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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

ORIGINAL SIDE

APOT/308/2024
IA NO: GA/1/2025, GA/2/2025
INCOME TAX OFFICER WARD 7(1) KOLKATA
VS
KRUSHANA INFRA PROPERTY PRIVATE LIMITED AND ORS.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 21st May, 2025

Appearance :
Mr. Amit Sharma, Adv.
..for appellant

Mr. Arun Kumar Upadhyay, Adv.
…for respondent no.1.

The Court : This appeal has been filed by the revenue challenging the order dated 21st June, 2023 in WPO/1065/2023. The appeal is barred by time as there is a delay of 397 days in filing the appeal.

The learned advocate appearing for the respondent/writ petitioner would vehemently oppose the prayer for condonation of delay. However, considering the fact that a legal issue has been raised and decided by the learned Single Bench, we are constrained to exercise discretion in the matter and condone the

delay and deal with the appeal on merits. Accordingly, the application GA/1/2025 is allowed and delay is condoned.

The writ petition was filed by the respondent herein challenging an order passed under Section 148A(d) of the Income Tax Act, 1961 for the assessment year 2017-18 on the ground that the approval of the "specified authority" in terms of Section 151(ii) of the Act has not been obtained. The writ petitioner contended that the specified authority in the assessee's case is the Principal Chief Commissioner of Income Tax which fact was not disputed before the learned Single Bench. The learned Single Bench referred to the instruction issued by the Central Board of Direct Taxes in instruction no.101/20-22 dated 11th May, 2022 and in particular paragraph 6.2 II wherein it has been stated that for the purpose of issuance of notice under Section 148 of the Act for the assessment year under consideration the approving authority will be the specified authority under Section 151(ii) of the Act. Further, on facts, it was found that the notice has been issued to the assessee after the expiry of three years from the end of the relevant assessment year and at the time of issuance of notice under Section 148 the Act was extended to taxation and other laws by converting notice under Section 148 into Section 148A(b) of the Act and the learned Single Bench found that the statutory compliance required to be adhered to under Section 151(i) and (ii) with subsequent notice under

Section 148 of the Act has not been specifically dispensed with and, therefore, the assessing officer cannot waive this obligation which has a colour of a statute. Therefore, the learned Single Bench on facts found that the condition for compliance as stipulated under Section 151(ii) has not been fulfilled. Having held so, it would have been well opened to the learned writ court to quash the entire proceedings but, however, the learned writ court remanded the matter back to the assessing officer to proceed afresh from the stage when such irregularity has been committed and pass a fresh order under Section 148A(d) of the Act in accordance with law after taking approval from the specified authority under Section 151(ii) of the Act and such order to be passed after following the due procedure of law and the learned Single Bench also fixed a time limit for eight weeks for compliance of such direction. The impugned order was passed on 21st June, 2023 and the memo of appeal was presented before this Court on 21st August, 2024. Thus, the department was not diligent enough to file the appeal within the period of limitation especially when a time frame has been fixed for the department to comply with the direction. That apart, we fail to understand as to how the department could be aggrieved by the impugned order as the learned writ court has not quashed the reassessment proceedings but only set aside the same to the extent where the irregularity has occurred and remanded the

matter back to the assessing officer to rectify the defect. Therefore, the department should have been well advised to comply with the direction issued instead of filing the appeal at such a belated stage.

For the above reasons, we find no grounds to interfere with the impugned order and, accordingly, the appeal fails and the same is dismissed.

The connected application is closed.

The time for compliance of the order passed by the learned Single Judge is extended by a period of eight weeks from the date of receipt of the server copy of this order.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

S.Das/
AR[CR]