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

ITAT/224/2024
IA NO : GA/1/2024
IDEAL VYAPAAR PRIVATE LIMITED
VS
INCOME TAX OFFICER WARD 6(2) & ANR.

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

Appearance :
Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
…for appellant
Ms. Smita Das De, Adv.
…for respondents

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 9th April, 2024, passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (Tribunal) in ITA no.870/Kol./2003, for the assessment year 2012-13.

The assessee has raised the following substantial questions for 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 April 9, 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 most importantly the transactions were through proper banking channels and whether the addition made under the provisions of Section 68 of the Act is wholly unsubstantiated and perverse ?

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 appellant ?

We have heard Ms. Swapna Das, learned counsel appearing for the appellant/assessee and Ms. Smita Das De, learned standing counsel appearing for the respondent/department.

Learned counsel for the appellant submitted that the assessee did not appear before the learned Tribunal resulting in dismissal of the appeal and prays for more opportunity to appear before the Tribunal to contest the appeal on merits. As rightly pointed out by the learned standing counsel for the respondent/department, the conduct of the assessee was taken note of by the learned Tribunal while passing the impugned order and the Tribunal held that certain notices which were issued for fixing the hearing had returned unserved though such notices were sent to the address mentioned in Form 36 and also through e-mail. Under normal circumstances we would have affirmed the order passed by the Tribunal but, however, considering the peculiar facts and circumstances of the case, we are inclined to take a different approach.

It is not the case where the appellant has not been diligent in prosecuting the appeal as the conduct of the assessee will clearly show that they were interested in contesting the appeal and for such reason, they had filed a paper book containing the several documents, which has been noted by the learned Tribunal in paragraph 4 of the impugned order. Therefore, the facts of the present case shows that it is not a case of sheer indifference to appear before the Tribunal and not to participate in the hearing. That apart, the learned Tribunal is last authority which would be able to re-appreciate the factual position. Therefore, we are inclined to remand the matter back to the learned Tribunal for fresh consideration after an opportunity to the assessee.

For the above reason, the appeal is allowed.

The impugned order is set aside.

Consequently, the substantial questions of law are left open.

The appeal before the Tribunal being ITA 870/Kol./2023 for the assessment year 2012-13 is restored to the file of the learned Tribunal to be heard and decided on merits after giving an opportunity to the assessee.

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

(T.S. SIVAGNANAM, CJ.)

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)