OD – 7

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/158/2023
IA NO: GA/1/2023, GA/2/2023
EUPHORIA INFOTECH INDIA PVT LTD.
VS
THE INCOME TAX OFFICER, WARD NO. 2(1), KOLKATA AND ORS.

BEFORE:-
THE HON'BLE THE CHIEF JUSTICE T. S. SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 2ND AUGUST, 2023.

Appearance :
Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Avra Majumder, Adv.
Ms. Alisha Das, Adv.
Mr. Kausheo Roy, Adv.
…for appellant
Mr. Om Narayan Rai, Adv.
…for respondent

The Court :- We have heard Mr. Abhratosh Majumdar, learned Senior Advocate appearing for the appellant and Mr. Om Narayan Rai, learned standing counsel appearing for the respondents.

It appears that there is a delay of 79 days in filing the appeal. We have perused the affidavit filed in support of the condone delay petition and we find sufficient cause has been shown for not preferring the appeal in time. Accordingly, the application for condonation of delay is allowed and the delay in filing the appeal is condoned.

This intra-Court appeal by the writ petitioner is directed against the order dated 30th January 2023 in WPO 64 of 2023. The appellant had challenged the order passed under Section 147 read with Section 144/144B of the Income Tax Act, 1961 dated 31st March, 2022. The learned Single Bench dismissed the writ petition on the ground that the impugned order in the writ petition is an appelable order.

After going through the relevant records we fully concur with the learned Single Bench in coming to the conclusion that the writ petition cannot be entertained since the order impugned in the writ petition is an appealable order. That apart, we hasten to add that to decide the correctness of the order dated 31st March, 2022, the facts have to be gone into, much of which is being disputed by the revenue. Therefore, the assessee has to pursue the appellate remedy and as observed by the learned Single Bench, the appellate authority will be able to re-appreciate the evidence and also substitute the findings of the assessing officer with his own findings.

Thus, we find no grounds to interfere with the order impugned.

The learned Senior Advocate appearing for the appellant submitted that the appellant may be permitted to file statutory appeal before the Commissioner of Income Tax (Appeals). Since Mr. Om Narayan Rai, learned Advocate for the respondent/revenue submitted that the assessment order was passed on 31st March, 2022 and the writ petition was filed during January 2023 and even at that point of time had a statutory appeal been filed by the assessee, it would have been time barred. In any event, since the assessee had availed a remedy before this Court in which they were not successful, it would be appropriate to exclude the period during which the writ petition was pending till the server copy of this order is received by the appellant. However, in respect of the anterior period, this Court is conscious of the fact that it would be appropriate for the Court to extend the statutory period of limitation nevertheless the Court can take judicial notice of the fact that in several cases filed by the revenue there is inordinate delay and Court has exercised discretion in several matters and condoned the delay in appeals filed by the revenue.

Thus, considering the peculiar facts and circumstances of the case and also the submission of the leaned Senior Advocate for the appellant that the entire income has been added, we are of the view that the appellant can be granted reasonable time to prefer an appeal and such appeal can be directed to be disposed of on merits and in accordance with law without rejecting the same on the ground of limitation.

Thus, making it clear that this order and direction shall not be treated as a precedent, while affirming the order passed by the learned Single Bench and disposing of the appeal, we grant liberty to the appellant to file a statutory appeal against the order impugned in the writ petition and if such appeal is filed within a period of thirty days from the date of receipt of the server copy of this order, the appeal shall be dealt with by the appellate authority on merits and in accordance with law, without rejecting the same and on the ground of limitation.

The appeal and application stand disposed of accordingly.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA,J.)

SN/GH.