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

ITAT/211/2023
INTENT INFRAPROJECTS PRIVATE LIMITED
VS
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA AND ANR.

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

Appearance :
Mr. J.P. Khaitan, Sr., Adv.
Mr. Pratyush Jhunjhunwala, Adv.
Ms. Sretapa Singh, Adv.
...for appellant
Mr. Prithu Dudhoria, Adv.
...for respondent

The Court :- Heard Learned Counsel appearing on either side.

This appeal filed by the assessee filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 24.01.2023 passed by the Income Tax Appellate Tribunal "B" Bench Kolkata (The Tribunal) in ITAT/38/Kol/2022 for the assessment year 2012013. The assessee has raised the following substantial questions of law for consideration:

i) Whether there was sufficient cause that prevented the appellant from preferring the appeal before the Tribunal within the period of limitation and the findings and observations of the Tribunal in this regard are erroneous, contrary to law and perverse ?

ii) Whether the delay in filing of the appeal before the Tribunal having occurred because of the death of the consultant initially appointed and subsequent reconstitution of the appeal papers during the pandemic and engaging a new practitioner for filing of the appeal were circumstances beyond the control of the petitioner which would constitute "sufficient cause" for condoning the delay ?

iii) Whether the Tribunal ought to have dealt with the issue on merits and examined whether the share subscription received by the appellant was in accordance with law and fulfilled the requirements of identity and creditworthiness of the share subscribers and the genuineness of the transactions ?

The learned Tribunal by the impugned order dismissed the appeal filed by the assessee as being time barred as there was a delay of 927 days. We have elaborately heard learned Advocate for the appellant and learned standing Counsel for the respondent and also perused the order passed by the learned Tribunal which has extracted an affidavit filed on behalf of the appellant/assessee by its director wherein an explanation has been offered by contending that the Chartered Accountant was engaged in the matter had passed away and subsequently the Advocate who was engaged had not taken diligent steps resulting in the delay in filing the appeal before the Tribunal. Considering the fact that the assessment is high pitched assessment and that the appellant/assessee should be granted an opportunity to put forth their submission on merits, we are inclined to exercise discretion in the matter subject to certain conditions.

For the above reasons, the appeal is allowed and the order passed by the Tribunal is set aside and the delay in filing the appeal before the learned Tribunal is condoned subject to the condition that the appellant pays a sum of Rs.5 lakhs to the West Bengal Legal Services Authority. Upon such payment, the receipt shall be filed before the learned Tribunal and the learned Tribunal on being satisfied that the condition imposed by this Court has been complied with shall take up the appeal namely ITA No. 38/Kol/2022 for the assessment year 2012-13 hear the appeal and pass order on merits and in accordance with law. The appellant shall not seek for any adjournment and shall appear before the learned Tribunal on the date so fixed by the Tribunal.

The amount directed to be paid shall not be paid later than 16th February 2024.

Consequently, the substantial questions of law are left open.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.