OD-5

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

ITAT/170/2025
IA NO: GA/1/2025

ABDUL MANNAN
VS
INCOME TAX OFFICER, WARD 32(3), KOLKATA

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 9th September, 2025

Mr. Anil Kumar Dugar, Adv.
Mr. Rajarshi Chatterjee, Adv.
Mr. Ashoke Sharma, Adv.
Mrs. Suman Sahani, Adv.
...for appellant

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 15.7.2025 passed by the Income Tax Appellate Tribunal, `SMC' Bench, Kolkata (Tribunal) in I.T.A No. 738/Kol/2025 for the assessment year 2017-18.

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

i) *Whether the Learned Tribunal erred in law in imposing hefty cost of Rs.50,000/- for restoration of the appeal despite appellate authority* *disposed of appeal in gross violation of section 250(6) of the said Act?*

ii) *Whether the imposition of cost of Rs.50,000/- in the given facts and circumstances, suffers from perversity and biasness?*

iii) *Whether the Learned Tribunal erred in law in imposing hefty cost of Rs.50,000/- for restoration of the appeal despite knowing the fact that the appellant could not comply with the dates fixed for hearing of assessment as well as appeal case owing to his ill health, poor knowledge regarding online compliances, and sole dependency upon a consultant, who did comply with the notices?*

We have heard Mr. Anil Kumar Dugar, learned Advocate, assisted by Mr. Rajarshi Chatterjee, learned Advocate, for the appellant/assessee.

Though notice has been served on the respondent/department, no counsel has been nominated by the department. Therefore, we have directed Mr. Soumen Bhattacharjee, learned standing counsel, present in Court, to accept notice on behalf of the respondent/department and his appearance be regularized and the fee bills be honoured.

This appeal is directed against the order dated 15th July, 2025 passed by the learned Tribunal by which the Tribunal remanded the matter back to the Assessing Officer to re-do the assessment afresh. The appellant is not aggrieved by such portion of the order but is aggrieved by the direction issued by the learned Tribunal in imposing a cost of Rs.50,000/- on the assessee payable to the Legal Aid Services.

Before the learned Tribunal, the assessee contended that he is a small trader of glass articles and an individual assessee who was solely dependent on the consultant/accountant and due to ill health and poor knowledge regarding online compliances, the assessee was unaware that the consultant did not comply with the notice issued by the Assessing Officer on two occasions which led to the assessment being completed ex parte by order dated 23rd October, 2019 under Section 143(3) of the Act.

The assessee carried the matter on appeal. Though the appeal was presented, the consultant of the appellant did not appear on three occasions. Therefore, the Appellate Authority proceeded to dispose of the appeal.

We have perused the order passed by the Appellate Authority dated 11th October, 2023 and we find that the Appellate Authority has not dealt with the grounds which have been canvassed by the appellant in the appeal petition, but has stated that no interference is called for with the order passed by the Assessing Officer.

When the matter was carried to the learned Tribunal, the reasons pleaded by the assessee for non-appearance before the Assessing Officer and before the Appellate authority were not being disputed by the revenue. In other words, there was no material placed before the learned Tribunal by the revenue to show that the stand taken by the assessee for his non-appearance was for reasons beyond his control and the assessee had made false statement.

In any event, when the assessee had filed the statutory appeal within the time of limitation, it is not a case where the assessee was not diligent of his rights but being an individual assessee, in all probabilities was not well versed with the procedures and was solely dependent upon the consultant, who appears to have not taken steps to comply with the notices issued by the Assessing Officer or by the Appellate Authority.

In any event, the learned Tribunal opined that the matter has to be redone and remanded the matter back to the Assessing Officer. However, we find that imposition of cost of Rs.50,000/- would be harsh on the appellant, more particularly, when he is a small time trader and an individual assessee. That apart, the issue pertains to the assessment year 2017-18. The assessee has undertaken before this Court that he will cooperate in the de novo assessment proceedings in terms of the directions issued by the learned Tribunal and one more opportunity may be granted.

Considering the above, this appeal is allowed and the cost imposed by the learned Tribunal on the appellant/assessee is set aside and the matter stands remanded to the Assessing Officer for a fresh decision. The Assessing Officer shall issue notice to the appellant/assessee and he shall comply with the notice by appearing in person or through the authorized representative without seeking any adjournment and place all materials that may be called for by the Assessing Officer and upon considering such materials as well as the averments the assessee may make, a fresh assessment order be passed on merits and in accordance with law.

Consequently, substantial questions of law are left open.

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

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

SN/SD
AR[CR]

<u>आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ, कोलकाता</u>

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH KOLKATA

श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील **सं/ITA No.738/KOL/2025**

(**निर्धारण वर्ष /** Assessment Year :2017-2018)

Abdul Mannan B-6/H/3, Miajan Ostagar Lane, Beniapukur, Kolkata-700017	Vs	ITO Ward-32(3), Kolkata
PAN No. : **AEYPM 6978 F**		
(**अपीलार्थी /Appellant**)	..	(**प्रत्यर्थी / Respondent**)
निर्धारिती की ओर से /Assessee by	:	Shri Anil Dugal, AR
राजस्व की ओर से /Revenue by	:	Smt. Pampa Ray, JCIT-Sr.DR
सुनवाई की तारीख / **Date of Hearing**	:	15/07/2025
घोषणा की तारीख/**Date of Pronouncement**	:	15/07/2025

<u>आदेश / O R D E R</u>

This is an appeal filed by the assessee against the order of the ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 11.10.2023 for the Assessment Year 2017-2018.

2. Shri Anil Dugal, ld.AR appeared on behalf of the assessee and Smt. Pampa Ray, ld. Sr.DR appeared on behalf of the revenue.

3. The appeal of the assessee is barred by 464 days. In this regard, the assessee has filed an application for condonation of delay stating therein sufficient reasons for delay, which are plausible and not found to be false. Ld. Sr.DR also did not raise any serious objection to condone the delay. Accordingly, delay of 464 days in filing the present appeal by the assessee is condoned and the appeal is admitted for hearing.

4. During the course of hearing, it was submitted by the ld. AR that the ld. CIT(A) has dismissed the appeal of the assessee without providing any sufficient opportunity of being heard to the assessee. It was the prayer that

the matter may be restored to the file of ld. AO to decide the issue involved in the appeal afresh so that the assessee could be able to produce all the evidence to substantiate its claim.

5. In reply, ld Sr. DR vehemently supported the orders of the Assessing Officer and ld. CIT(A).

6. I have considered the rival submissions. As it is noticed from the orders of the authorities below that the assessee could not substantiate its claim by providing relevant documents. Even the assessee was also failed to produce the evidences as required by the ld. CIT(A) and in absence of the same, the ld. CIT(A) has dismissed the appeal of the assessee. However, the ld. AR has made a request before the Bench that if the assessee is given one more opportunity to represent its case before the ld. AO, the assessee could be able to provide all the details before the ld. Assessing Officer to substantiate its claim. This being so, in the interest of justice, I grant the assessee one more opportunity to substantiate its claim before the ld. AO by restoring the issues in the appeal to the file of ld. AO for adjudicating afresh after providing the assessee adequate opportunity of being heard. However, looking to the non-cooperation of the assessee during the course of appellate proceedings even after issuance of notices to the assessee, I impose a cost of **Rs.50,000/-(Rupees Fifty Thousand only)** on the assessee to be payable to the Legal Aid Services, 3rd Floor of the Centenary Building, High Court, Calcutta-700001, within sixty days from the date of this order and receipt of the same would be produced before the AO at the first hearing. Should the assessee not pay the

abovementioned costs within the prescribed period of sixty days from the date of this order, the order of the ld. CIT(A) shall stand confirmed. The assessee shall cooperate in the readjudication proceeding before the AO positively.

7. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 15/07/2025.

Sd/-
(जार्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य / JUDICIAL MEMBER

<u>कोलकाता</u> Kolkata; दिनांक Dated 15/07/2025
Prakash Kumar Mishra, Sr.P.S.
<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **<u>कोलकाता</u>** / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(**Assistant Registrar**)
Income Tax Appellate Tribunal, Kolkata