Item no. 03

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice T.S. Sivagnanam
And
The Hon'ble Justice Hiranmay Bhattacharyya

MAT 337 of 2022
with
IA No. CAN 1 of 2022

Unisource Hydro Carbon Services Private Limited & anr.
vs.
Union of India & ors.

Appearance:
For the Appellants : Mr. Himangshu Kr. Ray

For the Respondents : Ms. Smita Das De
Mr. Soumen Bhattacharya

Heard on : 22.04.2022

Judgment on : 22.04.2022

T.S. Sivagnanam J.:

This intra court appeal filed by the appellant/writ petitioner is directed against an order dated 2.3.2022 in WPA 2852 of 2022. The appellant filed the said writ petition challenging the order passed by the Principal Commissioner of Income Tax, Kolkata-1 (PCIT) dated 15.12.2021 under Section 264 of the Income Tax Act, 1961 (in short,

'the Act') dismissing the revision petition filed by the appellants. From paragraph 5 of the impugned order, we find that the order was an ex parte order since according to the PCIT despite notice being sent to the assessee through e-mail none appeared for the hearing. That apart, the PCIT would observe that earlier the appellant had filed a writ petition before this court in WPA 11041 of 2021 challenging the assessment order dated 04.06.2021 under Section 143(3) read with Section 144(B) of the said Act. The appellant had filed the writ petition challenging the order of the PCIT on the ground that no notice was received by the assessee and that the notice has been sent to e-mail address which was no longer in use and despite the assessee having made the same known to the Department, the notice appeared to have been sent to the old e-mail address. Apart from that, the appellant had also contended that as to how the assessment order dated 04.06.2021 was bad in law.

The learned Single Judge had dismissed the writ petition by the impugned order primarily on the ground that the earlier writ petition filed by the appellant was dismissed by order dated 25.08.2021 and, therefore, the appellant cannot also again challenge the assessment order indirectly by questioning the order passed by the PCIT dated 15.12.2021 under Section 264 of the Act. The correctness of the order passed by the learned Single Judge is being challenged before us.

We have heard learned counsel for the parties at length.

On going through the order dated 25.08.2021 in WPA 11041 of 2021 we find that the appellant had challenged the assessment order

dated 04.06.2021 primarily on the ground of violation of principles of natural justice and as the appellant was not granted adequate and effective opportunity by the assessing officer and, therefore, the assessing officer had committed a jurisdictional error. It appears that the assessment order has been challenged also on merits. The learned Single Judge while dismissing the writ petition by order dated 25.08.2021 did not agree with the contention of the appellant that the assessment order suffered from any jurisdictional error as the appellant have been granted effective opportunity so far as the merits of the assessment is concerned, the learned Single Judge in page 4 of the impugned order dated 25.08.2021 observed as follows:

> *"… … … So far as the challenge to the impugned Assessment Order on merit and dealing with facts and evidences are concerned I am of the considered view that the Income Tax Act is a self-complete code and the petitioner has specific statutory appellate forum for redressal of its grievance if so aggrieved against the impugned assessment order, before the Commissioner of Income Tax (Appeals) and further appeal before the Income Tax Appellate Tribunal which has the power to decide both on facts as well as on law and further before the High Court under Section 260A of the Income Tax Act. In my considered opinion High Court sitting in Writ Jurisdiction under Article 226 of the Constitution of India should not disturb or interfere with the finding of the Assessing Officer in his assessment order which are based on material facts and evidence and to substitute the findings of an Assessing Officer in the assessment order with its own finding when statutory alternative remedy for adjudication of assessment order on merit, evidence and law is available under Income Tax Act, 1961 before the Appellate Forum. … … …"*

Having rendered the above finding the learned writ court proceeded to hear as to whether there was violation of principles of natural justice as contended by the appellant and ultimately held that there was no violation of principles of natural justice. Therefore, we find that the learned writ Court in its order dated 25.08.2021 has not rendered any finding on the merits of the assessment as canvassed by the appellant.

Therefore, the PCIT had committed an error in rejecting the revision petition on the ground that already the appellant had filed the writ petition and challenged the assessment order and the same has been dismissed. The dismissal of the writ petition was not on the merits of the assessment. Therefore, the PCIT committed an error in making such observation. The learned writ court has also faulted the assessee for having not filed a regular appeal as against the order of the assessment by approaching the Commissioner under Section 246(A) of the said Act. It may be true that the appeal might have been time barred but nevertheless the appellant assessee cannot be foreclosed from availing the revisional remedy under Section 264 of the said Act which is an independent remedy provided to an aggrieved person in terms of the provisions of the Act. Therefore, the decision is required to be taken by the PCIT on merits of the matter. Though there is allegation made that the notice have been sent to the e-mail address which was not in operation, we do not propose to go into the correctness of the said submission as we are of the considered view that an adequate

opportunity should be granted to the assessee to pursue the revision petition filed under Section 264 of the Act and since the revision petition has been manually presented, the assessee has also to be afforded an opportunity of personal hearing. We are of the view that PCIT has to take a decision on merits and in accordance with law.

For the reasons given hereinabove, the appeal stands **allowed** and the order passed by the PCIT, Kolkata -1 dated 15.12.2021 under Section 264 of the Act is set aside and the revision petition is restored to the file of the said authority. Consequently, the order passed in the writ petition is set aside. The authority shall issue notice in writing to the assessee and communicate the same through speed post to the address mentioned in the revision petition in addition sent a copy of such notice to the e-mail address provided by the assessee and fix a date for personal hearing and on such date the appellant shall be permitted to be represented by their authorized representative and are at liberty to place all the documents before the PCIT and after affording a reasonable opportunity of hearing the authority shall pass a speaking order on merits and in accordance with law. Accordingly, the application being CAN 1 of 2022 is disposed of.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava (AR. CT.)

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M.A.T. 337 of 2022

Unisource Hydro Carbon Services Private Limited & Anr.
Versus
Union of India & ors.

Mr. Himangshu Kr. Ray
.... for the appellants.

Ms. Smita Das De,
Mr. Soumen Bhattacharya ... for the respondents.

This matter has been listed under the caption "To Be Mentioned".

We have heard Mr. Himangshu Kr. Ray, learned Advocate for the appellants and Ms. Smita Das De, learned Advocate appearing for the respondents.

It is pointed out by the learned Advocate appearing for the appellants that this Court while allowing the appeal has set aside the order dated 15th December, 2021 but there are two other orders, which were also subject matter of challenge; one being rectification of revision order dated 17th January, 2022 and consequential penalty order dated 5th February, 2022 and prays that these orders may also be set aside.

As we have allowed the appeal and set aside the order dated 15th December, 2021, it goes without saying that the rectification of revision order dated 17th January, 2022 as well as the penalty order dated 5th February, 2022, which are all consequential orders, are also required to be set aside. Accordingly, the appeal stands allowed and the order passed by the PCIT, Kolkata – 1 dated 15th December, 2021 under Section 264 of the Act of 1961 is set aside. The order dated 17th January, 2022 rejecting the rectification application is also set aside and the penalty order dated 5th February, 2022 is also set aside and the revision petition is also restored to the file of the said authority.

The other orders and directions given in our order dated 22nd April, 2022 shall remain unaltered and shall be complied with by the concerned authority.

This order shall form part of the order dated 22nd April, 2022.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)