IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT /25/2025
IA NO: GA/1/2025, GA/2/2025
INCOME TAX OFFICER, WARD 13(1), KOLKATA
VS.
AMPLE VYAPAAR PRIVATE LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Dated : 16th June, 2025

Appearance:
Mr. Prithu Dudhoria, Adv.
..for Appellant
Mr. Brijesh Kumar Singh, Adv.
…for the Respondent

THE COURT: This intra-court appeal has been filed by the Income Tax department challenging the correctness of the order dated 11th May, 2023 in WPO 947 of 2023. In the said writ petition, the respondent herein had challenged the order passed under Section 148A(d) of the Income Tax Act, 1961 dated 21st April, 2022 for the assessment year 2018-19 raising a question of law relating to the jurisdiction of the assessing officer concerned in passing the said order as the formalities required to be complied with, with regard to obtaining approval of the specified authority mentioned in Section 151 (ii) of the Act was not followed. The learned Single Bench though found that the mandate under the law having not been followed, did not quash the entire proceeding but quashed the proceeding upto the stage where the irregularities had been committed and permitted the appellant/department to proceed further in accordance with law from the stage of such irregularities. It is not clear as to why the department has challenged the impugned order by way of this intra-court appeal. Apart from that, there is a delay of 235 days in filing the appeal.

We have perused the affidavit filed in the application seeking condonation of delay and we find that there is no acceptable reason except that the file was being transmitted from one officer to another. In more or less identical circumstances in APOT/27/2025, this Court by order dated 25th April, 2025 refused to condone the delay of 234 days in filing the appeal.

As was done in the said matter, the learned standing Counsel for the appellant placed reliance on the decision of the learned Single Bench in Giriraj Commercial Private Limited vs. Union of India And Ors., WPO/1122/023 dated 12th July, 2023. The Court took into consideration the said position and held that the factual position in the said case was entirely different. At this juncture, we quote the relevant paragraph of the said order dated 25th April, 2025.

> *"The revenue relies on the decision in the case of Giriraj Commercial Private Limited vs. Union of India And Ors., WPO/1122/2023 dated 12th July, 2023. On going through the said decision, we find that the same is factually different and considering the factual position, the learned Single Bench in the said case referred to Section 151 read with 149(1), fifth and sixth proviso and rejected the case of the writ petitioner/assessee. However, in the instant case, the factual position is entirely different. Firstly, the assessee's specific stand was that notice under 148A(b) of the Act was never served and the period of three years came to an end on 31st March, 2022 and the order passed under Section 148A(d) was passed on 7.4.2022. Apart from that, the question of applicability of the fifth and sixth proviso would not arise in the case in hand because the said amendment which was*

by Finance Act, 2023 was with effect from 1.4.2023. Therefore, the learned Single Bench was fully justified in passing the impugned order.

We also find that the learned Single Bench did not foreclose the rights of the department but granted them liberty to rectify the irregularity and take approval from the specified authority. Therefore, no ground has been made out to interfere with the impugned order."

For the above reasons, GA/1/2025 as well as APOT/25/2025 are dismissed.

The stay application (GA/2/2025) also stands dismissed.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

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