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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

ORIGINAL SIDE

APO/138/2023
IA NO.GA/1/2023
JAY SHREE TEA AND INDUSTRIES LIMITED
-Versus-

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 4/1 AND ORS.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 27th September, 2023

Appearance :
Mr.J.P. Khaitan, Sr. Adv.
Mr. Ananda Sen, Adv.
...for the appellant.

Mr. Om Narayan Rai, Adv.
...for the respondent.

The Court : This intra-Court appeal by the writ petitioner is directed against the order dated 2nd August, 2023 in WPO No.1340 of 2023. The said writ petition was filed by the appellant challenging the reassessment order passed under Section 147 read with Section 144 of the Income Tax Act, 1961 (the Act) dated 30th May, 2023 for the assessment year 2013-14. The learned Single Bench had dismissed the writ petition on the ground that the reassessment order was passed on 29th March, 2023 and the writ petition was filed on 28th June, 2023 much after the expiry of the period of limitation for preferring an appeal as against the reassessment order and, therefore, the writ petition cannot be entertained.

After hearing the learned senior advocate appearing for the appellant and the learned senior standing counsel for the respondent/department, we find that the factual error has crept in while noting the date of the reassessment order was passed. The correct date on which the reassessment order has been passed, which is not disputed by the revenue is 30th May, 2023 and admittedly, the writ petition was filed on 28th June, 2023 well within the period of limitation for filing the statutory appeal as against the reassessment order. Therefore, the appellant could not have been non-suited on the said ground. Be that as it may, the principal ground on which the reassessment order has been challenged is by contending that after the notice was issued on the assessee proposing to reopen the assessment, the assessee had raised a preliminary objection with regard to the limitation aspect contending that the notice intending reopening the assessment was barred by time. Apart from that, the assessee had also raised issues on the merits of the matter. It is the contention of the learned senior advocate for the appellant that the issue regarding the limitation aspect which was specifically canvassed by the assessee in their reply to the show cause notice issued under Section 148 of the Act was not dealt with by the assessing officer while rejecting the reply/objection filed by the assessee. In our considered view, this issue will not be a pure question of law but would be a mixed question of fact and law and, therefore, it is but appropriate for the assssee not to bypass the statutory appellate remedy available under the provisions of the Act which is not only an effective remedy but also an efficacious remedy as the first appellate authority would be entitled to appreciate and re-appreciate the factual position. Therefore, the appellant should file a statutory appeal before the appellate authority, namely, the Jurisdictional Commissioner of Income Tax (Appeals).

In the light of the above, the order passed in the writ petition is set aside and the appeal stands disposed of by directing the appellant to prefer a statutory appeal before the Jurisdictional Commissioner of Income Tax (Appeals) within a period of 30 days from the date of receipt of the server copy of this order. Since this Court has directed the appeal to be filed within the time stipulated as above, the appeal should be entertained by the appellate authority and decided on merits and not to be rejected on the ground of limitation.

We make it clear that we have not gone into the merits of the matter and the appellant is free to canvass all grounds before the appellate authority which shall be considered on merits and in accordance with law. In the said appeal the appellant is entitled to canvass all grounds both on facts as well as on law and the appellate authority shall consider the appeal and endeavour to dispose of the appeal as expeditiously as possible preferably within a period of two months from the date on which the personal hearing is concluded.

In view of the above, the connected application stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/