OD-13

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT 313 OF 2023
IA NO: GA/1/2023, GA/2/2023
INCOME TAX OFFICER, WARD-5(1), KOLKATA
-Versus-
SILVERTOSS VANIJYA PVT. LTD.

BEFORE:

The Hon'ble T.S. SIVAGNANAM, CHIEF JUSTICE
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 4th October, 2023

Appearance :
Mr. Prithu Dudhoria, Adv.
..for the appellant

Mr. Brijesh Kumar Singh, Adv.
Mr. Om Prakash Prasad, Adv.
... for the respondent

The Court : This intra-court appeal has been filed by the Income tax Department challenging the order passed by the Learned Single Bench dated 8th February, 2023 in WPO No. 213 of 2023.

There is a delay of 179 days in filing the appeal. Though the explanation offered is not fully satisfactory, considering the fact that the delay is only 179 days, we exercise our discretion and condone the delay in filing the appeal.

The respondent/writ petitioner challenged a notice issued by the appellant under Section 148A(b) of the Income Tax Act, 1961, dated 26th May, 2022, relating to the assessment year 2013-14 and the consequential order passed under Section 148A(d) of the Act dated 23rd July, 2022. The Learned Single Bench noted that for the very same assessment year, namely 2013-14, a notice was issued under Section 148 of the Act dated 23rd June, 2021. This notice was a second notice which was issued by the Assessing Officer for the very same assessment year. The assessee filed a writ petition before this Court being WPO 825 of 2021 and by order dated 10th November, 2021 the Learned Single Bench set aside the notice on the ground that the Department was not in a position to defend the action of the Assessing Officer by issuing a second notice under the very same provision in respect of the same assessment year which, in the opinion of the Court, was a case of total non-application of mind and would amount to harassment of the respondent/assessee. The order passed in WPO 825 of 2021 dated 10th November, 2021 had become final.

The appellant-department had issued a third notice under the amended provision, namely 148A(b) of the Act for the assessment year 2013-14, by referring to the decision of the Hon'ble Supreme Court in *Union of India & Ors. vs. Asish Agarwal* dated 4th May, 2022 and issued the third notice. The correctness of this was examined and the Court held that there was no justification for issuance of the notice under Section 148A(b) of the Act or passing a consequential order under Section 148A(d) of the Act after the re-assessment was completed long back prior to the newly amended

Section 148A and the judgement of the Hon'ble Supreme Court in *Asish Agarwal* and accordingly, allowed the writ petition and quashed the proceedings.

Considering the facts and circumstances of the case, we are of the clear view that the revenue has not made out any case for interfering with the order passed by the Learned Single Bench. We find that in the impugned order the Learned Single Bench has imposed a cost of Rs.10,000/- on the Assessing Officer Mr. Bitan Roy to be paid from his salary.

Considering the legal issues which have been canvassed in this appeal by the department, we are of the view that cost need not be imposed on the Assessing Officer. Accordingly that portion of the order passed by the Learned Single Bench imposing costs is set aside and the other aspects of the order stand confirmed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

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AR(CR)