

OD-1 TO 7

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

ITAT/70/2023
IA NO.GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL- 1, KOLKATA
VS.
SMT. PUJA AGARWAL

ITAT/71/2023
IA NO.GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL- 1, KOLKATA
VS.
SRI SURESH AGARWAL

ITAT/72/2023
IA NO.GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL- 1, KOLKATA
VS.
SRI RAJNISH AGARWAL

ITAT/81/2023
IA NO.GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL- 1, KOLKATA
VS.
SMT. SEEMA AGARWAL

ITAT/82/2023
IA NO.GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL- 1, KOLKATA
VS.
SRI MANISH AGARWAL

ITAT/83/2023
IA NO.GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL- 1, KOLKATA
VS.
SMT. SHALINI AGARWAL

ITAT/84/2023
IA NO.GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL- 1, KOLKATA
VS.
SMT. SEEMA AGARWAL

BEFORE :

THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 24th April, 2023

Appearance :

Mr. Prithu Dudhoria, Adv.

....for the appellant (item nos.1 – 3)

Mr. Soumen Bhattacharjee, Adv.

...for the appellant (item nos. 4 – 7)

Ms. Swapna Das, Adv.

Mr. Siddhartha Das, Adv.

...for the respondents.

The Court : We have heard Mr. Prithu Dudhoria, learned standing Counsel appearing for the appellants (in item Nos.1–3), Mr. Soumen Bhattacharjee, learned standing counsel appearing for the appellants (in item Nos.4–7) and Ms. Swapna Das, learned Advocate, assisted by Mr. Siddhartha Das, Advocate appearing for the respondents.

These appeals have been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated 28th February, 2020 passed by the Income Tax Appellate Tribunal “C” Bench Kolkata in a batch of nine matters all pertaining to the assessment year 2014-15 and all the respondent assesseees are members of the joint family. The first hurdle the revenue has to cross is to convince this Court with an acceptable explanation for the delay (974 days in ITAT/70/2023, ITAT/71/2023, ITAT/72/2023; 978 days in ITAT/81/2023, ITAT/82/2023; 979 days in ITAT/82/2023 and ITAT/84/2023) in filing the appeals.

We have perused the affidavits filed in support of the condone delay petitions and we find that the usual reasons have been set out, stating that the files had to be circulated through various authorities until a final decision was taken for filing the appeals and it is stated that on account of Covid pandemic things could not be taken forward and there is a delay in filing the appeal and for such reason the delay in filing the appeal has to be condoned.

Similar plea was raised by the revenue in one of the appeals filed before this Court against of the orders passed by the Tribunal, which is a common order in ITAT/75/2023 and after elaborately hearing the submissions on either side the application was dismissed by order dated 28th March, 2023. The order reads as follows :-

“Heard learned advocates on either side.

The appeal filed by the revenue is barred by time and in the application filed for condonation of delay, it has been mentioned that there is a delay of 974 days. Admittedly, the certified copy of the order passed by the Tribunal was received by the Department on 18.03.2020. The department seeks to take advantage of the period during which lockdown was announced and in that process they have excluded 715 days while computing the limitation and stated that the appeal is delayed by 974 days. We have perused the affidavit in support of the petition to examine as to whether there is any acceptable explanation for 974 days in filing this appeal. From the dates and events which have been mentioned, we find that the file had been circulating within the department from one officer to another and, ultimately, the Director General of Income Tax [Investigation] granted approval for filing the appeal on 20.2.2020. The Chief Commissioner of Income Tax-2, Kolkata accorded his concurrence on 4.1.2021. Thereafter once again the file had been

circulating from various officials to the standing counsel and, ultimately, the appeal was filed on 17.3.2023. The dates clearly show that substantial part of the delay remains unexplained. A faint plea has been raised by the department attempting to blame the erstwhile standing counsel to whom the papers were entrusted for preferring the appeal. However, such averment is unsubstantiated and uncalled for. In any event, in the absence of any acceptable explanation for the inordinate delay, we are not persuaded to exercise any discretion in favour of the appellant. Therefore, the application is dismissed. Consequently, the appeal stands rejected. The substantial questions of law, which were suggested, are left open.

Subsequently, another appeal was preferred in ITAT/76/2023 which is also one of the appeals covered in this batch and the same was dismissed by order dated 5th April, 2023.

In the light of the stand taken by the Court in the aforementioned orders, a different approach cannot be maintained in these cases. Thus in the absence of any satisfactory explanation for the inordinate delay, we are not persuaded to exercise any discretion in favour of the appellants/revenue.

Accordingly, the applications for condonation of delay are dismissed and consequently, the appeals filed by the revenue stand dismissed. The suggested questions are left open.

(T.S. SIVAGNANAM, J.)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)