Item No.2, 3, & 4.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 07.02.2023

DELIVERED ON: 07.02.2023

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

F.M.A. 1160 of 2022
With
I.A. No.CAN 1 of 2022
With
I.A. No.CAN 2 of 2022

Jankalyan Vinimay Private Limited
Vs.
Deputy Commissioner of Income Tax, Circle-1(1), Kolkata & Ors.

And

F.M.A. 1161 of 2022
With
I.A. No.CAN 1 of 2022
With
I.A. No.CAN 2 of 2022

Jankalyan Vinimay Private Limited
Vs.
Deputy Commissioner of Income Tax, Circle-1(1), Kolkata & Ors.

And

F.M.A. 1164 of 2022

With
I.A. No.CAN 1 of 2022
With
I.A. No.CAN 2 of 2022

Jankalyan Vinimay Private Limited
Vs.
Deputy Commissioner of Income Tax, Circle-1(1), Kolkata & Ors.

Appearance:-

Mrs. Manju Agarwal, **Mr. B. Manot**	**...**	**for the appellant.**
Mr. Smarjit Roychowdhury	**....**	**for the respondents.**

<u>JUDGMENT</u>

(Judgment of the Court was delivered by* T.S. SIVAGNANAM*, J.)

1. Since the issues involved in these appeals are common and germane, all the appeals are disposed of by this common judgment and order.

2. These intra-Court appeals have been filed by the writ petitioner against the orders passed by the learned Single Bench in W.P.A. No.11284 of 2021, W.P.A. No.11281 of 2021 and W.P.A. No.11272 of 2021 respectively dated 27th July, 2021. All the writ petitions were filed by the assessee with varied prayers and in effect questioning the assessment orders passed under Section

143(3) of the Income Tax Act, 1961 (for short, “the Act”). Though such varied prayers were sought for in the writ petitions, during the course of submissions before the learned Writ Court, the learned Advocate appearing for the appellant / writ petitioner confined the arguments with the prayer to dispose of the appellant’s application filed under Section 220 (6) of the Act for granting an order of interim stay of the assessments, which according to the appellant, are high-pitched assessments till the appeal filed by the assessee before the Commissioner of Income Tax (Appeals) are disposed of.

3. The learned Single Bench has dismissed the writ petitions by the impugned orders on the ground that the writ petitions were filed belated whereas the stay applications were filed before the assessing officer during September, 2018. Aggrieved by such order, the appellant is before this Court by way of these appeals.

4. There is a delay of 166 days in filing the appeals. We find sufficient cause has been shown for not preferring the appeals within the period of limitation. Hence, the delay in filing the appeals are condoned.

5. We have heard Mrs. Manju Agarwal, learned counsel appearing for the appellant and Mr. Smarajit Roychowdhury, learned counsel appearing for the respondents.

6. Admittedly, the assessments are high-pitched assessments having completed in the year 2017-2018. The assessments relate to the assessment years 2011-12, 2012-13 and 2016-17. Well within the period of limitation, the appellant had filed the statutory appeals before the Commissioner of Income Tax (Appeals) and the appeals are pending since 2018. It is not clear as to why the appeal petitions have not been disposed of in spite of passage of time and very recently, the assessing officer has rejected the stay application buy communication dated 8th December, 2022.

7. Be that as it may, this Court is of the view that during the pendency of the appeals, if the assessment orders are to be given effect to, it may cause prejudice. Normally, while granting an order of interim stay, condition would be imposed on the assessee to pay part of the assessed tax. However, there have been cases where such payment / deposit has not been ordered when the assessments are unduly high-pitched.

8. In the instant case, since the appeals were filed in 2018 and the stay applications filed before the Deputy Commissioner of Income Tax during the year 2018 followed by subsequent reminders, were rejected only on 8th December, 2022 and the assessments orders were not given effect to till date, we are of the view that the appeals filed before the Commissioner of Income Tax (Appeals) could be disposed of at an early date and until then, the respondents/department should not take any coercive action against the appellant / assessee for recovery of the income tax, which has been assessed.

9. Identical view was taken by this Court in the case of ***Great Barter Private Limited Vs. Assistant Commissioner of Income Tax, Circle-1(1), Kolkata & Ors*** in ***MAT 244 of 2020*** and ***MAT 245 of 2020*** dated ***6th December, 2022***. The operative portion of the order reads as follows:-

> *"9. Admittedly, the assessments are high pitched assessments and when such high pitched assessments are appealed against and an order of stay is sought for either before the assessing officer by filing an application under Section 220(6) of the Income Tax Act, orders are passed by the assessing*

officer either keeping the notice of recovery in abeyance and not treating the assessee as an assessee in default till the appeal is disposed of.

12. In both these cases, the Hon'ble Division Bench of the High Court of Delhi has considered high pitched assessments and has also taken note of the instruction issued by the CBDT and have held that when the assessments are unreasonably high pitched, the notices of recovery should remain stayed till the disposal of the appeal by the first appellate authority. In cases on hand, the return filed by the assessee was a loss return. However, the assessing officer has assessed the income and it is definitely a high pitched assessment. That apart, we find that the appeal was filed before the Commissioner of Income Tax (Appeals) well within the period of limitation and is pending since 25th January, 2018.

14. In the light of the above, the appeals are allowed and the order passed in the writ petitions is set aside with a direction to keep the recovery notices issued by the assessing officer kept in abeyance and direct the Commissioner of Income Tax (Appeals), the appellate authority, to disposed of the appeals on merits and in accordance with law after affording an opportunity of personal hearing to the authorised representative of the assessee as expeditiously as possible preferably within a

> *period of 45 days from the date of receipt of the server copy of this judgment and order.*

10. In the light of the above discussion, these appeals are allowed and the orders passed in the writ petitions are set aside with a direction to keep the recovery proceedings initiated by the assessing officer in abeyance with a further direction to the Commissioner of Income Tax (Appeals) to dispose of the appeal petitions filed by the assessee on merits and in accordance with law after affording an opportunity of personal hearing to the authorised representative of the assessee as expeditiously as possible, preferably within a period of 45 days from the date of receipt of the server copy of this judgment and order.

11. We make it clear that we have not gone into the merits of the matters and it will be well open to the assessee to canvass all factual and legal issues in the pending appeals before the Commissioner of Income Tax (Appeals).

12. There shall be no order as to costs.

13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)