IN THE HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

Before:
The Hon'ble Justice Hiranmay Bhattacharyya

WPA 640 of 2025
Arun Kumar Bose
VS.
Income Tax Officer, Ward-1(1), Siliguri & Ors.

For the petitioner : Ms. Sutapa Roychoudhury, Sr. Adv
Mr. Abhijat Das
Ms. Aratrika Roy
..... advocates

For the Income Tax Department : Mr. Ajoy Kumar Singhania
...... advocate

Heard on : 08.04.2025

Judgment on : 08.04.2025

<u>Hiranmay Bhattacharyya, J.:-</u>

1. This application under Article 226 of the Constitution of India is at the instance of the assessee and is directed against an order dated February 7, 2025 passed by the Income Tax Officer, Ward No.1 (1), Siliguri.

2. The assessee filed his return of income for the assessment year 2014-2015 declaring a total income of Rs. 10,23,320/-. The return of income was processed under Section 143 (1) of the Income Tax Act, 1961 and the same was selected for scrutiny under CASS. The Assessing Officer issued statutory notices under Section 143(2) read with 142(1) of the Income Tax

Act, 1961. Hearing was conducted and the scrutiny assessment under Section 143(3) of the Income Tax Act was completed by order dated August 31, 2016 thereby determining the total income of the assessee at Rs. 85,42,009/-. The total income of the assessee was determined by the Assessing Officer after adding an amount of Rs.75,18,689/-towards unexplained sundry creditors which was outstanding as on March 31, 2014. Being aggrieved against such assessment, the assessee preferred an appeal under Section 250 of the Income Tax Act, 1961 before the National Faceless Appeal Centre.

3. The Commissioner of Income Tax Act (Appeals), National Faceless Appeal Centre (for short "CIT(A)") passed an order dated November 23, 2021 directing the Assessing Officer to delete the additions subject to certain conditions. Being aggrieved by the order of the CIT (A), the petitioner preferred an appeal before the Income Tax Appellate Tribunal "B" Bench Kolkata (for short "the Tribunal").

4. The learned Tribunal passed an order dated February 9, 2023 thereby refusing to interfere with the order passed by the CIT (A).

5. Challenging the order passed by the Learned Tribunal petitioner preferred an appeal under Section 260A of the Income Tax, 1961 before the Hon'ble High Court at Calcutta. The said appeal was allowed by an order dated August 2, 2023 answering the substantial questions of law in favour of the assessee.

6. Thereafter, the Assessing Officer passed an order dated January 3, 2024 thereby giving effect to the order of the Hon'ble High Court and re-computing the income of the assessee by holding that the assessee/petitioner herein is entitled to refund of Rs.12,18,636/-. The order dated 3rd of January, 2024 was, however, rectified by the Assessing Officer by a subsequent order dated February 7, 2025, which is under challenge in this writ petition.

7. Ms. Roychoudhury, learned Senior Advocate appearing in support of the writ petition submits that the Hon'ble Division Bench in the appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 did not interfere with the portion of the order passed by the CIT(A) directing the Assessing Officer to delete the additions. She submits that the portion of the order of the CIT (A) directing further enquires to be made was only set aside. She further submits that the Assessing Officer rightly gave effect to the order passed by the Hon'ble Division Bench while passing the order dated 3rd January, 2024. She submits that subsequently the same Assessing Officer enhanced the tax liability of the petitioner/assessee by exercising powers under Section 154 of the Income Tax Act, 1961 without serving any notice upon the petitioner assessee. In support of such contention she placed reliance upon the provisions of sub-Section 3 of Section 154 of the Income Tax Act.

8. Per Contra, Mr. Singhania, learned Advocate appearing for the revenue submits that the Hon'ble Division Bench in the order dated 2nd August,

2023 was pleased to set aside the orders passed by the CIT(A) as well as the order of the Tribunal. He submits that the consequential effect of such an order is that the order of the Assessing Officer automatically stood revived. He further submits that the Assessing Officer, on a bona fide mistake, passed an order dated 3rd January, 2024 directing certain amount to be refunded to the petitioner and immediately after detection of such bona fide mistake the order dated 7th February, 2025 was passed. He submits that the tax liability of the petitioner was not enhanced by the impugned order but only a bona fide error in giving effect to the order of the Hon'ble Division Bench was rectified by the subsequent order dated 7th February, 2025 and, therefore, the provisions of Section 154(3) of the Income Tax Act, 1961 does not stand attracted to the case on hand. He further submits that the order of refund was not approved by the higher authority for which the Assessing Officer passed the subsequent order dated February 7, 2025. Mr. Singhania, learned advocate submits that the effect of the order of the Hon'ble Division Bench is that the appeal stood restored to the file of the CIT(A).

9. Heard the learned advocates for the parties and perused the materials placed.

10. After going through the assessment order dated August 31, 2016, this Court finds that the addition was made towards unexplained sundry creditors which was outstanding as on March 31, 2014. The CIT (A) passed a detailed order and expressed an opinion that the additions made by the

Assessing Officer cannot be sustained in the eye of law. The CIT (A), however, directed the Assessing Officer to delete the addition subject to certain conditions as indicated in the order dated November 23, 2021 passed by the CIT (Appeal).

11. The Hon'ble Division Bench in ITAT 147 of 2023 passed an order on August 2, 2023 after framing two substantial questions of law. The substantial questions of law framed by the Hon'ble High Court would be relevant for the purpose of deciding this writ petition and for which the same is extracted hereinafter:

> ***"i) Whether on the facts and circumstances of the case the learned Tribunal was justified in upholding the order of the CIT(A) when the same is beyond the scope and power vested upon the CIT(A) under the provisions of Section 251(1)(a) of the said Act?***
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> ***ii) Whether in the facts and circumstances of the case when the additions made in respect of the sundry creditors namely M/s. Goodwill Corporation (India), M/s. Quality Udyog and M/s. Swastik Trading & Manufacturing Co. were directed to be deleted as being unsustainable can be subject to the enquiries conducted by the Assessing Officer?"***

12. The Hon'ble Division Bench took note of the amendment of the Finance Act, 2001 by virtue of which the power to remand the matter back to the Assessing Officer for fresh assessment was omitted. After noting the provisions of Section 251(1)(a) of the Income Tax Act, 1961, which states that in an appeal against the order of assessment, the

Commissioner may confirm, reduce, enhance or annul the assessment, the Hon'ble Division Bench observed that in view of the statutory embargo, the Commissioner could not have remanded the matter back to the Assessing Officer after having decided the case in favour of the assessee in its entirety.

13. The learned advocate representing the Revenue before the Hon'ble Division Bench submitted that the findings recorded by the CIT (A) was only 'prima facie' which shows that the CIT(A) wanted a fresh exercise to be done by the assessing officer and, therefore, it would have been well open to the CIT(A) to call for a remand report and thereafter to enquire into the matter and proceed to take a decision. The said learned advocate prayed that the case be remanded back to CIT (A) to undertake a fresh exercise.

14. The Hon'ble Division Bench after elaborately going through the order of the CIT (A) held that though in the order passed by the CIT (A), the word 'prima facie' has been used, from a cumulative reading of the order passed by the CIT (A), it appears that the case has been discussed on merits and thereafter a finding has been recorded that the Assessing Officer was not justified in making the addition and there was a positive direction to delete the addition. The Hon'ble Division Bench further observed that mere use of the word 'prima facie' could not make prima facie view as the CIT (A) has discussed the matter elaborately taking into consideration the factual position.

15. After going through the order of the Hon'ble Division Bench this Court finds that the Hon'ble Division Bench noted the factual finding recorded by the CIT (A) that the Assessing Officer was not justified in making the addition and there was a positive direction to delete the addition. The Hon'ble Division Bench was of the view that the CIT (A) committed an error of law by remanding the matter to the Assessing Officer for a fresh consideration after having held in favour of the assessee and the Tribunal also did not deal with such issue.

16. In the light of the statutory embargo, it was held by the Hon'ble Division Bench that the order of remand passed by the CIT (A) is not tenable in the eye of law and consequently the same is required to be set aside as well as the order passed by the learned Tribunal. The Hon'ble Division Bench also recorded in its order that admittedly the revenue had not challenged the findings rendered by CIT (A) which was in favour of the assessee. The appeal was allowed by the Hon'ble Division Bench answering the substantial questions of law in favour of the assessee. Needless to mention that the substantial questions of law were framed with regard to the power of the CIT (A) to direct further enquiries to be made.

17. From a bare reading of the order of the Hon'ble Division Bench it would be evident that only the portion of the order remanding the matter to the Assessing Officer for fresh adjudication on merits, was interfered with by the Hon'ble Division Bench and the positive finding recorded in

the order of the CIT (A) that the Assessing Officer was not justified in making the addition as well as the positive direction to delete the addition, was not interfered with by the Hon'ble Division Bench.

18. It would be further evident from the order of the Hon'ble Division Bench that the submission of the learned advocate for the revenue to remand the matter to the CIT(A) was also not accepted. This Court is, therefore, not inclined to accept the contention of Mr. Singhania, that the appeal stood restored to the file of CIT(A).

19. This Court is, therefore, of the considered view that the order of the CIT(A) directing the Assessing Officer to delete the addition of amount on account of unexplained sundry creditors was not set aside by the Hon'ble Division Bench. In other words, the portion of the order of CIT(A) directing the Assessing Officer to delete the addition, stands. The resultant effect is that the order of the Assessing Officer stood set aside.

20. For such reason this Court is not inclined to accept the submission of Mr. Singhania that the order of the Assessing Officer automatically stood revived upon passing of the order by the Hon'ble Division Bench.

21. This Court finds that the Assessing Officer rightly gave effect of the order of the Hon'ble Division Bench by passing the order dated January 3, 2024 by deleting the additions as directed in the order of CIT (A).

22. The Assessing Officer passed the subsequent order dated February 7, 2025 by exercising powers under Section 154 of the Income Tax, 1961. By such order the assessment was enhanced and the refund was reduced

as it would be evident from a bare perusal of the order dated February 7, 2025 that the order dated January 3, 2025 directing refund, was rectified by adjusting the penalty demand with the refund order and arriving at an amount of tax payable by the assessee. Such an exercise undoubtedly falls with the scope of sub-Section (3) of Section 154 of the Income Tax Act, 1961.

23. Section 154(3) of the Income Tax Act states that an amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or the deductor or the collector shall not be made under this Section unless the authority concerned has given notice to the assessee or the deductor or the collector of its intention so to do and has allowed the assessee or the deductor or the collector a reasonable opportunity of being heard.

24. Section 154(2) of the Income Tax Act, 1961 permits the authority concerned to make an amendment of its own motion and also mandates amendment to be done for rectifying any mistake which has been brought to its notice either by the assessee or by the deductor or by the collector and where the authority concerned is the Commissioner (Appeals), by the Assessing Officer also.

25. Upon a conjoint reading of subsection (1), (2), (3) and (4) of Section 154, this Court holds that the authority has the power to make an amendment under Section 154(1) of its own motion but if such amendment has the effect of enhancing an assessment or reducing a

refund or otherwise increasing the liability of the assessee, the authority concerned is under a statutory obligation to issue a notice upon the assessee and give a reasonable opportunity of hearing before passing an order of amendment for rectification of any mistake apparent from the record.

26. In the case on hand, the assessing officer made the amendment of its own motion. It is not in dispute that notice in terms of Section 154(3) of the Income Tax Act was not served upon the petitioner. No opportunity of hearing was afforded to the petitioner before passing the order dated February 7, 2025. This Court holds that there has been a violation of the provision laid down under Section 154(3) of the 1961 Act and for such reason the order dated February 7, 2025 calls for interference.

27. That apart, the Assessing Officer while passing the order dated February 7, 2025 held that the impugned Assessment Order of the Assessing Officer passed under Section 143(3) of the Income Tax Act dated August 31, 2016 remains uninterfered and still remains in force. This Court has already observed that the effect of the order of the Hon'ble Division Bench is that the order of the appellate authority directing the Assessing Officer to delete the additions, stands.

28. In view thereof, this Court holds that the observation made in the order dated February 7, 2025 to the effect that the order of the Assessing Officer dated August 31, 2016, is still in force, calls for interference.

29. For all the reasons as aforesaid, the order dated February 7, 2025 is set aside and quashed. Consequently the order dated January 3, 2024 stands revived. The authorities are directed to take all consequential steps in terms of the order dated January 3, 2024 within a period of four weeks from the date of receipt of a server copy of this order.

30. At this stage Ms. Roychoudhury, learned Senior Advocate for the petitioner submits that the petitioner has preferred a revision petition against the penalty order dated February 20, 2023 which is still pending.

31. The petitioner will be at liberty to place this order before the revisional authority in accordance with law.

32. With the above observations and direction, WPA 640 of 2025 is disposed of.

33. There shall be, however, no order as to costs.

34. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)