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

ITAT/38/2024
IA NO: GA/1/2024

BRIGHT VYAPAAR PRIVATE LIMITED
VS.
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th May, 2024

Appearance :

Mr. Pratyush Jhunhunwala, Adv.
Ms. Sreetapa Sinha, Adv.
Mr. Samit Rudra, Adv.
...for Appellant

Ms. Smita Das De, Adv.
...for respondent

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 May 4, 2023 passed by the Income Tax Appellant Tribunal, "B" Bench, Kolkata (Tribunal) in ITA No.29/Kol/2023, for the assessment year 2012-13.

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

- i) Whether the assessment order dated March 02, 2015 is invalid, null and without jurisdiction as the notice under Section 143(2) of the Act has not

been issued by the Income Tax Officer having jurisdiction over the file of the appellant assessee ?

- ii) Whether the file of the appellant assessee can be transferred and the assessment be proceeded with another Income Tax Officer without informing the appellant assessee of the same ?
- iii) Whether the addition under Section 68 of the Act can be made only on account of non-compliance to notice under Section 131 of the Act when the appellant had filed all the necessary details pertaining to the share subscribers who were income tax assesseees and who had also filed their responses to notices issued under Section 133(6) of the Act and the findings and observations of the Tribunal in this regard are erroneous and/or perverse?
- iv) Whether the order dated May 04, 2023 and/or November 14, 2022 and/or March 02, 2015 is in violation of the principles of natural justice and the findings and observations of the Tribunal are perverse?"

We have heard the learned Advocates for the parties.

The assessee is aggrieved by the order passed by the learned Tribunal by which the Tribunal proceeded ex parte on account of non-appearance of the assessee. Partly, the assessee has to be blamed since the assessee while filing the appeal before the learned Tribunal had given an address from which the registered office of the company had changed in the year 2011 itself. The address given in the appeal form was 7A, Bentinck Street, but on the date of filing the

said appeal the assessee had changed its address to 4/2B, Leonard Road, Hastings. The assessee company initially had the registered office at 15, Ganesh Chandra Avenue. Subsequently in the year 2008 the address was changed to 7A, Bentinck Street. Subsequently, in the year 2011 the registered office of the company was changed to No.7, Ganesh Chandra Avenue and thereafter, the final change took place on 1st April, 2017 where the address was changed to Hastings.

The learned Tribunal has observed that the assessee has not participated in the proceedings before the CIT(Appeals) [CIT(A)]. However, it is seen from the certified copy of the records obtained from the Assessing Officer that the assessee had filed an elaborate written submissions consisting of 29 pages and submitted the same to the CIT(A). However, the notice from the office of the CIT(A) was sent to a wrong address. Consequently, the consultant of the assessee did not appear. This resulted in the appeal being dismissed. The same was the fate of the appeal before the learned Tribunal since the assessee itself had given a wrong address in the appeal Memo. That apart, we also find from the certified copy of the records obtained from the files of the Assessing Officer that thrice the jurisdictional Assessing Officer was changed. Therefore, we are convinced that the assessee should be entitled to one more opportunity to place all the facts before the Appellate Authority so that a decision can be arrived at on merits.

For the above reason alone, the appeal is allowed and the order passed by the learned Tribunal and that of the CIT(A) is set aside and the matter is

remanded to the file of the CIT(A) and the appeal shall be decided afresh after affording opportunity of hearing to the assessee.

The assessee shall file proof of the correct address before the CIT(A) which shall be entered for all future purposes.

Consequently, the substantial questions of law are left open.

The stay application IA NO: GA/1/2024 is closed.

(T.S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)