Form No. J.(2)
Item No.4

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. 1624 of 2023
With
IA No. CAN 1 of 2023

M/s/ Exprezy Logistics Private Limited
Vs.
Income Tax Officer, Ward No. 5(1),
Kolkata & Ors.

Appearance:-

Mr. Avra Mazumder
Mr. Suman Bhowmik
Mr. Samrat Das
.........for the appellant

Mr. Aryak Dutt ....for the respondents

JUDGMENT

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 17th July, 2023 in W.P.A. 14638 of 2023. In the said writ petition, the appellant had challenged the order dated 12th April, 2023 passed under section 148A(d) of the Income Tax Act, 1961 (for brevity 'the Act') for the assessment year 2019-2020.

2. As could be seen from the order passed by the learned Single Bench, the point, which was canvassed before the learned Single Bench was that the order dated 12th April, 2023 has been passed without approval from the specified authority as prescribed under section 151(ii) of the Act. The learned Single Bench has considered the said point and rejected the challenge to the order dated 12th April, 2023 on the ground, which was urged before the learned Single Bench.

3. Today before us, learned advocate appearing for the appellant would submit that the appellant is not pressing the point concerning whether the approval was obtained from the specified authority or not but more importantly, the appellant seeks to canvass the ground that the reply dated 4th April , 2023 given to the show cause notice dated 17th March, 2023 has not been considered. Apart from that, it was submitted that in the order dated 12th April, 2023 in paragraph 5 the authority has merely recorded that the submissions of the assessee has been carefully gone through and the ledger accounts, which were furnished by the assessee were kept on record without discussing about the documents, which were placed by the assessee nor considering the reply given by the assessee, more particularly the reply dated 4th April, 2023.

4. This contention raised by the appellant before us for the first time cannot be considered in this appeal since this point appears to have not been urged before the learned Single Bench, though it is stated that specific pleading has been made to the said effect in the writ petition. Therefore, the only remedy available to the appellant is to file a review before the learned

Single Bench and canvass the other grounds, which have been raised in the writ petition.

5. For the above reasons, the appeal stands disposed of along with the connected application by giving liberty to the appellant to raise all contentions except the contention with regard to whether approval was obtained from the specified authority or not.

6. If such review application is filed, the learned Single Bench is requested to consider the other points, which may be urged by the appellant in the said review application.

7. No costs.

8. 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.)