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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/345/2023
IA NO: GA/1/2023, GA/2/2023
INCOME TAX OFFICER, WARD-44(1), KOLKATA
VS.
NEELAM JAIN

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th December, 2023

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

The Court : This intra-court appeal by the revenue is directed against the order dated 9th September, 2022 in WPO No. 2541 of 2022 by which the writ petition was allowed on the ground that the re-assessment proceedings is barred by limitation.

We have heard Mr. Prithu Dudhoria, learned standing Counsel appearing for the appellant.

There is a delay of 347 days in filing the appeal. We are satisfied with the explanation offered by the appellant for not preferring the appeal within the period of limitation. Accordingly, the application for condonation of delay IA No: GA/1/2022 is allowed. Delay in filing the appeal is condoned.

The learned Counsel for the appellant would submit that the Department was not granted any opportunity to file their affidavit-in-opposition and the writ petition was allowed at the admission stage recording as if the learned standing counsel for the Department could not contradict the factual position with regard to the contention that the re-assessment proceedings were barred by limitation. It is further submitted that identical issue has been raised in several writ petitions and in one such case affidavit-in-opposition was filed and the elaborate submissions have been made by the learned Advocates appearing for the assessee as well as the learned standing counsel and the batch of cases are still pending before the Learned Single Bench. Therefore, it is submitted that opportunity may be granted to the Department to put forth their case on merits.

We have heard the learned Counsel for the respondent/assessee on the above submission.

Considering the fact that the question of limitation is not purely a question of law but a mixed questions of law and fact, it is appropriate that the Department is granted an opportunity to place facts before the Court in the form of an affidavit. Therefore, we are of the view that such opportunity should not be denied to the Department.

For the above reason, the appeal is allowed and the order passed by the Learned Single Bench dated 9th September, 2022 is set aside and WPO No. 2541 of 2022 is restored to the file of the Learned Single Bench.

The appellant Department is directed to file their affidavit-in-opposition to the writ petition within three weeks from date and reply, if any, within a week thereafter. Let the writ petition be listed before the Learned Single Bench in the week commencing 15th January, 2024.

Learned Counsel appearing for the respondent/assessee submitted that in the batch of cases which are not pending before the Learned Single Bench, orders of interim stay were granted. However, since the writ petition itself was allowed in the case of the respondent/assessee and occasion did not occur for grant of any interim order, considering the fact that we have allowed the revenue's appeal and restored the writ petition to the file of the Learned Single Bench to be heard and decided on merits, there will be an order of stay and the re-assessment proceedings for the relevant assessment year till 31st January, 2024.

The stay application being IA: GA No. 2 of 2023 is also disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN/S.Das
AR(CR)