Form No. J.(2)
Item No.3

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

HEARD ON: 02.01.2024

DELIVERED ON: 02.01.2024

CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

M.A.T. 1377 of 2023
With
I.A. No. CAN 1 of 2023
With
CAN 2 of 2023

Tanmoy Dutta
Vs.
Union of India & Ors.

Appearance:-

Mr. Pranit Bag
Mr. Brijesh Kumar Singh
Mr. Om Prakash Prasad

.........for the appellant

Mr. Om Narayan Rai

.........for the respondents

JUDGMENT

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

In Re.: I.A. No. CAN 1 of 2023

1. We have heard the learned advocates for the parties.

2. There is delay of 85 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 2023 is allowed and the delay in filing the appeal is condoned.

In Re: M.A.T. 1377 of 2023.

4. This intra-Court appeal by the writ petitioner is directed against the order dated 31st March, 2023 in W.P.A. No.5908 of 2023. In the said writ petition, the appellant had impugned the notice dated 27th May, 2022 issued under Section 148A(b) of the Income Tax Act, 1961 (for brevity, "the Act") and the order dated 27th August, 2022 passed under Section 148A(d) of the Act and the consequential notice issued under Section 148 of the Act dated 30th June, 2021.

5. The learned Single Bench dismissed the writ petition on the ground that prior to filing of the writ petition, which was done on 9th March, 2023, the re-assessment order was passed under Section 147 of the Act on 6th March, 2023. Therefore, the learned Single Bench observed that the re-assessment order being an appealable order, the appellant should avail such alternate remedy. Aggrieved by such order, the present appeal has been preferred.

6. After we have elaborately heard Mr. Pranit Bag, learned advocate appearing for the appellant and Mr. Om Narayan Rai, learned Standing Counsel appearing for the respondents/Department, we find that no good ground has been made out by the appellant for interfering with the impugned order. At the same time, we may observe that if the

respondents/department is proposing to effect recovery proceedings, it will be well open to the appellant to file an application for stay before the appellate authority and pray for not enforcing the demand till the appeal is heard and disposed of.

7. We make it clear that in the appeal, which is to be preferred before the appellate authority, the appellant will be entitled to raise all questions of law and fact including the validity of the reopening of the assessment by resorting to the power under Section 148A of the Act.

8. With the above observations, the appeal and the connected application (IA No. CAN 2 of 2023) stand disposed of.

9. No costs.

10. 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.

(SUPRATIM BHATTACHARYA, J.)

Pallab/KS AR(Ct.)