

OD-24

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/71/2024
IA NO: GA/1/2024, GA/2/2024
INCOME TAX OFFICER WARD 47 2
KOLKATA
VS
VIVEK KUMAR SINGH

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 11TH MARCH, 2024.

Appearance :
Mr. P. Dudhuria, Adv.
...for appellant
Mr. Brijesh Kumar Singh, Adv.
Mr. Om Prakash Prasad, Adv.
..for respondents

The Court :- We have heard counsel on either side.

It appears that there is a delay of 254 days in filing the appeal. We are satisfied with the reasons assigned in the affidavit filled in support of the condone delay petition and accordingly, the delay in filing the appeal is condoned. The application for condonation of delay is allowed.

The Income Tax Department is aggrieved by the order and direction issued in WPO/1028/2023 dated 12.05.2023, by which the writ petition filed by the respondent/assessee was partly allowed/disposed of on the ground that the approval for reopening the assessment was not obtained from the specified authority. Thus, the factual position appears to be not in dispute in the appeal filed by the revenue except placing reliance on a circular instruction issued by the CBDT. Though, there may be a circular issued by the CBDT the same did

not bind the assessee and it would bind the revenue alone. In any event, the learned Single Bench, has not set aside the entire proceeding but has granted liberty to the appellant department to proceed further in accordance with law from the stage in which the irregularity has been committed after taking approval from the specified committee. Therefore, we find that there is no ground made out by the appellant for interfering with the order passed by the learned Single Bench. Accordingly, the appeal is dismissed.

The appellant department shall rectify the irregularity obtaining the approval from the specified authority within two weeks from the date of receipt of server copy in accordance with law.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)