OD-1

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

ITAT/168/2024
IA NO: GA/1/2024, GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS
THE PEERLESS GENERAL FINANCE AND INVESTMENT CO.LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 5TH JULY, 2024.

Appearance :
Mr.Om Narayan Rai, Adv.
Mr. Amit Sharma, Adv.
…for appellant.
Mr. Saumya Kejriwal, Adv.
Ms. Ananya Rath, Adv.
Mr. Navin Mittal, Adv.
…for respondent

The Court :- Heard learned Advocates on either side.

There is a delay of 1923 days in filing the appeal.

We have perused the affidavit filed in support of the condone delay petition and we find it to be absolutely devoid of any reason as to why the appeal was filed with such an inordinate delay of 1923 days.

The order passed by the Tribunal is dated 7.9.2019 and the certified copy was received by the Income Tax Department on 12.10.2018 and the appeal was presented on 16.5.2024.

It is not clear as to why in such high revenue matters the department does not exercise due diligence in preferring the appeal within the period of limitation. In fact this Court had been very lenient whenever an application for condonation of delay is filed at the instance of the Income Tax Department and exercise discretion in its favour and condone the delay. However, exercise of such discretion cannot be without any basis as the Court is expected to record reasons as to why they are satisfied that in a given case such exercise of discretion is warranted. Admittedly the assessee is not a small time assessee or an individual and they have various business activities in West Bengal. It is not clear as to whether these matters are brought to the notice to the Principal Chief Commissioner of Income Tax of West Bengal and Sikkim, the highest authority of the Income Tax Department for this region. It may be cases where there is sheer negligence on the part of the officials at the lower level and the mind of this Court is not free from doubt as to whether there was any other factor which led to the belated filing of this appeal.

Let, therefore, the Income Tax Department evolve a procedure to ensure that appeals are presented within the period of limitation and those with a marginal delay, proper explanation has to be given for the delay failing which the Court will not be inclined to exercise any discretion in favour of the department. The respondent/assessee is well entitled to oppose the delay as an appeal filed very belatedly such as in this case that is after 1923 days is likely to unsettle certain settled matters and may lead to other consequences which may have an commercial impact on the assessee. Therefore, it is high time that the Principal Chief Commissioner of West Bengal and Sikkim issue necessary circular to all its field formations so that appeals are preferred before this Court within the period of limitation. Since, we have found that in the instant case where the assessee is a prominent business house in West Bengal and the appeal has been filed after a period of 1923 days. As a test case Principal Chief Commissioner of Income Tax should conduct a probe and fix responsibility as to under what circumstances this appeal was filed with an inordinate delay of 1923 days.

The Registry of this Court is directed a copy of this order to the Principal Chief Commissioner of Income Tax for West Bengal and Sikkim for necessary action.

As noted above, the delay having not been explained and the same being inordinate we are not persuaded to exercise any discretion in favour of the department.

Accordingly, the application is dismissed.

Consequently, the appeal stands rejected and the substantial questions of law which have been raised are left open.

.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

GH.