od-115

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/309/2024
REGIUS TIE UP PRIVATE LIMITED
VS
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : September 18, 2024.

Appearance :
Mr. Madhur Agarwal, adv.
Mr. A.K. Dey, Adv.
Ms. Kamalika Mukherjee, Adv.
Ms. Chumki Das Bhairagya, Adv.
Mr.Om Narayan Rai, Adv.
Mr. Tapan Bhanja, Adv.

The Court :- This intra-Court appeal is directed against the interim order dated 31.07.2024. By the said order, the learned Single Bench while directing affidavit to be filed by the respondent department granted an order of stay of the demand subject to the condition that the appellant/writ petitioner deposits Rs.3.3 crore with the jurisdictional assessing officer which would constitute approximately 15% of the demand. We find that the order passed by the learned Single Bench to be an elaborate order giving detailed reasons. What weighed in the mind of the learned Single Bench was that the appellant had made a belated challenge to the order passed under Section 148A(d) of the Income Tax Act, 1961, which was dated 04.04.2022, which came to be challenged in the writ petition filed in the year 2024. In the meantime, the department had issued notice under Section 148 of the Act on the same date and an order of reassessment was passed under Section 147 read with Section 144, Section 144B of the Act dated 17.03.2022 and a demand was also raised under Section 156 on the same date. Therefore, the learned Single Bench was of the view that, an unconditional order of stay cannot be passed and exercising discretion directed the appellant to deposit a sum of Rs.3.3 crores.

Challenging the said order the appellant is before us.

We have elaborately heard the submissions of the learned Advocate for the appellant and the standing Counsel for the respondent department. Exercise of discretion cannot be interfered unless and until to show manifestly arbitrary that no reasonable person could have arrived at such a conclusion. None of these facts are available in the impugned order for us to interfere with. However, taking note of the submissions of the learned Advocate for the appellant that the financial position of the appellant company, we are of the view that the only indulgence that can be granted to the appellant at this stage is to reduce the amount which has been directed to be deposited by the learned Single Bench. Apart from that, we find no error in exercise of discretion by the learned Single Bench. Accordingly, the appeal is disposed of by directing the appellant to deposit a sum of Rs.1.85 crore within a period of five weeks from the date of server copy of this order, and, if such deposit is made, the order of interim stay which was granted by the learned Single Bench shall continue till disposal of the writ petition. The respondent department is directed to file their affidavit in opposition by 14.11.2024; reply, if any, by 22.11.2024. Liberty is granted to the appellant as well as to the respondent department to mention for inclusion of the writ petition in the first or second week of December 2024.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH