

OD-11

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/23/2025
IA NO: GA/1/2025

M/s. RANISATI CAPITAL PRIVATE LIMITED
VS
THE PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 7th March, 2025.

Appearance :
Ms. Alisha Das, Adv.
Mr. Samrat Das, Adv.
Ms. Elina Dey, Adv.
...for appellant.

Ms. Smita Das De, Adv.
Mr. Prithu Dudhuria, Adv.
...for respondent.

The Court :- This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated August 23, 2024 passed by the Income Tax Appellate Tribunal “C” Bench, Kolkata (Tribunal) in MA/6/Kol/2023 arising out of ITA/1529/Kol/2019 for the assessment year 2012-13.

The assessee has raised the following substantial questions of law for consideration :-

- “a. Whether the said impugned order dated August 23, 2024 passed by the learned Tribunal is wrongful, illegal, arbitrary and bad in law ?*
- b. Whether the learned Tribunal was justified in law in not recalling the ex-parte order passed by the Ld. Tribunal on August 23, 2024 when there was a reasonable cause for non-appearance on the date of hearing of the appeal ?*

c. Whether, on the facts and in the circumstances of the case, the Ld. Tribunal was justified in dismissing the miscellaneous application when your appellant has appeared on several occasions on the dates of hearing of the appeal, however, on most of the hearing dates, the bench was not in session ?”

Heard learned advocates on either side.

The appellant/assessee had filed a miscellaneous application before the learned tribunal in MA/6/Kol/2023 to recall the ex parte order passed by the tribunal dated 15.12.2023 in ITA/1529/KOL/2019. The learned tribunal held that at the time when the miscellaneous application was heard none was present on behalf of the assessee and that the assessee also did not participate in the assessment proceeding resulting in a best of judgment assessment and that the assessee did not prosecute its appeal before the Commissioner of Income Tax (Appeals)[CIT(A)] which was decided ex parte. With this reasoning, the learned tribunal dismissed the miscellaneous application.

Aggrieved by such order, the assessee has preferred the present appeal.

After we have elaborately heard the learned advocate for the appellant/assessee as well as the learned senior standing counsel for the respondent/department, we find that the learned tribunal had committed a factual mistake in holding that the assessee did not appear before the CIT(A) when the fact remains that the assessee had appeared before the appellate authority and contested the proceeding on merits.

With regard to the prayer made in M.A. No. 6/Kol/2023 was to set aside the order passed by the Tribunal dated 15th December, 2022 by which the Tribunal dismissed the assessee's appeal since the assessee was not represented. What is required to be seen is that whether the conduct of the assessee was so bad that the assessee would not be entitled for any discretionary remedy.

We note that when the appeal was filed before the Tribunal during the year 2023, 13.6.2023 was the first date of hearing fixed for the appeal and the assessee was represented. Subsequently the case was adjourned to 21.7.2023. However, the assessee was not represented. The case was further adjourned to 1.9.2023, the assessee was represented and subsequently, on 22.9.2023 the case was adjourned since the Bench of the learned Tribunal was not functioning. Subsequently, the case was listed on 16.2.2023 and adjourned at the assessee's authorized representative. On 16.2.2023 the Bench of the Tribunal did not function and the hearing was adjourned. Similar was the reason for adjournment on 23.2.2024 and 1.3.2024. On 22.3.2024 the case was adjourned and fixed for hearing on 26.4.2024. On 26.4.2024, on account of non-availability of the Hon'ble Member of the Tribunal, the case was adjourned till 21.6.2024 and it appears to have been listed on 23.8.2024, on which date the Miscellaneous application was dismissed on account of non-appearance of the assessee. The chain of events clearly shows that the assessee had been diligently prosecuting the matter and cannot be held to have slept over their rights. As already noted, the assessee had appeared before the CIT(A). However, the learned Tribunal had committed a factual mistake in observing that the assessee did not appear before the Appellate Authority.

We have gone through the order passed by the Appellate Authority and we find that the Appellate Authority has not discussed any facts nor dealt with the grounds which have been raised by the assessee, though the grounds have been extracted in the order passed by the Appellate Authority dated 23.5.2019 in paragraph 2. Thereafter, the Appellate Authority referred to the various decisions and ultimately, the conclusion is in paragraph 13 holding that the assessee had not proved the three ingredients required under Section 68 of the Act.

We are of the view that there is no discussion on facts despite the assessee having appeared before the Appellate Authority. Therefore, we are of the view that the assessee should not be left remediless and should be given an opportunity to put forth their case on merits. Since the assessment proceedings were based on judgment assessment, we are inclined to remand the matter back to the Assessing Officer for a fresh consideration.

For the above reasons, the order passed by the learned Tribunal, the order passed by the Appellate Authority and the assessment order are set aside and the assessment is restored to the file of the Assessing Officer, who shall complete the assessment after affording an opportunity of personal hearing to the authorized representative of the assessee. The assessee is not entitled to seek for any adjournment and shall appear before the Assessing Officer either in person or through their authorized representative on the date and time as fixed by the Assessing Officer.

It is made clear that we have not gone into the merits of the matter and it will be well open to the assessee to raise all factual and legal grounds before the Assessing Officer.

The appeal is allowed for the above reasons.

Consequently, the substantial questions of law are left open.

The stay application IA No: GA/1/2025 is disposed of.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)