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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/10/2024
IA No: GA/1/2024
SOMNATH COMMOSALES PRIVATE LIMITED
VS.
PRINCIPAL COMMISSIONER OF INCOME TAX-3, KOLKATA & ANR.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 1st May, 2024

Appearance :
Mr. Avra Mazumder, Adv.
…for appellant

Ms. Smita Das De, Adv.
Mr. Soumen Bhattacharjee, Adv.
…for respondents

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 20th September, 2023 passed by the Income Tax Appellate Tribunal, `A' Bench, Kolkata in MA No. 55/Kol/2022, arising out of ITA No. 1294/Kol/2018, for the assessment year 2012-13.

The assessee has raised the following substantial questions of law for consideration :

i) Whether the said impugned order dated 20th September, 2023 passed by the Learned Tribunal is wrongful, illegal, arbitrary and bad in law ?

ii) Whether the Learned Tribunal was justified in law in not recalling the exparte order passed by the Learned Tribunal on 10th November, 2022 when there was a reasonable cause for non-appearance on the date of hearing of the appeal ?

iii) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in dismissing the miscellaneous application when your petitioner has sufficient cause for non-appearance on the date of hearing of the appeal ?

We have heard Mr. Avra Mazumder, learned standing Counsel appearing for the appellant and Ms. Smita Das De, learned standing Counsel for the respondents/assessee.

When the matter came up for hearing on 23rd February, 2024, we took note of the conduct of the assessee who is not diligent in prosecuting the matter and had not appeared before the Assessing Officer despite notice and also remained exparte in the other proceedings. However, considering the fact that the matter is an appeal under Section 260A of the Act, we directed the appellant/assessee to pay cost to the learned standing Counsel for the appellant. This direction has been complied with. By order dated 11th March, 2024, we observed that the Court will examine as to whether any substantial question of law arises for consideration or as to what orders are to be passed in the instant case.

The impugned order before us is an order passed in the miscellaneous application filed by the assessee requesting/pleading for one more opportunity before the learned Tribunal to contest the matter on merits. This was rejected by the Tribunal noting the conduct of the assessee. Aggrieved by the order passed by the CIT(A), the assessee had preferred appeal before the Tribunal which is registered in the year 2018 and the appeal was taken up for disposal in September, 2022 and none appeared for the assessee and the Tribunal proceeded to decide the matter against the assessee. The assessee had preferred an appeal before the Commissioner of Income Tax (Appeals) –18, Kolkata [CIT(A)] challenging the assessment order dated 12th March, 2015 passed under Section 144 of the Act. The assessee did not attend the hearing and the appeal was dismissed. Even before the Assessing Officer the assessee did not cooperate in the proceedings. There are certain reasons which have been set out by the assessee which appear to be not wholly false nor there is any material to show that the assessee has willfully not proceeded to appear before the Appellate authority or before the Tribunal. In any event, what is required to be considered is whether appropriate tax has been computed and levied upon execution of the factual position.

Therefore, we are of the view that the matter can be remanded for fresh consideration to the Assessing Officer so that the assessee would be able to place materials before the Assessing Officer to substantiate their case. However, it is made clear that this is the final opportunity and no further indulgence would be granted to the assessee. The assessee is required to appear before the

Assessing Officer on the date fixed, submit documents and details called for and cooperate in the assessment proceedings.

For the above reasons, the appeal is allowed and the impugned order is set aside and the matter is remanded to the Assessing Officer with the aforementioned direction.

The stay application IA No: GA/1/2024 is also allowed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

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