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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/39/2023
IA No:GA/1/2023
J.J. AUTOMATIVE PRIVATE LIMITED
VS.
THE UNION OF INDIA & ORS.

BEFORE :

THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 12th April, 2023

Appearance :
*Mr. Arvind Agarwal, Adv.*
*Ms. Monika Katra, Adv.*
*Mr. Farhan Ghaffar, Adv.*
*Ms. P. Das, Adv.*
*... for appellant*

*Mr. Prithu Dudhoria, Adv.*
*... for respondent*

The Court : This intra-court appeal by the appellant is directed against the judgment and order dated 20th January, 2023 passed in WPO 66 of 2023. The said writ petition was filed by the appellant challenging an order dated 18th August, 2022 passed under Section 250 of the Income tax Act, 1961 (the Act) by the National Faceless Appeal Centre (NFAC). The learned writ court by the impugned order had dismissed the writ petition on the ground that it is a second round of litigation and aggrieved by the order passed by the NFACT the appellant can file an appeal before the Tribunal. The correctness of such order is the subject matter of this appeal.

We have heard Mr. Arvind Agarwal, learned Counsel appearing for the appellant and Mr. Prithu Dudhoria, learned Counsel appearing for the respondent.

The order which was impugned in the writ petition dated 18th August, 2022, rejects the appeal filed by the appellant against the order of assessment under Section 143(3) read with Section 147 of the Act, dated 24th March, 2022. The only reason assigned for rejecting the appeal is by stating that the appellant has been issued Form 5, dated 4th July, 2022 and uploaded on the said date under the Vivad Se Vishwas Scheme 2020 (VSV Scheme) and hence the appeal has become infructuous and therefore dismissed as withdrawn.

The appellant immediately logged into the portal and expressed their grievance on 22nd August, 2022. Thereafter the assessee sent a very detailed e-mail to the Commissioner of Income tax (Appeals) dated 22nd August, 2022 stating that the appeal could not have been dismissed as infructuous on the ground that Form 5 was issued under the VSV Scheme. The NFAC had sent a response to the appellant assessee stating that one of the two courses mentioned in the e-mail dated 13th October, 2022 can be exercised by the appellant namely, 1) apply for rectification of the appeal order, 2) appeal before the ITAT. The appellant exercised the first option and made a request for rectification. After pointing out all the relevant details, the appellant stated that VSV Scheme 2020 can under no circumstances cover of an appeal which has been filed against order under Section 143/143(3), dated 24th March, 2020, for which appeal has been filed on 26th April, 2022, which was dismissed on the ground that Form 5 has been issued. Though such request for rectification was made in terms of the information received by the assessee from the NFAC, such rectification had not been entertained and no orders have been passed. The assessee thereafter sent e-mail to the Principal Commissioner of Income Tax (1), Kolkata on 19th November, 2022 expressing their grievance and reiterating their request once again they logged into the grievance portal and lodged their grievance on 10th October, 2022 and 25th November, 2022. However, since the grievance was not addressed, the appellant had filed the writ petition. As pointed out by the appellant in their grievance petition, the issuance of Form 5 under the VSV Scheme can under no circumstances cover an appeal filed against an assessment order dated 24th March, 2020. Therefore, the NFAC should not have dismissed the appeal as infructuous.

It is not clear as to why inspite of the petitioner having sought for rectification of the order, the NFAC has not taken any action on such request. Thus, we are of the clear view that the appeal filed by the assessee against the assessment order dated 24th March, 2022 has to be decided on merits and in accordance with law.

For the above reasons, the appeal is allowed. The order passed in the writ petition is set aside.

Consequently, the writ petition is allowed and the order passed by the NFAC dated 18th August, 2022 is set aside with a direction to decide the appeal on merits and in accordance with law as expeditiously as possible.

Learned counsel appearing for the appellant submitted that in the meantime the Assessing Officer should not commence recovery proceedings. We give liberty to the assessee appellant to move for appropriate interim orders before the Commissioner of Income Tax (Appeals).

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

(HIRANMAY BHATTACHARYYA, J.)

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AR(CR)