

OD-11

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/28/2025
IA NO: GA/1/2025, GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX 1, KOLKATA
VS.
SAPPHIRE TRADE ASSOCIATES PVT.LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Dated : 21ST MARCH, 2025

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

Mr. Saumya Kejriwal, Adv.
Mr. Debargha Banerjee Adv.
..for the respondent

THE COURT: We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant/Department and Mr. Saumya Kejriwal, learned counsel appearing for the respondent/assessee.

There is a delay of 45 days in filing the appeal. As the explanation offered is found to be satisfactory, the delay is condoned. The application GA 1/2025 is allowed.

This appeal filed by the Department under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 24th June, 2024 passed by the Income Tax Appellate Tribunal, “C” Bench, Kolkata in ITA No./709/Kol/2023 for the assessment year 2014-15.

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 considering the direct and circumstantial evidence brought on record by the Assessing officer to establish that the Assessee had introduced its own unaccounted money in the form of share capital and share premium and deleting the addition made by the Assessing Officer of Rs 2,91,60,000 as an unexplained cash credit u/s 68 of the IT Act 1961?

b) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in deleting the addition by not considering the decision of the jurisdictional High Court in the case of Commissioner of Income Tax vs Precision Finance Pvt. Ltd. 1994(208 ITR 465) (Cal)?

c) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in deleting the addition of Rs. 2,91,60,000 made by the Assessing Officer by not considering the decision of Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax vs NRA Iron & Steel (2019)412 ITR 161(SC) which states that Assessee is under legal obligation to prove the receipt of share capital premium to the satisfaction of the Assessing Officer?

d) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law by not considering in

giving the verdict in favour of the assessee where the case is covered by clause (h) of Exceptions laid down under Para 3.1 of the CBDT Circular No.5/2024 vide F. No.279/Misc-142/2007- ITJ(Pt), Dated 15th March, 2024?”

After we have elaborately heard the learned Advocates for the parties, we find that the issue to be decided in the case is whether the Assessing Officer could have invoked Section 68 of the Act and treated the amount of Rs.2,91,60,000/- as unexplained cash credit found in the books of account of the assessee during the year ended on 31.3.2014. The assessment order passed under Section 143(2) dated 27.12.2016 was affirmed by the National Faceless Appeal Centre by order dated 7.6.2023. Challenging the same the assessee preferred appeal before the learned Tribunal.

On perusal of the order passed by the learned Tribunal, we find that the learned Tribunal has thoroughly examined the factual position and noted that the assessee has filed evidence comprising of copies of the Income tax returns, audited accounts, share application forms, share allotment letters, bank statements, memorandum of articles of association etc. in respect of each of the subscribers before the Assessing Officer as well as before the Appellate Authority. Furthermore, the Tribunal noted that the Assessing Officer issued notice under Section 133(6) of the Act, which was duly replied by the subscribers by furnishing all details as called for by the Assessing Officer. Apart from that, summons issued under Section 131 to six subscribers were complied with and all six persons who were summoned confirmed the

transactions/investment made by them. Furthermore, the learned Tribunal noted that for the assessment year 2016-17, shares were also issued to the same parties which were accepted by the revenue to be genuine in the assessment proceeding which was done under Section 143(3) of the Act. The Tribunal also took note of the valuation of shares as made by SDP & Associates for the purpose of Section 56, read with Rule 11UA of the Rules, and noted that the premium computed at Rs.95.27p. per equity share and as a matter of fact, the shares were issued at a premium of Rs.90 each. Furthermore, the Tribunal had held that the assessee was justified in issuance of the share capital at a premium as the money collected were to be invested in M/s. Delsey (I) Pvt. Ltd. which was a joint venture with Sapphire Trade Associates, the respondent/assessee and M/s. Delsey (I) Pvt. Ltd. with 49% and 51% share respectively. That apart, the Tribunal has pointed out factual mistake committed by the Assessing Officer stating that the assessee company is a newly formed company in the assessment year 2014-15.

Learned advocate appearing for the respondent/assessee has produced the extract from the website of the Ministry of Corporate Affairs from which we find that the company was incorporated on 26.8.2011. This factual mistake has ultimately led to an erroneous order passed by the Assessing Officer. Apart from that, in respect of identical transaction during the assessment year 2012-13, the Assessing Officer held against the assessee and made the addition under Section 68 of the Act. This order was put to challenge before the

Appellate authority and by order dated 18.4.2024, the appeal filed by the assessee was allowed.

Thus, we find that the Tribunal has rightly granted relief to the assessee/respondent and there is no question of law, much less substantial questions of law, arising for consideration in this appeal. Accordingly, the appeal fails and is dismissed.

The stay application being IA No: GA/2/2025 also stands dismissed.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)