OD-1,2,3,4

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/196/2022
IA No: GA/1/2022
AMIT KUMAR AGARWAL
VS.
UNION OF INDIA AND ORS.

APOT/197/2022
IA No: GA/1/2022
AMAR KUMAR AGARWAL
VS.
UNION OF INDIA AND ORS.

APOT/198/2022
IA No: GA/1/2022
DILIP KUMAR GHOSH
VS.
UNION OF INDIA AND ORS.

APOT/200/2022
IA No: GA/1/2022
RAJESH AGARWAL
VS.
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 7th February, 2023

Appearance :
Mr. J.P. Khaitan, Sr. Adv.
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Indranil Banerjee, Adv.
Mr. Samit Rudra, Adv.
Mr. M. Kejriwal, Adv.
....for appellant.

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

The Court : We have heard learned Counsel for the either side.

These intra Court appeals are directed challenging the orders dated 26.09.2022 in four writ petitions filed by the appellants. The prayers sought for in all the four writ petitions are identical inasmuch the appellants/assessees had challenged the show-cause notices issued under Section 279(1) read with Section 2(35) of the Income Tax Act, 1961 and the prosecution which was initiated by the respondent/department under Sections 276C(1), 277 and 277A of the Act all relating to various assessment years.

The learned Single Bench by the impugned orders had taken note of the fact that as against the assessments which were completed in the case of the assessees, the assessees have preferred the appeal before the Commissioner of Income Tax (Appeals) and in the light of the pendency of the appeals before the Appellate Authority the penalty proceeding should not proceed further and, accordingly, the learned Single Bench had directed that the penalty proceedings should be stayed and should await outcome of the appeals pending before the Appellate Authority. To that extent, the appellants are not aggrieved as the said order enures in their favour. The appellants are aggrieved only with that portion of the impugned order by which the learned Single Bench declined to interfere with the prosecution initiated by the respondent/department against the appellants. Challenging that portion of the order, the appellants had filed the present appeal.

The learned Counsel appearing for the appellants placed reliance on the decision of the Hon'ble Supreme Court in the case of *Commissioner of Income Tax –vs.- Bhupen Champak Lal Dalal And Another, reported in [2001] 248 ITR 830* and submitted that the prosecution should be stayed.

The learned Single Bench had, in fact, taken note of the submissions made on behalf of the revenue that sanction to prosecute had already been granted. However, it is the submission of the learned Senior Counsel for the appellants that till date the summons have not been served on the appellants. The facts in Bhupen Champak Lal Dalal (supra) show that in those cases against the prosecution initiated by the Income Tax Department that the assessees had filed an application for stay of the proceedings before the Criminal Court and the Criminal Court was not inclined to stay the proceedings and the appeal arose out of such an order. In the instant case, the appellants have approached the learned Single Bench of this Court at the very threshold when notices were issued proposing to initiate the prosecution. Therefore, if at all the appellants are aggrieved, the appellants should first move the Court of first instance, namely, the Criminal Court before which the respondent/department has filed the complaints and at this stage of the matter a Writ Court should not interdict the process.

Therefore, in our view, the learned Single Bench was right in refusing to interfere with the prosecution which had been initiated by the respondent/department.

Thus, we find that there are no good grounds to interfere with the orders passed by the learned Single Bench. However, it has to be made clear that it is always open to the appellants to approach the Criminal Court for appropriate relief if in their opinion that the prosecution should not proceed further in the light of the facts that statutory appeals are pending as against the assessment and the learned Single Bench had also granted stay of the penalty proceedings.

With the above observations, the appeals stand dismissed.

Accordingly, the connected applications are closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/GH