Form No. J.(2)
Item No.12

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 19.03.2024

DELIVERED ON: 19.03.2024

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 259 of 2024
With
I.A. No. CAN 1 of 2024
+
CAN 2 of 2024

Gopal Das
Vs.
Principal Commissioner of Income Tax-5, Asansol & Ors.

Appearance:-
Mr. Pramit Bag
Ms. Suranjana Chatterjee
.........for the appellant

Mrs. Smita Das De **.........for the respondents**

<u>JUDGMENT</u>

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

<u>In Re: I.A. No. CAN 1 of 2024</u>

1. We have heard Mr. Pramit Bag, learned advocate appearing for the appellant and Mrs. Smita Das De, learned Standing counsel appearing for the respondents.

2. There is delay of 48 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation.
3. I.A. No. CAN 1 of 2024 is allowed and the delay in filing the appeal is condoned.

In Re: M.A.T. 259 of 2024

4. The unsuccessful writ petitioner is the appellant before us. The writ petition was filed challenging an order passed by the Principal Commissioner of Income Tax, Asansol (for brevity, “the PCIT”) dated 23rd March, 2021 rejecting the application filed by the appellant under Section 264 of the Income Tax Act, 1961 (for brevity, “the Act”).
5. It is well-settled principle of law that the Court cannot examine the merits of the matter and the correctness of the order can be tested only with regard to the decision making process. There are certain set parameters, which would empower the Court to interfere in such orders in exercise of its powers under Article 226 of the Constitution of India for which the petitioner has to establish certain grounds, one of which is that there is a violation of principles of natural justice.
6. In the instant case, the appellant would contend that though an elaborate application was filed under Section 264 of the Act, the PCIT by the order dated 23rd March, 2021 has merely accepted the remand report submitted by the Assessing Officer dated 10th March, 2021 and rejected the petition. Though a copy of the remand report was furnished to the appellant along with a show-cause notice, the appellant did not avail the opportunity by

submitting his objections or submitting clarifications to the issues pointed out by the assessing officer in the remand report.

7. Be that as it may, the PCIT while considering the application under Section 264 of the Act should first take note of the submissions made in the application, considered the remand report and then take a decision on merits and in accordance with law.

8. However, on a perusal of the order dated 23rd March, 2021, more particularly in paragraph 5, the PCIT has not dealt with the merits of the matter but has rejected the petition taking note of the conduct of the appellant in the assessment proceedings, which were completed under Section 144 of the Act by order dated 4th December, 2019.

9. In the application filed under Section 264 of the Act, the appellant pleads that he has not received any notice either through e-mail or through speed post and he was unaware that assessment proceedings were under progress and therefore, the assessee cannot be termed to have wilfully ignored the notices.

10. Further, the assessee contended that he had a bank credit limit in the form of cash credit for his trading activities in UCO Bank and other factual details have also been set out.

11. Further, it is pointed out that the assessment under Section 144 is a high-pitched assessment and the said amount is aggregated cash deposited during the financial year 2016-17 in the bank account maintained by the assessee. The details of the bank accounts were furnished by the assessee and the assessee takes a specific stand that no cash deposits were made in

the savings account. There are other grounds, which have been raised by the assessee in the application filed under Section 264 of the Act.

12. Therefore, the PCIT while considering the application has to consider the correctness of the said submission and also take note of the remand report given by the assessing officer and also examined the assessment files. It is no doubt true that the assessee did not avail the opportunity granted pursuant to the show-cause notice dated 18th March, 2021.

13. However, in our considered view, since the assessee has lost his right of appeal and there is an allegation that notices issued by the Assessing Officer were not received by the assessee either by e-mail or by speed post, without standing on technicalities, we are of the view that one more opportunity can be granted to the assessee to go before the PCIT.

14. Accordingly, the appeal along with the connected application being, CAN 2 of 2024 stand disposed of by directing the appellant to submit his response to the show-cause notice dated 18th March, 2021 within 15 days from the date of receipt of server copy of this judgement and order. On receipt of the said response, the PCIT shall reconsider the matter after taking into consideration the submissions of the appellant, the remand report and the response to the show-cause notice dated 18th March, 2021. The authorized representative of the appellant shall be afforded an opportunity of personal hearing before a decision is taken.

15. Needless to state that if the appellant fails to avail the opportunity in terms of the aforementioned order, the benefit of this order will not accrue to the appellant and the appeal will stand automatically dismissed without reference to this Court.

16. No costs.

17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/KS AR(Ct.)