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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 21.04.2023

+ **W.P.(C) 5649/2021**

ARDENT INFO SYSTEMS PVT. LTD.

..... Petitioner

Through: Mr Sumit Lalchandani with Mr Vibhu
Jain, Advocates.

versus

PR COMMISSIONER OF INCOME TAX -1 & ORS.....Respondents

Through: Mr Sanjay Kumar, Sr Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

CM APPL. 17597/2021

1. Allowed, subject to just exceptions.

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2. This writ petition is directed against three rejection orders passed by respondent no.1, which is the designated authority under the Direct Tax Vivad Se Vishwas Act, 2020 [in short, "2020 Act"].

3. The three rejection orders which have been assailed are dated 31.01.2021, 25.03.2021 and 09.04.2021. The orders are almost identical in their width and scope.

4. However, as is evident on a bare perusal of the said orders, these

orders came to be passed on account of declarations made by the petitioner on various dates.

4.1 Thus, insofar as the rejection order dated 31.01.2021 is concerned, a declaration in the prescribed form i.e., Form-1 and Form-2 under the 2020 Act, was made on 21.11.2020.

4.2 Likewise, as regards the rejection order dated 25.03.2021 is concerned, the declaration was filed, as indicated above, on 31.01.2021.

4.3 Similarly, the third declaration was filed by the petitioner, once again, in the prescribed form on 25.03.2021, which was rejected on 09.04.2021.

5. The ground on which the petitioner's declarations were rejected was that on the specified date i.e., 31.01.2020, its appeal was not pending.

6. To appreciate the issue at hand, which is: whether or not the appeal was pending either before the Income Tax Appellate Tribunal [in short, "Tribunal"] or the first appellant authority i.e., the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"]- the following broad facts are required to be noticed.

6.1 The petitioner had filed its return for Assessment Year 2008-09 on 31.03.2009.

6.2 The return was processed under Section 143(1) of the Income Tax Act, 1961 [in short, "1961 Act"].

6.3 On 23.03.2015, a notice under Section 148 of the 1961 Act was issued.

6.4 Consequentially, respondent no.2 passed an assessment order on 16.03.2016 under Section 147, read with Section 144 of the 1961 Act. Resultantly, the petitioner's income chargeable to tax was reassessed and pegged at Rs.20,32,181/-.

6.5 Since the petitioner was dissatisfied with the outcome in the

reassessment proceedings, it preferred an appeal, *albeit*, in physical form as against an appeal in digital mode on 28.04.2016. This appeal was lodged before respondent no.3.

6.6 It appears that the petitioner, in line with CBDT's Circular No.20/2016 dated 26.05.2016, filed an appeal with respondent no.3 via online mode as well. This appeal was uploaded on 07.06.2017.

6.7 Respondent no.3, on 06.07.2018, passed two separate orders. The first order concerned the appeal filed by the petitioner in physical mode, (i.e., Appeal No.79/16-17). This appeal was dismissed on the ground that an appeal filed in physical form was not viable i.e., could not be entertained.

6.8. The second order which was passed by respondent no.3 concerned the appeal (i.e., Appeal No.39/17-18), which had been preferred digital mode. This order considered the petitioner's case on merits. Respondent no.3, however, disagreed with the petitioner, and thereby sustained the reassessment order dated 16.03.2016 passed by respondent no.2.

7. As would be evident, there were two orders available on record, of even date i.e., 06.07.2018. The petitioner, it appears, made things difficult for itself, inasmuch as, while filing an appeal against the order passed by respondent no.3 with the Tribunal, it appended the order passed by respondent no.3 on its appeal preferred in physical form.

8. We are informed that the petitioner had preferred an appeal with the Tribunal on 11.09.2018.

8.1 The Tribunal *via* order dated 01.04.2019 set aside the order dated 06.07.2018 passed in Appeal No.79/16-17, which was the order passed in the appeal preferred by the petitioner in physical form, and remanded the matter to respondent no.3.

8.2 Pertinently, this order was passed by the Tribunal without the petitioner being represented on the said date. It appears that the petitioner discovered, thereafter, that its grievance could not have been redressed by the remand order dated 01.04.2019 passed by the Tribunal, given the fact that the order which had been set aside was not the order which respondent no.3 had passed on merits. As indicated above, the order on merits was passed by respondent no.3 in the appeal preferred before him *via* digital mode.

9. This impelled the petitioner to file a Miscellaneous Application (MA) under Section 254(2) of the 1961 Act for correcting, what it thought was an error apparent on record.

9.1 The MA was filed on 30.05.2019. The petitioner sought to bring to the notice of the Tribunal, the inadvertent mistake it had made by appending to its appeal, the order that respondent no.3 had passed in the appeal which had been preferred in physical form- which did not deal with the merits of the petitioner's case.

9.2 For whatever reasons, the Tribunal, took a simplistic view of the matter and held that there was no error apparent on the face of the record and consequently, proceeded to dismiss the petitioner's MA via order dated 30.08.2019.

10 It is important to note that what the Tribunal, perhaps, failed to focus on was the impact of its order whereby the matter had been remanded to respondent no.3. The Tribunal failed to appreciate that the direction for remand order had created an incongruous situation, inasmuch as the order, on merits, passed by respondent no.3, remained undisturbed.

11. The petitioner, to correct course, lodged a fresh appeal with the

Tribunal on 10.02.2020, along with an application for condonation of delay.

11.1 This appeal was preferred by the petitioner against the order, passed on merits, by respondent no.3 on 06.07.2018 *albeit*, on the appeal preferred by it in the digital mode.

12. The record shows that, while the appeal was pending, the Finance Act 2020 received the assent of the President of India on 17.03.2020.

13. It is in these circumstances that the petitioner filed the first declaration, in a series of declarations referred to hereinabove, with respondent no.1 under the 2020 Act.

13.1 As alluded to hereinabove, the first declaration was filed on 21.11.2020, which was rejected on 31.01.2021; the second declaration was filed on 31.01.2021, which was rejected by respondent no.1 on 25.03.2021; while the third and last declaration was lodged on 25.03.2021, which was rejected (like the previous two declarations), on 09.04.2021.

14. Therefore, as indicated right at the outset, the moot issue is: whether the petitioner's appeal was pending consideration before the concerned statutory authority under the 1961 Act, on the specified date?

15. There is no doubt that the specified date is 31.01.2020; as indicated in Section 2(n) of the 2020 Act.

16. As adverted to above, the Tribunal passed its remand order on 01.04.2019. The Tribunal refused to correct the remand order passed on 01.04.2019 which had brought about the revival of the petitioner's appeal [preferred in physical form]- which had been rejected by respondent no.3 via order dated 06.07.2018.

17. Although the petitioner had attempted to bring to the notice of the Tribunal that while filing the appeal, it had, inadvertently, not placed on

record the second order of even date i.e., 06.07.2018, passed by respondent no.3, *albeit*, on merits, it refused to entertain the application and dismissed the same via order dated 30.08.2019.

18. The facts, as set forth hereinabove, also reveal that a fresh appeal was filed by the petitioner before the Tribunal on 10.02.2020 along with an application for condonation of delay. The Tribunal, *via* the detailed order dated 18.12.2020, condoned the delay and admitted the appeal.

19. Given these facts, it was submitted by Mr Sumit Lalchandani, who appears on behalf of the petitioner, that the condonation of delay by the Tribunal *via* order dated 18.12.2020 would put the petitioner, in a sense, back in point of time, and therefore, contrary to what has been indicated in the orders passed by respondent no.1, the appeal would have to be treated as pending on the specified date.

20. On the other hand, Mr Sanjay Kumar, learned senior standing counsel, who appears on behalf of the respondent/revenue, says that the issue that this Court has to consider is: whether the appeal was pending on the specified date?

20.1 In other words, Mr Kumar says that the order dated 18.12.2020 was passed after the specified date had been crossed and because the petitioner was seeking to come within the regime prescribed under the 2020 Act, that date, cannot be shifted i.e., taken back in point of time on account of the order passed by the Tribunal in the condonation of delay application.

20.2 It is Mr Kumar's submission that the regime set forth in the 2020 Act grants "rebate" on disputed tax, and therefore, the provisions of eligibility have to be construed strictly.

21. We have heard the learned counsels for the parties and captured the

broad backdrop in which this writ petition has been lodged. The dates and events recorded hereinabove are not in dispute.

22. To our minds, the Tribunal took, to say the least, a rather simplistic view, on the MA filed by the petitioner.

22.1 In our opinion, had the Tribunal carefully perused the application filed by the petitioner, it would have realised that its remand order dated 01.04.2019 infused the proceedings with internal contradictions, as respondent no.3's order on merits dismissing the appeal remained intact.

23. All that the Tribunal's order dated 01.04.2019 achieved was to revive the petitioner's appeal preferred in physical mode which had been rejected by respondent no.3 via order dated 06.07.2018. Insofar as the order on merits was concerned, which is also dated 06.07.2018, since, at the relevant point in time i.e., on 01.04.2019, no appeal was pending before the Tribunal, no orders were passed.

24. Thus, there are two ways of looking at the matter.

24.1 Firstly, the appeal preferred in physical form was pending.

24.2 The provisions of the 2020 Act do not make any distinction as to the mode in which appeal is preferred as long as it is pending. Therefore, if we were to take this view, according to us, respondent no.1 could not have passed the orders of rejection, as the appeal lodged by the petitioner in physical form had, in a sense, resurfaced with the Tribunal passing an order of remand on 01.04.2019. The order passed by respondent no.3 on merits was rendered otiose, in view of the order of remand passed by the appellate authority i.e., the Tribunal.

24.3 Second, which is the other way of looking at the matter at hand, that is, an appeal was pending since petitioner had attempted a course correction

and filed a fresh appeal against the order on merits dated 06.07.2018.

24.4 Given the circumstances obtaining in the matter, there is weight in Mr Lalchandani's submission that once the Tribunal condoned the delay on 18.12.2020, the appeal would be construed as having been instituted on the date it ought to have been lodged.

24.5 In this context, we may also note that the fresh appeal was filed before the 2020 Act had received the assent of the President i.e., on 17.03.2020. Therefore, the *bona fides* of the petitioner, clearly, cannot be doubted.

24.6 But, as indicated hereinabove, this line of discussion need not be taken further in view of what we have stated hereinabove, which is that the order passed by the Tribunal, on 01.04.2019, gave a fresh lease of life to the appeal which had been preferred by the petitioner in physical mode.

24.7 Perhaps, the purpose of this direction was that respondent no.3 should have passed an order on merits and ought not to have dismissed the appeal only on the ground that it had not been filed in the digital mode.

25. As indicated above, the Tribunal's order dated 30.08.2019 only complicated the matter by refusing to correct the inadvertent error which was committed by the petitioner.

26. Therefore, the question that begs an answer is: should the petitioner suffer on account of an obvious and inadvertent mistake made by the counsel for the petitioner?

27. It is often said that ignorance of the law is no excuse. To our minds, it is also equally well-settled, that not everyone knows the law. [See *Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh* (1979) 2 SCC 409].

28. The petitioner would not have known that a viable appeal was one

which was instituted in digital mode. Undoubtedly, the petitioner suffered on account of its lawyer's failing.

29. Therefore, for the aforesaid reasons, we are inclined to hold that the petitioner's appeal was pending on the specified date i.e., 31.01.2020.

30. Accordingly, the impugned orders passed by respondent no.1 are set aside. Respondent no.1 is directed to progress the declarations made by the petitioner in accordance with the provisions of the 2020 Act.

31. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 21, 2023 / pmc