.
DATE: 22nd FEBRUARY, 2022

PER COURT:

1. The order passed by the Income Tax Appellate Tribunal is assailed.

2. Mr. Chandak, learned Counsel for the Appellant submits that the Appeal is decided *ex parte*. Though the notice was issued by the Income Tax Appellate Tribunal to the Appellant, the same was not served upon the Appellant. The notice was issued on the address of the Appeal Memo, however subsequent to the filing of the Appeal the property was taken in possession under the Secruritisation and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 and was handed over to the purchaser. In view of that, the notice could not be served upon the Appellant and the Appeal has been decided in absence of the Appellant.

3. Mr. Sharma, learned Counsel for the Respondent submits that the notice was served on the address given by the Appellant in the Appeal Memo. The Appellant herein was the Appellant. Apart from the notice being issued by the Tribunal it was the duty of the Appellant to attend to the case filed by it. It was because the Appellant was not attending the matter the Income Tax Appellate Tribunal by way of abundant caution issued notice to it. There is gross negligence on the part of the Appellant.

4. We have perused the impugned order. It appears that the Appellant has not participated in the Appeal as after filing of the Appeal the Appellant has not appeared.

5. The Appeal it seems is decided on merits. In fact, if the Appellant is absent the Tribunal has recourse to dismiss the Appeal for non-prosecution instead of deciding it on merits.

6. It was also the duty of the Appellant to give changed address with the Tribunal. The Appellant did not give it’s new address to the Tribunal and the notice was served to the Appellant on the address given by it. In fact, it was also the boundant duty of the Appellant to attend to the Appeal filed by it. Simply by filing the Appeal the duty of the Appellant does not come to an end, it has to attend the matter.

7. Considering that in the absence of the Appellant the matter has been decided on merits and the Appeal involves the right of the Appellant as far as monetary claim is concerned, we are inclined to grant one more opportunity to the Appellant, however the Appellant also deserves to be mulct with costs.

8. In the result, we pass the following order-

ORDER

[I] The impugned order is quashed and set aside and the matter is relegated before the Tribunal on condition that the Appellant deposits Rs.25,000/- (Rs. Twenty Five Thousand only) with the Income Tax Officer, Ward-1(2), Jalgaon within a period of two (02) weeks from today.

[II] The parties shall appear before the Tribunal 16.03.2022.

[III] The Appellant shall produce the receipt of the deposit of costs of Rs.25,000/- (Rs. Twenty Five Thousand only) with the Respondent / Sole before the Tribunal.

[IV] The Tribunal shall, thereafter, decide the Appeal on it's own merits.

[V] As the date of appearance has been given by this Court, it is not necessary for the Tribunal to issue fresh notice to the parties.

9. The Writ Petition accordingly stands disposed of.

[S. G. DIGE, J.] **[S. V. GANGAPURWALA, J.]**

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