Form No. J.(2)
Item No.14

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. 2095 of 2023
With
I.A. No. CAN 1 of 2023
With
I.A. No. CAN 2 of 2023

Income Tax Officer, Ward – 44(2), Kolkata
Vs.
Debajyoti Bhattacharya

Appearance:-

Mr. Prithu Dudhoria ....for the appellant

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

JUDGMENT

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

In Re: I.A. No. CAN 2 of 2023

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

2. There is delay of 123 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 2 of 2023 is allowed and the delay in filing the appeal is condoned.

In Re: M.A.T. 2095 of 2023

4. This intra-Court appeal by the department is directed against the order dated 16th May, 2023 in W.P.A. 8122 of 2023. In the said writ petition, the respondent herein had challenged the order passed under Section 147 read with Section 144B of the Income Tax Act, 1961 dated 20th March, 2023 for the assessment year 2018-2019 on the ground that no draft assessment order was served on the writ petitioner before final assessment order was passed.

5. It is the submission of the learned Senior Standing Counsel for the appellant that it is not mandatory for the officer to serve the draft assessment order. However, from the Memorandum of Appeal, we find that the contention of the department is that the assessing officer had issued show-cause notice to the assessee on 7th March, 2023, which is in the nature of a draft assessment order containing all proposed variations.

6. If this is the stand taken by the department, it goes without saying that there was no draft assessment order prepared but only a show-cause notice was issued on 7th March, 2023.

7. Thus, we are of the view that the learned Single Bench rightly set aside the assessment order and remanded the matter back to the assessing officer to supply a copy of the draft assessment order and thereafter, after inviting

the objections from the assessee, proceed to pass final orders in accordance with law.

8. Thus, we find no ground to interfere with the order passed by the learned Single Bench and the appeal stands dismissed. Consequently, I.A. No. CAN 1 of 2023 also dismissed.

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 AR(Ct.)