OD–14

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/235/2022
IA No: GA/1/2022

MRM FINVEST PRIVATE LIMITED
VS.
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th January, 2023

Appearance :
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Mrigank Kejriwal, Adv.
....for appellant/ assessee.

Mr. Aryak Dutt, Adv.
... for the respondent.

The Court : This intra court appeal filed by the writ petitioner is directed against the order dated 12th December, 2022 in the WPO No.3143 of 2022. The said writ petition was filed by the appellant/assessee challenging the order passed by the Principal Commissioner of Income Tax, Kolkata-2 dated 25th March, 2022 passed under Section 264 of the Income Tax Act, 1961. The learned Single Bench dismissed the said writ petition and on being aggrieved by the same, the writ petitioner has preferred the present appeal.

We have heard Mr. Pratyush Jhunjhunwala, learned counsel appearing for the appellant/assessee and Mr. Aryak Dutt, learned standing counsel for the respondent.

The short issue which falls for consideration is as to what is the correct name of the assessee. Initially, the assessee's name was MRM Securities

Private Limited which is valid and true. Subsequently, an application was made on 16th September, 2008 challenging that the correct name of the company should be changed as MRM Finvest Private Limited as the Reserve Bank of India did not grant approval on the name MRM Securities Private Limited. This application was preferably considered and a new PAN was issued on 14th October, 2008 showing the name of the company as MRM Finvest Private Limited.

From the assessment year 2009-10 onwards, the assessee has filed all the returns in the said name duly accepted by the Income Tax department. The present dispute has arisen for the assessment year 2019-20. The assessee filed the return of income on 16th September, 2019. However, the said return was not treated as a valid return by the CPC, Bangalore vide order dated 18th March, 2020 passed under Section 139(9) of the Act. The remedy available to the appellant/assessee at that juncture was to point out to the department that the mistake had occurred on account of the Income Tax department not having updated the departmental portal. The new name of the company was duly entered as of 14th October, 2008 when the new PAN was issued. However, the assessee appears to have filed another return of income on 27th July, 2020 for the reason that the said return could be considered and the mistake can be rectified. Even prior to filing of the return, several representations have been made by the assessee pointing out as to how the mistake had occurred on account of the fact that the new PAN with the new name of the assessee has not been uploaded in the departmental portal. After the new PAN number was registered and PAN was issued on 14th October, 2008, another confusion had arisen by which the name of the assessee was changed from MRM Finvest

Private Limited to MRM Securities Private Limited, by order dated 2nd March, 2017. On coming to know of the same the assessee immediately raised the objection on the grievance platform on 10th March, 2017 stating that as per the sequence of events duly supported by documents the name of the company should be MRM Finvest Private Limited and not MRM Securities Private Limited as the name MRM Securities Private Limited was rejected by the Reserve Bank of India. Even thereafter, the department appears to have not made the necessary rectifications in their portal. This has resulted in the return dated 16th September, 2019 being treated as an invalid return.

It is settled position that for the fault committed by the department the assessee should not be put to prejudice. Furthermore, if the order passed under Section 264 of the Act is allowed to remain, then it would tantamount to the department recovering excess tax which is not authorized by law. In any event, a mistake being procedural in nature and on account of procedural error, the assessee cannot be put to prejudice.

Therefore, we are of the view that the portal of the Income Tax department has to be duly corrected by showing the correct name of the assessee as MRM Finvest Private Limited instead of MRM Securities Private Limited and all necessary changes be made in the records/e-records of the Income Tax Department and consequently the original return filed on 16th September, 2019 shall be treated as valid return.

As we have directed the return dated 16th September, 2019 be treated as valid return, it goes without saying that the return shall be processed in an appropriate manner by the Assessing Officer and, accordingly, the matter stands remitted to the Assessing Officer for necessary orders.

With the above directions, the appeal and the application are allowed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/s.chandra