OD-20

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

ITAT/130/2024
IA NO: GA/1/2024
KLENZER TRADING PRIVATE LIMITED
VS.
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA & ANR.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 22nd May, 2024

Appearance :
Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
…for Appellant

Mr. Tilak Mitra, 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 17th January, 2024 passed by the Income Tax Appellant Tribunal, "C" Bench, Kolkata (Tribunal) in ITA No. 111/Kol/2023 for the assessment year 2012-13.

The assessee has raised the following substantial questions 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 January 17, 2024 is against the principles of natural justice ?

ii) Whether the appellant having provided the details of share subscribers, copies of their income tax returns and audited accounts and bank statements and cheque details for the transactions and replies were also filed by the share subscribers to notices u/s 133(6) of the Act, the onus had shifted on the Assessing Officer to bring on record any material and/or evidence which should show that the identity and credit worthiness of the share subscribers were doubtful ?

iii) Whether the order of the Tribunal is perverse being based on the findings which were not discernible from the orders passed by the lower authorities in the case of the assessee ?

We have heard Mrs. Swapna Das, learned Counsel appearing with Mr. Siddhartha Das, learned Advocate for the appellant and Mr. Tilak Mitra, learned standing Counsel for the respondents.

Learned Counsel appearing for the appellant, at the very outset submitted that she is not canvassing merits of the matter and the assessee's only prayer before this Court is to afford one more opportunity to go before the Tribunal and place the facts. It is submitted that adjournment petitions were filed. Nonetheless, there was no representation when the matter was taken up by the learned Tribunal and the non-appearance is neither willful nor deliberate and the assessee had all along been proceeding with the matter diligently and the assessee may be afforded an opportunity.

Learned Counsel for the appellant also placed reliance on the order passed by this Court in ITAT 4/2024, M/s. Mirabelle Tradecom Private Limited vs. Income Tax Officer, Ward 4/2, Kolkata & Anr., dated 19th January, 2024.

Mr. Tilak Mitra, learned standing Counsel for the respondents, would submit that the conduct of the assessee was rightly taken note of by the learned Tribunal and since none appeared for the assessee, the matter was dealt with on the available documents and the order passed by the Tribunal may be affirmed.

Upon considering the facts of the case, we find that the assessee's conduct cannot be appreciated. Nonetheless, the learned Tribunal being the last fact finding authority, we are of the view that one more opportunity can be granted to the appellant to agitate the matter on merits before the Tribunal subject to certain conditions.

Accordingly, the appeal is allowed and the order passed by the Tribunal is set aside subject to the conditions that the appellant pays a sum of Rs.1 Lac to the Bar Association, High Court at Calcutta, within three weeks from the date of receipt of the server copy of this order.

The appellant shall submit the receipt for such payment in the office of the learned Tribunal and upon production of the said receipt for payment of cost as directed above, the learned Tribunal shall take up the matter for consideration and afford one opportunity to the appellant to appear in the matter and pass fresh orders on merits and in accordance with law.

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

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

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)