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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/209/2024
IA NO: GA/1/2024

SHIVBHUMI TRADERS PVT LTD
VS
INCOME TAX OFFICER WARD 12(1) KOL AND ORS

BEFORE :
THE HON’BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON’BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 20th December, 2024

Appearance :
Mr. S.M. Surana, Sr. Adv.
Mr.Bhaskar Sengupta, Adv.
...for the appellant.

Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv.
..for the respondent.

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 January 19, 2024 passed by the Income Tax Appellate Tribunal, “SMC” Bench, Kolkata (the Tribunal) in ITA No.771/Kol/2023 for the assessment year 2011-12.

The assessee has raised the following substantial questions of law :

“*(a) Whether on the facts and circumstances of the instant case, the Learned Tribunal is right in dismissing the appeal without allowing the petitioner* *a reasonable opportunity of being heard by allowing the request for adjournment filed on the date on which the hearing of the appeal was taken up for conclusion?*

(b) Whether the Ld. Income tax Appellate Tribunal was justified in confirm the order of the Ld. CIT(A) when the petitioner duly discharged its onus to prove the identity, genuineness and creditworthiness of the party?

(c) Whether on the facts and circumstances of the case there was any material before the Ld. Income tax Appellate Tribunal that the transaction was bogus and on that ground the order is perverse?"

We have heard Mr. S.M. Surana, learned senior advocate appearing for the appellant/assessee and Mr. Soumen Bhattacharjee, learned standing counsel appearing for the respondent/revenue.

The learned senior advocate appearing for the appellant/assessee submits that the assessee was diligent in prosecuting the appeal before the learned Tribunal and also filed written submissions but, however, on the said date when the case was heard, an adjournment letter was circulated stating that the advocate appearing for the assessee was indisposed and could not appear. However, the learned Tribunal did not consider the request for adjournment and decided the appeal on merits.

It appears that the appeal was heard on 13th December, 2023, which, according to the learned advocate appearing for the appellant/assessee, was the first day on which the matter was set down for hearing. It is not that the assessee was not diligently prosecuting the matter. In fact before the Tribunal the assessee had filed written submissions and the learned Tribunal in paragraph 5 of the impugned order extracted the entire written submissions before the CIT(A). Thus, the conduct of the assesee cannot be stated to be that they were not interested in prosecuting the appeal, but the reason given for not appearing before the learned Tribunal cannot be said to be ingenuine. With regard to the plea that an adjournment letter was circulated, we find that there is no recording made by the learned Tribunal.

Be that as it may, since the learned Tribunal is the last fact finding forum which would be able to appreciate and reappreciate the factual position, we are of the view that the assessee may be given one more opportunity to contest the matter on merits.

For the above reason, the appeal is allowed and the impugned order is set aside and the appeal before the learned Tribunal in ITA No.771/Kol/2023 is restored to its file to be heard afresh after giving opportunity to the appellant/assessee.

It is made clear that on the date fixed by the learned Tribunal the assessee should appear and no request for adjournment shall be entertained.

Consequently, the substantial questions of law are left open.

In the result, the appeal stands disposed of along with the connected application.

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/SM.
AR[CR]