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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/296/2023
IA NO: GA/1/2023
KEVENTER AGRO LIMITED
VS
ASSISTANT/DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 4(1), KOLKATA AND ORS

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 6TH September, 2023

<u>Appearance</u> :
Mr. J.P. Khaitan, Sr. Adv.
Mr. Akhilesh Gupta, Adv.
Mr. Pranav Sharma, Adv.
Mr. Swetank Rai, Adv.
...for appellant
Ms. Smita Das De, Adv.
...for respondent

The Court : - This intra-Court appeal by the writ petitioner is directed against the order dated 22nd August, 2023 in WPO No. 1511 of 2023. In the said writ petition the appellant/assessee challenged an order passed by the assessing officer under Section 220(6) of the Income Tax Act, 1961 directing the appellant to pay 50% of the demand pursuant to the assessment proceeding completed on 29th May, 2023. It is not in dispute that as against the assessment order the assessee has preferred an appeal before the Commissioner of Income Tax, Appeals (CITA) on 26th June, 2023 and the appeal is pending. After elaborately hearing the learned Senior Advocate for the appellant and Counsel for respondent/department we are of the view that to decide the issue as to whether the appellant has to deposit 20% of the demand raised of the entitled sum to grant a stay and or whether the appellant is entitled for an unconditional stay would be a matter of academic interest in the instant case as the appellant has canvassed several points in the stay petition dated 31.07.29023 touching upon the merits of the assessment as well as relying upon various case laws and also pointing out that the assessment being a high pitched assessment heavy condition imposed by the assessing officer to pay the 20% of the demand is onerous. Considering the material facts and circumstances of the case and also the fact that assessment is a high pitched assessment we are of the view that the appeal itself can be disposed of by the Commissioner of Income Tax, Appeals at an early date preferably within the period of two months from the date of receipt of the server copy of this order.

In the result, the appeal is partly allowed and the order passed by the assessing officer dated 10th August, 2023 under Section 220(6) of the Act shall be kept in abeyance and there would be a direction to the CIT(A) to dispose of the appeal filed by the appellant challenging the assessment order on 26.06.2023 after affording an opportunity to the appellant as soon as possible preferably within a period of two months from the date of receipt of the server copy of this order. The appellant is directed to extend full cooperation to the Appellate Authority in expeditious disposal of the appeal without seeking for unnecessary adjournment. Till then, the order passed by the assessing officer under Section 220(6) of the Act dated 26.06.2023 shall be kept in abeyance.

In order to ensure that this direction is complied with within the time line suggested by this Court, the matter may be assigned to Commissioner of Income Tax, Appeals having jurisdiction over the assessee instead of Commissioner of Income Tax, Appeals, Faceless Assessment Circle.

We make it clear, that this order is passed considering the peculiar facts and circumstances of the case and not to be treated as a precedent.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN/PKD/GH/S.Das