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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/4/2024
IA NO: GA/1/2024

M/S MIRABELLE TRADECOM PRIVATE LIMITED
VS
INCOME TAX OFFICER WARD 4/2, KOLKATA AND ANR.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 19th January, 2024.

Appearance :
Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
...for appellant.
Mr. Soumen Bhattacharjee, Adv.
...for respondents.

The Court :- This appeal by the assessee filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 7.8.2023 passed by the Income Tax Appellate Tribunal 'A" Bench Kolkata (the Tribunal) in ITA No. 322/Kol/2023 for the assessment year 2012-2013. The assessee has raised the following substantial question of law for consideration :-

(i) *Whether on the facts and circumstances of the case the Tribunal erred in dismissing the appeal ex-parte where the petitioner was prevented by 'sufficient cause' and whether the order dated 7th August, 2023 is against the principles of natural justice ?*

We have heard learned Counsel on either sides.

The learned Tribunal had dismissed the appeal filed by the assessee. In paragraph 2 of the impugned order the learned Tribunal has set out the manner in which the notice was sent to the assessee and that the assessee did not appear in spite of telephonically informed by the registry of the Tribunal. We find that the first notice which was sent to the assessee had been served. However, on the date fixed by the learned Tribunal the assessee did not appear and the learned Tribunal has recorded that the registry has telephonically informed the assessee. However, the learned Tribunal notes that the second notice which was sent by registered post was received back and could not be served for want of correct address. It is the submission of the learned Tribunal for the appellant that it is beyond comprehension as to how the second notice could have returned un-served for want of correct address when the first notice to the same address has been served.

Be that as it may, since a large sums of money has been added to the income of the assessee, this Court is of the view that one more opportunity can be granted to the assessee to contest the matter on merits. Only for such reason this court is inclined to interfere with the order passed by the learned Tribunal making it clear that this Court has not examined the merits of the matter.

For the above reason, the appeal is allowed. The impugned order passed by the learned Tribunal is set aside and the appeal stands remanded to the learned Tribunal for fresh consideration and a decision on merits.

Consequently, the substantial question of law is kept open.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.