OD–1

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

RVWO/11/2023
IA NO: GA/1/2023

PREMLATA AGARWAL
VS.
PRINCIPAL COMMISSIONER OF INCOME TAX 13, KOLKATA

BEFORE :
THE HON'BLE T.S. SIVAGNANAM ACTING CHIEF JUSTICE
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 13TH APRIL, 2023.

<u>Appearance</u> :
Ms. Asha G. Gutgutia, Adv.
Ms. Sudipa Minda, Adv.
…for appellant.
Mr. Soumen Bhattacharjee, Adv.
…for respondent.

The Court :- We have heard learned standing Counsel for the review applicant Ms. Asha G. Gutgutia, duly assisted by Ms. Sudipa Minda, learned Advocate and Mr. Soumen Bhattacharjee, learned Advocate appearing on behalf of the respondent.

There is a delay of 154 days in filing the review application. The learned Advocate appearing for the applicant submits that the applicant is aged about 76 years and after coming to know of the judgement and order dated 26.09.2022 she could not take immediate steps to contact her counsel to file this review application. On perusal of the affidavit filed in support of the condone delay application, we find that sufficient cause has been shown for not being able to prefer the application within the period of limitation. Hence, the application is allowed and delay in filing the application is condoned.

This review application has been filed to review the judgement and order dated 26.09.2022. The revenue had filed the appeal with a delay of 950 days and the reason given by the revenue is that substantial period of delay is covered during the lockdown period. Apart from that it was stated that a circular was issued by the C.B.D.T. directing the monetary limit for exemption of filing appeals in cases of LTCG/STCG involving penny stock was not to be given effect to. In the judgement we had referred to an order passed in ITAT No. 31 of 2020 with regard to the effect of the circular and in that case the delay was condoned. It is pointed out by the learned Advocate appearing for the review applicant that the delay is substantial and has not been explained. Furthermore, it is contended that there are distinguishing features in the instant case and the issue involved in the case of *PCIT vs. SWATI BAJAJ;* 2022 SCC Online, Cal. 1572. It is further submitted that the tax effect in this case is only Rs.6,88,910/- and the same is excluded from the purview of filing appeal as per the C.B.D.T. Circular dated 08.8.2019. Further it is submitted that the Income Tax Department has implemented the order passed by the Tribunal and effected refund for a sum of Rs.7,72,080/-. This important fact was not placed before this Court when the application for condonation of delay and the appeal was served. Thus, if the department had implemented the order passed by the Tribunal dated 26.6.2019 and effected refund, the department cannot be permitted to pursue the appeal. Thus, we are of the view that the judgement and order dated 26.09.2022 is required to be recalled and reviewed.

In the light of the fact that the order passed by the Tribunal was implemented by the department and refund was effected on 11.02.2020 and the appeal was filed before this Court only on 29.06.2022, the appeal cannot be entertained.

For the above reason, the review application is allowed. The judgement and order dated 26.09.2022 is recalled and the appeal filed by the revenue is dismissed.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE)

(SUPRATIM BHATTACHARYA, J.)

pkd/GH.