

OD - 6

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/16/2025
IA NO: GA/2/2025
PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
M/S DEVBHUMI VINIMAY PVT LTD

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 22nd July, 2025

Appearance :
Mr. Prithu Dudheria, Adv.
..for the appellant.

Mr. S.M. Surana, Adv.
Mr. Pratyush Jhunhunwala, Adv.
Ms. Sruti Datta, Adv.
Ms. Sakshi Singhi, Adv.
...for the respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated May 14, 2024 passed by the Income Tax Appellate Tribunal, C- Bench, Kolkata (the Tribunal) in ITA/1393/Kol/2023 for the assessment year 2012-13.

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

“a) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in not deleting the addition u/s 68 of The I.T. Act, made on account of unaccounted transactions, without considering the evidences brought on record by the Assessing Officer to establish that the genuineness of the transactions and creditworthiness could not be satisfactorily prove in this case?

b) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in not holding that the assessee has proved the identity and genuineness of transaction of cash deposit, ignoring the decision of Hon'ble Supreme Court in the case of Novodaya Castle (P) Ltd [(2015) 56 Taxmann.com 18(SC)?

c) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in not following the judicial principles laid down in the matter of Pr. CIT (Cen)-2 Kolkata vs M/s BST Infratech Ltd. in ITAT/67/2024 dated 23/04/2024, [2024]161 Taxman.co, 668 (Calcutta) which is earlier decision of Hon'ble High Court having precedence value?”

We have heard Mr. Prithu Dudheria, learned senior standing counsel for the appellant/revenue and Mr. Pratyush Jhunjhunwala, learned advocate for the respondent/assessee.

The short question which falls for consideration is whether the learned Tribunal was justified in setting aside the assessment order as well as the order passed by the appellate authority by which the addition made by the assessing officer under Section 68 of the Act was set aside. The assessee in order to demonstrate the three parameters which are required to be established by them had produced all the relevant documents which have been noted by the learned Tribunal in paragraph 9 of the impugned order. All the individual share applicant has furnished income tax returns, financial statement,

bank statement, confirmation of account and also confirmed the source of fund applied for making investment in the assessee company. The Tribunal found that the individual share applicants are mostly relatives and known to the director of the assessee company. All those documents filed before the assessing officer are once again placed before the learned Tribunal and the learned Tribunal has re-appreciated the evidence brought on record and found that the assessee explained that all these individual persons were having PAN numbers and they had an immediate source of fund which was utilised for making investments. The source of fund with the individual share applicants is not only the loan received from other applicants but also from the sale of investments and properties supported by copy of the development agreements etc. With regard to the other share applicants which are private limited companies, the Tribunal found that all of them have furnished the audited financial statements and their income tax return, PAN details, confirmation of source of investments, copy of master data and in some cases copy of the assessment orders passed under Section 143(3) of the Act. Furthermore, the Tribunal noted that in the audited balance-sheet it is shown that at the time of making investment in the assessee company those share applicants which are private limited company had sufficient net worth in the form of share capital and reserve and surplus to explain the amount invested. Furthermore, the Tribunal has recorded that the CIT(A) has confirmed this fact that all details have been filed before the assessing officer as well as before it. If such be the factual situation, addition could not have been made under Section 68 of the Act and, therefore, the

learned Tribunal rightly deleted the addition by allowing the assessee's appeal. We find no question of law much less substantial question of law arises for consideration.

Accordingly, the appeal fails and is dismissed.

The stay application, IA NO: GA/2/2025, also stands dismissed.

(T.S SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)