JPD-34
Ct No.01
30.07.2025
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

MAT 56 of 2025
IA No: CAN 1 of 2025

Samir Kumar Dey
Vs
The Union of India and others

Mr. Himangshu Kumar Ray
Ms. Matan Chakraborty
Mr. Gaurav Chakraborty
Mr. Animitra Roy
…. for the appellant.

Mr. Ajoy Kumar Singhania
…for the Income Tax authorities.

1. Learned counsel for the appellant submits that the appeal has been preferred against an order whereby, in a writ petition preferred by the appellant against an assessment order under the Income Tax Act, the learned Single Judge merely directed exchange of affidavits, which operates as a deemed refusal of the *ad interim* prayer of stay made by the appellant/petitioner before the writ court.

2. Learned counsel appearing for the appellant cites a judgment of a coordinate Bench where in similar circumstances, where a statutory appeal was available before the Appellate

Authority, the Hon'ble Division Bench was pleased to grant liberty to the appellant therein to file a statutory appeal within a period of thirty days from the date of receipt of the server copy of the judgment of the Division Bench and the Appellate Authority was to take up the appeal and decide the same on merits and in accordance with law without rejecting the appeal on the ground of limitation.

3. In the present case, due to extenuating circumstances as pleaded by the petitioner, it is submitted that a similar relief may be granted to the petitioner/appellant.

4. Learned counsel appearing for the respondents opposes the prayer and submits that in the unreported order cited in the case of *Mukul Mahanta vs. The Union of India and others (MAT 978 of 2025),* the issue involved in the writ petition was a reopening of the assessment.

5. The governing provisions of Section 148A of the Income Tax Act were under consideration therein as opposed to the present case, which relates to the initial assessment of tax.

6. Such contention is opposed by learned counsel for the appellant.

7. Be that as it may, on a perusal of the order cited before us, we find that the observation of the Division Bench to the effect that the Appellate Authority shall not reject the appeal on the ground of limitation does not have binding value as a precedent, since no law was laid down in such context.

8. The parties had not argued on the question as to whether the Appellate Court could have passed such an order by condoning limitation despite holding that the writ petition itself could not be entertained, since a provision of appeal is there in the statute, nor was such issue decided therein.

9. Even in the present case, we find that the writ petition itself could not have been entertained, since a statutory appeal with a specific limitation period was available to the writ petitioner/present appellant.

10. As such, instead of prolonging the present litigation, MAT 56 of 2025, along with CAN 1 of 2025, are dismissed, granting liberty to the appellant to prefer a statutory appeal against the assessment order as well as the consequential penalty orders, which were challenged before writ court, before the appropriate Appellate Authority in a properly constituted appeal, subject to the question of limitation.

11. If an application for condonation of delay is made by the appellant before the Appellate Authority in connection with the said statutory appeal, such prayer shall be considered by the Appellate Authority upon giving opportunity of hearing to both parties in accordance with law, taking into consideration the time spent in pursuing the writ petition and the present appeal before this Court.

12. Consequentially, WPA 1327 of 2025 is also treated to be disposed of in the light of the above observations.

13. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)