OD-3

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/1896/2023
BENOY MAJUMDER
VS
COMISSIONER OF INCOME TAX (APPEALS) NFAC AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 8th January, 2024

Appearance:
Ms. Anjali Agarwal, Adv.
...For the Petitioner

Mr. Soumen Bhattacharjee, Adv.
...For the Respondents

The Court : Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 9th November, 2023 passed by the CIT(Appeals) concerned under Section 250 of the Income Tax Act, 1961 relating to assessment year 2017-18 on the ground of non-appearance of the petitioner/appellant without going into the merit of the same.

Learned Advocate appearing for the petitioner submits that such order of the CIT (appeals) is without jurisdiction and illegal and not sustainable in law since law does not confer any such power upon of the Commissioner to dismiss an assesse's appeal for default and it has to dispose the appeal on merit.

Learned Advocate representing the respondent income tax authorities very fairly does not deny the aforesaid allegation of the petitioner.

Considering the facts and circumstances of the case and submission of the parties, I am of the considered view that the allegation of the petitioner is substantially correct and as such the aforesaid impugned order dated 9th November, 2023 is not sustainable in law and accordingly the same is set aside and the matter is remanded back to the Appellate Authority concerned to dispose of the appeal in question on merit after giving an opportunity of hearing to the petitioner or his authorize representatives and in case petitioner does not cooperate in the proceeding, the respondent Appellate Authority concerned shall be free to pass the order on merit.

(MD. NIZAMUDDIN, J.)

s.pal/sk