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

ITAT/166/2025
IA NO: GA/1/2025

DUNIGRAM JANA KALYAN SAMITY
VS
DEPUTY COMMISSIONER OF INCOME TAX,
CENTRALIZED PROCESSING CENTRE, INCOME TAX DEPARTMENT & ORS.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 10th September, 2025

Mr. Sumit Ghosh, Adv.
Mr. Souradeep Majumdar, Adv.
…for appellant
Mr. Amit Sharma, Adv.,
led by Mr. Tilak Mitra, Adv.
…for respondents

The Court : This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated 7.7.2025 passed by the Income Tax Appellate Tribunal, "SMC" Bench, Kolkata (Tribunal) in I.T.A. No. 960/Kol/2025 for the assessment year 2017-18.

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

(i) Whether the Ld. CIT(A) was justified in dismissing the appeal as non-maintainable, treating the order dated 29.04.2022 issued by the Ld. ITO, Ward 2(1), Exemption,

Durgapur as related to condonation of delay in filing of Form 10B u/s 119(2)(b) of the Income Tax Act, when it is a fact that the subject captioned therein as 'Condonation under section 119(2)(b)-Order' was merely a forwarding note or information parted that the Ld. CIT(E) (vide its order dated 03.02.2022) has already condoned such delay in filing of Form 10B, as such when the condonation has already been granted or concluded, can the same be under challenge before the Ld. CIT(A) ?

(ii) Whether the Ld. CIT (A) and the Ld. Tribunal were both justified in not going through the contents of the letter dated 29.04.2022 but only perused the heading therein as 'Condonation under section 119(2)(b)-Order' which is truly a forwarding note or an information imparted that the condonation had already been granted by the Ld. CIT(A) but left to consider the other part of the said letter, which dealt with a request to pay the outstanding demand of Rs.4,23,280/-, as such issued for execution of the purported demand arising out of the rectification order u/s 154 dated 06.08.2019 ?

(iii) Whether the Ld. Tribunal was justified in treating that the rectification order u/s 154 has been passed after condonation without considering that the said rectification order lead to a demand of Rs.4,23,280/- which is the real challenge along with the order dated 29.04.2022 which was actually issued for execution of the demand, being consequential in nature, as such combinedly assailed before the Ld. CIT(A)?

(iv) Whether the Ld. Tribunal was justified in treating that the impugned order referred to in Form 35 is the order passed u/s 119(2)(b) of the Act and the order u/s 154 of the Act is not the impugned order, when it is on record that Form 35 clearly mentioned the section as 154 but the date was mentioned as 29.04.2022, since the online system in filing appeal did not permit mentioning of two dates 06.08.2019 and 29.04.2022 simultaneously, though the rectification order dated 06.08.2019 and execution order dated 29.04.2022 were both challenged ?

(v) Whether the Ld. Tribunal was justified in holding that the assessee can challenge one appeal against one order, when it is a fact that the real challenge was the rectification order u/s 154 dated 06.08.2019 along with the consequential order dated 29.04.2022 which is simply a request to pay the outstanding demand but the same has nothing to do with the condonation part, which was already granted and thereby concluded?

We have heard Mr. Sumit Ghosh, learned Advocate appearing for the appellant/assessee and Mr. Amit Sharma, learned standing counsel for the respondent/department.

The assessee is a registered society under the West Bengal Act XXVI of 1961 and has been granted a registration under Section 12AA of the Act as a charitable/religious trust/institution. The Centralised Processing Centre (CPC) passed a rectification order under Section 154 of the Act dated 6.8.2019.

Aggrieved by the said order, the assessee preferred appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. It appears that in the appeal memorandum the appellant/assessee had also annexed the order dated 29.4.2022, which is an order of condonation passed under Section 119(2)(b) of the Act. As could be seen from the grounds which have been raised by the assessee as noted by the Appellate authority in its order dated 3.4.2023. The appellant/assessee has challenged the order passed under Section 154 of the Act dated 6.8.2019 raising various contentions. However, the Appellate authority has filed the appeal against the order dated 29.4.2022 which is not an appealable order under Section 246A of the Act. To be noted that in the

Grounds of Appeal, the challenge is to the order passed under Section 154, dated 6.8.2019 and in fact, the Appellate authority has extracted the grounds raised by the assessee in para 3.1 of his order dated 30.4.2023 by which order the appeal was dismissed.

The assessee carried the matter on appeal to the learned Tribunal contending that the Appellate authority misconstrued the appeal which was preferred against the rectification order dated 6.8.2019 under Section 154 of the Act which was mistakenly mentioned in the Grounds of Appeal as 6.8.2022 and therefore the appeal was maintainable. Furthermore, even in the order dated 29.4.2022, the Income Tax Officer (Exemption) had issued a direction to pay the outstanding demand of Rs.4,23,284/- and therefore, the assessee challenged the same in its entirety. Further, it was contended that the Appellate authority ought to have considered that the rectification order passed under Section 154 of the Act wherein the voluntary contribution other than corpus was computed at par for Rs.10,59,166/-, wherefrom if the rate of bank interest Rs.2,325/- and depreciation Rs.43,320/- are deducted, the resultant figure comes to Rs.10,87,171/-, which was determined at Rs.10,61,491/-, being the difference of Rs.43,240/- comprising of Rs.49,995/- as depreciation and Rs.2,325/- as bank interest. The assessee further contended that Rs.10,61,491/- was erroneously treated as taxable under the head, `Income from other source' when, out of which Rs.10,59,166/- was already allowed as exempted, apart from bank interest of Rs.2,325/-.

Furthermore, the assessee contended in the appeal that due to an inadvertent mistake in filing the return led to the erroneous rectification and therefore the order has to be set aside and the appeal should be decided on merits.

However, the learned Tribunal was also of the view that what was challenged by the assessee is only an order of condonation of delay. This appears to be factually incorrect as the challenge made by the assessee is to the order passed under Section 154 of the Act, correctness of which has never been tested either by the Appellate authority or by the learned Tribunal. This led to a situation where the assessee is being left remediless against the order passed under Section 154 of the Act, which position cannot remain so.

Thus, for the above reasons, we are of the view that the appeal should be decided by the Appellate authority on merits testing the correctness of the order passed under Section 154 of the Act and for which purpose the matter is required to be remanded back to the Appellate authority for a fresh decision on merits.

Accordingly, the appeal is allowed.

The stay application, IA NO: GA/1/2025, also is allowed.

The impugned order passed by the learned Tribunal is set aside as well as the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 3.4.2023 is also set aside and the matter is remanded to the Appellate authority for a fresh decision on merits by testing the correctness of the order passed under Section 154 of the Act, dated 6.8.2019, after affording an opportunity of hearing to the appellant/assessee.

Consequently, the substantial questions of law are left open.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

SN/SKD.
AR[CR]