Ct. No. 26

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30.03 2023

W.P.A. 5958 of 2023

The Rigle Factory Co-operative Society Ltd.
Vs.
The Assistant Commissioner of Income Tax, Circle-49 & Ors.
(Assigned)

Mr. Somk Basu
Mr. Swagato Kabiraj ...For the Petitioner

Ms. Smita Das De ...For the Respondents

Heard learned Counsel appearing for the parties.

By order dated January 03, 2023, this Court had directed the Authorities to grant an opportunity of hearing to the petitioner with regard to stay application and the appeal and pass a reasoned order after granting an opportunity of hearing to the petitioner within a period of six weeks.

Subsequent to the order passed by this Court, The Assistant Commissioner of Income Tax, Circle-49(I), Kolkata has passed an order dated February 23, 2023. The relevant portion of the order, being paragraphs 6 and 8 are quoted hereinbelow :-

> ***"6. In pursuance to the direction of the Hon'ble High Court of Calcutta dated 03/01/2023, a letter dated 11/01/2023 vide DIN & Letter No. ITBA/RCV/F/17/2022-23/1048622137(1) was issued to the assessee AOP providing an opportunity to submit all the particulars in connection with the demant outstanding for the AY 2017-2018 on or within 20/01/2023 in response, the assessee AOP through Shri Manish Kumar Pandey, Managing Director appeared and filed a submission with petition U/s 220(6) and enclosures for the stay of the demand of Rs.3,77,62,050/-. In the said leter, the assessee AOP emphasized upon the facts of the case and requested to refer the matter before the Ld. Pr. CIT (Jurisdictional) in order to consider the prayer to grant stay without any deposit in terms of clause 4(B)(b) of the OM No. F.***

404/72/93 dated 29.02.2016 which was subsequently modified on 31.07.2017.

8. In this case, the assessee failed to make any payment of failed to file any undertaking that they would cooperate in the early disposal of appeal. If any such application has been made, no copy of such was filed or produced during the hearing on 20/01/2023. However, as per the request of the assessee, the application was forwarded to the PCIT-5, Kolkata through proper channel for consideration of the same vide this office letter F. No. ACIT Circle 49(1)/Kol/High Court matter/2022-23/149 dated 30/01/2023.

In connection to the said letter dated 30/01/2023, the Ld. PCIT-5, Kolkata vide letter No. 11380 dated 16.02.2023 gave a direction, which is reproduced as under:-

'Please reject the stay petition'.*"*

It is amply clear from the said order that the Authorities granted hearing and sought to take approval from the Principal Commissioner of Income Tax-5, Kolkata before passing the order. That was not the direction passed by this Court. The Authority, who hears the petitioner shall pass the reasoned order and that was purport of the order, passed on January 03, 2023.

In the light of the above observation, the impugned order is quashed and set aside with a direction upon the Principal Commissioner of Income Tax to personally grant an opportunity of hearing to the petitioner and thereafter pass an order with regard to the stay application filed by the petitioner.

It is to be further noted that by the order passed on January 03, 2023 there was a specific direction for hearing out the main appeal within a period of six weeks. This order has also not been complied with.

Accordingly, the Commissioner of Income Tax (Appeals), Kolkata is directed to have the main matter heard expeditiously within a period of six weeks from date.

I make it clear that the petitioner shall not seek any adjournment from the Principal Commissioner of Income Tax or from the Commissioner of Income Tax (Appeals) with regard to hearing of the above matters.

Reply filed by the petitioner before the Commissioner of Income Tax (Appeals) shall be placed before the Principal Commissioner of Income Tax as the response of the petitioner.

The Principal Commissioner of Income Tax now requires only to fix a date of hearing of the stay application.

With the aforesaid directions the instant writ petition is disposed of.

There shall be no further order as to costs.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

Urgent photostat copy of the order, if applied for, be supplied to the parties on priority basis on compliance of all necessary formalities.

(Shekhar B. Saraf, J.)