ORDER OD – 4

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

ITAT/12/2022
IA NO: GA/1/2022
GA/2/2022

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL – 2, KOLKATA
VERSUS
SHRI DEEPAK KUMAR AGARWAL

BEFORE:

The Hon'ble Justice SURYA PRAKASH KESARWANI
The Hon'ble Justice RAJARSHI BHARADWAJ

Date : 4th December 2023.

Appearance:

Mr. Tilak Mitra, Advocate
... for appellant.

Mr. Avra Mazumder, Advocate
Mr. Suman Bhowmik, Advocate
Mr. Samrat Das, Advocate
... for respondent.

**Order on delay condonation application [IA GA No.1 of 2022]**

1. Heard Sri Tilak Mitra, learned senior standing counsel for the Income Tax Department / appellant / applicant and Sri Avra Mazumder, learned counsel for the respondent/assessee on delay condonation application being IA GA No.1 of 2022.

2. Learned counsel for the appellant/applicant submits that delay has been explained in paragraph 3 and its sub-paragraphs of the application. Learned counsel for the respondent/assessee submits that no explanation

for long delay of 902 days in filing the present appeal has been offered by the appellant and as such, the delay is not condonable. Consequently, the delay condonation application deserves to be rejected and the appeal also deserves to be dismissed.

3. We have carefully considered the submissions of the learned counsel for the parties and perused the application.

4. In paragraph 3 and its sub-paragraphs, the appellant/applicant has shown cause for delay as under:-

> "3. According to the calculation of the Revenue/Petitioner, the last date for filing the appeal under Section 260A of the Income Tax Act, 1961 expired on 05.10.2019 but the appeal has been filed on 25.03.2022 thereby there is a delay of about 902 days in filing the appeal before this Hon'ble Court and the reasons for the delay caused in filing this appeal are as follows:-

a) The Order of the Income Tax Appellate Tribunal "B" Bench Kolkata- was received by the Principal Commissioner of Income Tax, Central-2, Kolkata on 07.06.2019. On receipt of the file, the Assistant Commissioner of Income Tax, Hqr, Central-2, Kolkata sent the file asking for appeal scrutiny Report.

b) On 09.07.2019 the Deputy Commissioner of Income Tax / Assistant Commissioner of Income Tax Central Circle-3(1), Kolkata forwarded the appeal scrutiny report along with all relevant document to the office of the Principal Commissioner of Income Tax, Central-2, Kolkata through proper channel.

c) On 12.07.2019 Addl./Jt. Commissioner of Income Tax, Central, Range-3, Kolkata submitted the appeal scrutiny report along with his comments to the Principal Commissioner of Income Tax, Central-2, Kolkata for opinion.

d) That the Principal Commissioner of Income Tax, Central-2, Kolkata after considering the appeal scrutiny report and judicial folder suggested to file appeal u/s 260A of the Income Tax Act, and the judicial folder along with all relevant document were sent to the Commissioner of Income Tax (Judicial), Kolkata for taking necessary steps in the matter on 23.07.2019. On 09.09.2019 CIT (Judicial), Kolkata forwarded the judicial folder to the Principal Commissioner of Income Tax, Central-2, Kolkata office informing that Director General of Income Tax (Inv.), West Bengal, Sikkim & North Eastern Region has approved the proposal for filing appeal U/s 260A.

e) On 18.09.2019 the Income Tax Department sent the judicial folder to the Ministry of Law & Justice for preparing the necessary drafts. The Additional Government Advocate of Ministry of Law and Justice handed over the said judicial folder and engaged Junior Counsel to draw the Application, who received the same on 27.09.2019. The draft of Applications for were made ready by the learned Junior Counsel on 07.01.2020 and after being settled by the empanelled senior counsel on 07.01.2020 and the same was returned to the Ministry of Law and Justice on 27.01.2021 for verification by the revenue department.

f) On 27.01.2021 Ministry of Law sent the draft application to the Office of the Principal Commissioner of Income Tax, Central-2, Kolkata for verification.

g) On 01.03.2021 the Assistant Commissioner of Income Tax, Central Circle-3(1), Kolkata submitted the appeal papers to the office of the Principal Commissioner of Income Tax, Central-2, Kolkata. The said draft applications have been returned to the Assistant Commissioner of Income Tax, Central Circle-3(1), Kolkata for proper verification.

h) Again on 15.03.2021 the Assistant Commissioner of Income Tax, Central Circle-3(1), Kolkata submitted the draft application to the Principal Commissioner of Income Tax, Central-2, Kolkata. But the documents have been returned to the Assessing Officer for rectification. Subsequent reminder also sent to the Assistant Commissioner of Income Tax, Central Circle-3(1), Kolkata on 06.08.2021.

i) Again on 11.08.2021 the Assistant Commissioner of Income Tax, Central Circle-3(1), Kolkata submitted the draft application to the Principal Commissioner of Income Tax, Central-2, Kolkata. But the documents have been returned to the Assessing Officer for rectification on 30.08.2021.

j) The revenue department after proper verification and scrutiny of the documents and records sent the entire file back to the Ministry of Law and Justice on 04.03.2022 to take necessary steps for filing the appeal and application. The appeal and application were finally filed on 25.03.2022 after proper scrutiny and verification, and thus the delay in filing the appeal u/s 260A of the Income Tax Act and other application is about 902 days."

5. From bare perusal of the aforesaid application, we find that the appellant has completely failed to explain the delay properly and more particularly for the periods from 05.10.2019 to 15.03.2020 and 28.02.2022 to 24.03.2022, even after excluding the period of limitation as provided by orders of Hon'ble Supreme Court in Suo Moto Writ Petition (C) No.3 of 2020 in Re: cognizance for extension of limitation. Thus, in the absence of any acceptable explanation offered by the appellant/applicant for

condonation of delay, the delay cannot be condoned. Under the circumstances, the delay condonation application being IA GA No.1 of 2021 deserves to be rejected.

6. For the reasons afore-stated, IA GA No.1 of 2022 is hereby rejected.

**Order on Appeal**

7. In view of rejection of IA GA No.1 of 2022, the appeal also stands dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar