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

ITAT/278/2023
IA NO: GA/1/2023
CONCRETE CONSULTANCY SERVICES PRIVATE LIMITED
VS.
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA & ORS.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 5th January, 2024

Appearance :
Mr. Pratyush Jhunjhunwalla, Adv.
led by Mr. J.P. Khaitan, Sr. Adv.
Ms. Sritapa Sinha, Adv.
Mr. Samit Rudra, Adv.
…for appellant
Mr. Amit Sharma, Adv.
…for respondent

The Court : This appeal by the assessee filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated May 01, 2023 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (Tribunal) in I.T.A. No. 447/Kol/2022 for the assessment year 2015-16.

The assessee has raised the following substantial questions of law for consideration :

i) Whether there was any delay in preferring the appeal before the Tribunal as the appellant was not aware of the order dated April 04, 2019 and had preferred the appeal before the Tribunal within 60 days of being aware of the order dated April 04, 2019 ?

ii) Whether it is incumbent upon for the order of the Commissioner of Income Tax (Appeals) to be communicated in accordance with section 282 of the Income Tax Act, 1961 read with rule 282 of the Income Tax Rules, 1962 ?

iii) Whether the Commissioner of Income Tax (Appeals) is also required to serve the notice by affixing the same in accordance with the provisions of the Code of Civil Procedure, 1908, before passing an ex-parte order ?

iv) Assuming though not admitting that there was delay in preferring the appeal, whether the non-cooperation and departure of an employee is sufficient cause for condonation of delay in preferring the appeal and the findings and observations of the Tribunal in this regard are contrary to law, erroneous and perverse ?

v) Whether the difference in the amount of loans taken can be added under section 68 of the Act when the show cause notice was restricted only to the loans received from related parties and the amount of increase did not reflect any credit entry and was only the differential value and the findings and observations of all the lower authorities including the Tribunal, in this regard, are perverse ?

vi) Whether the loans taken by the appellant were genuine and the identity and creditworthiness of the lenders were established and as such no addition could have been made under section 68 of the Act and the findings and observations of all the lower authorities in this regard are perverse ?

We have heard Mr. Pratyush Jhunjhunwalla, learned Counsel, led by Mr. J.P. Khaitan, learned Senior Advocate appearing for the appellant and Mr. Amit Sharma, learned standing Counsel for the respondent department.

It may not be necessary for the Court to go into the facts of the case since the learned Tribunal has not gone into the facts but dismissed the appeal on the ground of delay and laches. To be noted, that the appeal filed by the assessee before the Commissioner of Income tax (Appeals) 2, Kolkata [CIT(A)] against the order of assessment dated 9th November, 2017 was dismissed by order dated 4th April, 2019 as the authorised representative of the assessee did not appear in the matter. The delay of 1000 days has been computed by taking into consideration the date of the order passed by the CIT(A), not the date on which the order was received by the appellant/assessee.

Be that as it may, in several matters revenue has also been regularly filing appeals challenging the orders passed by the learned Tribunal where the delay is more than 500 days and the Court has exercised discretion and condoned the delay only with a view that these appeals filed under Section 260A of the Act and Court is required to consider whether any substantial question of law arises for consideration. It is true that in certain appeals filed by the revenue where the delay is more than 1000 days and remains totally unexplained, Court has refused to exercise any discretion in favour of the appellant. In the instant case, we find that the assessee had cooperated in the assessment proceedings made under Section 143(3) of the Act, filed replies to the Section 142(1) notice issued by the Assessing Officer. Therefore, it cannot be said that the assessee was not diligent in prosecuting the matter. The explanation given by the assessee for not properly defending the matter before the CIT(A) was that a disgruntle employee of the assessee who was handling the matter had purposely not devoted attention to the same and the notice which was sent by the Department had also been returned on the ground of insufficient address. In our view, technicalities should not stand in the way of the assessee being able to agitate the matter on merits. Therefore, we are of the view that one more opportunity can be granted to the assessee to go before the CIT(A) and contest their appeal on merits.

For the above reasons, the appeal is allowed. The order passed by the learned Tribunal and the order passed by the CIT(A) dated 4th April, 2019 is set aside and the matter stands remanded to the CIT(A) for considering the appeal petition on merits and in accordance with law.

The stay application IA No: GA/1/2023 stands closed.

The assessee shall be informed about the date on which the appeal will be taken up for hearing and on the said date the assessee shall not take any adjournment and the assessee shall cooperate with the expeditious disposal of the appeal.

In the event the assessee adopts any dilatory tactics, benefit of this order will not enure in favour of the assessee and the appeal will stand automatically dismissed without any reference to this Court.

In this matter, Mr. Amit Sharma, standing Counsel has appeared for the Department and his appearance should be regularised by the Department and all fee bill raised by Mr. Amit Sharma shall be promptly honoured.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)

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AR(CR)