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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT 344 OF 2023
IA NO: GA/1/2023, GA/2/2023
INCOME TAX OFFICER, WARD-44(2), KOLKATA
-Versus-
GUPTA TRADING CO.

BEFORE:

The Hon'ble T.S. SIVAGNANAM, CHIEF JUSTICE
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 18th November, 2023

<u>*Appearance :*</u>
Mr. Prithu Dudhoria, Adv.
..for the appellant

Mr. Hemant Tiwari, Adv.
...for the respondent

The Court : This intra-court appeal by the revenue is directed against the order dated 9th September, 2022 passed in WPO No. 2540 of 2022.

There is a delay of 347 days in filing the appeal. We have heard the learned Advocate for the parties and perused the averment set out in the condone delay petition and we find sufficient cause has been shown for not preferring the appeal within the period of limitation. Accordingly, the delay is condoned. The application being GA 1 of 2023 is allowed.

The respondent/writ petitioner challenged the order dated 30th June, 2022 passed under Section 148A(d) of the Income Tax Act, 1961, relating to the assessment years 2016-17, on the ground that the notice for reopening under Section 148 of the Act was issued much prior to the passing of the order under Section 148A(d) of the Act.

The learned Single Judge after noting the facts which remained uncontroverted allowed the writ petition on the ground that the notice under Section 148 could not precede an order to be passed under section 148A(d) of the Act.

We have perused the documents placed on record and we find that the notice under Section 148 is dated 28th June, 2022 and it is stated in the said notice that it is issued pursuant to an order which has been passed under Section 148A(d) of the Act. It is an admitted fact that as on the said date namely 28th June, 2022 there was no order passed under section 148A(d) of the Act which was admittedly passed on 30th June, 2022. Before us the revenue seeks to contend that it is a typographical mistake. However, it appears to be not being the stand of the department at any earlier point of time. Moreover, we find that the order under section 148A(d) dated 30th June, 2022 at 4.43 PM. Therefore, the theory of the typographical mistake is untenable. Thus, we find that the learned Single Judge was fully justified in allowing the writ petition and no grounds have been made out to interfere with the said order.

Accordingly, the appeal fails and is dismissed.

The stay application GA 2 of 2023 is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN/GH.
AR(CR)