OD-12

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/229/2023
IA NO: GA/1/2023
KARNANI PROMOTERS PRIVATE LIMITED
VS
INCOME TAX OFFICER WARD 7(1) AND ORS.

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

Appearance :
Mr. Saurabh Bagaria, Adv.
Mr. Rites Goel, Adv.
...for appellant
Mr. Tilak Mitra, Adv.
...for respondent

The Court : - This intra Court appeal by the writ petitioner is directed against the order dated 20.06.2023 in WPO/1225/2023. The said writ petition was filed challenging the order dated 1.7.2022 under Section 148A(d) of the Income Tax Act, 1961 (the Act) for the assessment year 2016-17. During the pendency of the writ petition the assessment order has been passed.

Mr. Saurabh Bagaria, learned Advocate appearing for the appellant would strenuously contend that the judisdictional defect in the entire reopening proceeding inasmuch as approval for reopening was not granted by the competent authority, which will be the Principal Chief Commissioner of Income Tax, but it has been granted by the Principal Commissioner of Income Tax, which aspect was specially pointed out by the assessee in their reply to the show-cause notice. Nevertheless, the assessing officer has not dealt with the point nor the defect had been cured. Therefore, the assessment order has to be set aside and the matter has to be sent back to the department to proceed in accordance with law. Mr. Amit Sharma, learned Advocate appearing for the respondent submits that even assuming that approval was granted only by the Principal Commissioner of Income Tax and not by the Principal Chief Commissioner of Income Tax the same shall be a procedural error and at best it can be a curable defect. In any event, the assessment order having been passed though during the pendency of the writ petition as there was no interim order in the writ petition. In our view, the assessee should exhaust the appellate remedy available under the Act without bypassing the same as appellant authority would be entitled to examine the aspect by calling for the necessary records. In the result, the appeal stands disposed of by directing the appellant to file an appeal before the appellate authority namely the Commissioner of Income Tax, (Appeals) and if such appeal is filed within a period of 30 days from the date of receipt of the server copy of this order, the appeal shall not be rejected on the ground of limitation. The appellant is entitled to canvass the issue regarding the validity of the approval granted by the Principal Commissioner of Income Tax. Apart from other grounds on the merits of the assessment and the appellate authority while considering the appeal petition shall decide the validity of the approval granted as first amongst several issues which may arise for consideration.

The application is disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH