OD-10

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/208/2023
IA NO: GA/2/2023
UNIVERSAL ENTERPRISES LIMITED
VS
INCOME TAX OFFICER, WARD 6(2) & ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 23rd August, 2023

Appearance :
Ms. Swapna Das, Adv.
…for appellant

Mr. Om Narayan Rai, Adv.
Mr. Prithu Dudhoria, Adv.
…for respondent

The Court : - This intra-Court appeal by the writ petitioners is directed against the order passed by the learned Single Bench in WPO No. 1022 of 2023, dated May 17, 2023. The writ petition was allowed holding that the appellant being aggrieved by an order of assessment passed by the Assessing Officer has to necessarily file an appeal.

Ms. Swapna Das, learned Advocate appearing for the appellant, would vehemently contend that the reopening of the assessment is hopelessly time-barred and this aspect of the matter has not been specifically dealt with by the Learned Writ Court in the impugned order and therefore aggrieved by the same the appellant has preferred this appeal.

We have heard Mr. Om Narayan Rai, learned standing Counsel appearing with Mr. Prithu Dudhoria, learned Advocate for the respondents.

The Assessing Officer issued show-cause notice dated May 26, 2022 under Section 148A(b) of the Income Tax Act, 1961 (the Act) proposing to reopen the assessment for the relevant assessment year namely, A.Y. 2015-16. The reasons based on which the assessment was proposed to be reopened was mentioned in the show-cause notice. The assessee submitted their reply/objection pointing that the re-assessment proceedings is time-barred. Apart from that the assessee had also set out certain averments on the merits of the matter, which could be seen from paragraph 4 of the reply dated June 9, 2022. The Assessing Officer passed order under Section 148A(d), dated 23rd July, 2022 and has dealt with the issue regarding the plea of limitation by stating that in terms of the provisions of taxation and other laws amendment Act, the period of limitation for issuance of the reopening notice stood extended to 30th June, 2021 and therefore, the reopening proceedings is not barred by time. Apart from that, other findings were also recorded by the Assessing

Officer. Thereafter, a show-cause notice was issued on April 26, 2023 proposing certain variations. For such show-cause notice, the assessee sent a reply not on merits but with a request to keep the proceedings in abeyance since the writ petition was filed by the appellant. However, the assessment order has been passed by the Assessing Officer dated May 26, 2023.

In the light of the stand taken by the Assessing Officer with regard to the plea of limitation by referring to the decision of the Hon'ble Supreme Court in the case of *Union of India & Ors. vs. Ashish Agarwal*, correctness of the same is required to be decided before the appropriate appellate authority and not by a writ court as the question of limitation arisen in the instant case is a mixed question of fact and law.

Therefore, it is appropriate for the appellant to file an appeal as against the assessment order dated May 26, 2023. In the appeal that the appellant may file, the appellant would be at liberty to raise the plea of limitation, which will be considered by the appellate authority.

In the light of the above, we are not inclined to interfere with the order passed by the Learned Single Bench and we direct the appellant to file a statutory appeal before the Commissioner of Income Tax (Appeals) and if such appeal is filed within 30 days from the date of receipt of the server copy of this order and judgment, the appeal shall not be rejected on the ground of limitation but shall be entertained by the said appellate authority.

The appellant will be entitled to raise the plea that the entire reopening proceedings is time-barred apart from raising other plea on the merits of the matter and the appellate authority shall decide the plea of limitation as fast among the several issues which will fall for consideration.

With the above observation, the appeal is dismissed.

The stay application being IA NO: GA/2/2023 is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN/SD.
AR(CR)