

OD – 10

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

ORIGINAL SIDE

ITAT/42/2025

IA NO: GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 2 KOLKATA

VS

M/S KUNJAL SYNERGIES PRIVATE LIMITED

BEFORE :

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

And

THE HON'BLE JUSTICE UDAY KUMAR

Date : 1st December, 2025

Appearance :

Mr. Soumen Bhattacharjee, Adv.

Mr. Ankan Das, Adv.

...for the appellant.

Mr. Avra Mazumder, Adv.

Ms. Alisha Das, Adv.

Ms. Elina Dey, Adv.

...for the respondent

The Court: Learned counsel appearing for the appellant/revenue has suggested the following substantial questions of law :

“i) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in holding that the assessee which is a Pvt. Ltd. company, having negligible income was justified in raising huge share capital, with a premium as high 99 times?

ii) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in holding that the share applicant/subscriber companies were genuine companies though none of the directors or representatives appeared on summons under section 131 but all of them posted all documents via post on the same day i.e. 14.03.2015 by same post office (Kolkata GPO) and the same time between 17:54 to 17:55?”

This Court perused the memorandum of appeal, application for stay and the impugned judgment of the Tribunal dated 29.2.2024.

"5. The Ld. CIT(A) simply affirmed the order of AO by observing and holding as under :

"The Hon'ble ITAT has discussed the issue in detail in the case of ITO, Ward-5(3), Kolkata vs. M/s Blessings Commercial Pvt. Ltd. in ITA No. 271/Kol/2014 for AY 2010-11. In this case, Rs. 10/- shares has been issued at a premium of Rs. 990-. On this question, the assessee has not even attempted to justify the amount of share premium. A perusal of the audited statement of accounts of these companies demonstrate that the financials are not in live with the premium charged. Respectfully applying the propositions of law laid down by the co-ordinate bench of the Tribunal to the facts of the case, we find that Section 68 of the Act applies to the facts of this case as a sum of money was credited, in the books of the assessee and the assessee could not prove the genuineness of these credits as well as the creditworthiness of the creditor. Hence in our informed view the audition has rightly been made by the AO. Accordingly, the appeal of the appellants hereby dismissed as the factual matrix is more or less similar."

6. The Ld. A.R vehemently submitted that the assessee company is mainly engaged in the business of trading, storage, distribution petrochemicals, solvents energy related products and during the year filed return of income declaring total income of Rs. 2,06,04,670/-. During the year the assessee raised share capital/share premium by issuing equity shares to five subscribers at face value of Rs. 10/- each at a premium of Rs. 990/- per share though the book value of the share was Rs. 212/- per share. However as per the growth of the company the value of the share has increased 20 times over a period of four years: The Ld. A.R submitted that the assessee was incorporated in 2007 and during the period of 4 years the worth of shares has gone up 20 times. It is only on this basis, the issue price of the shares has been fixed by the assessee. The Ld. A.R also stated that Section 56(2)(viib) of the Act which provides for addition of income if the shares issued at a price which is higher than fair market value of the shares but the same is effective from AY-2013-14 and not the year under consideration which has been settled by various judicial forums. The Ld. A.R also referred to the worth of the share subscribers which was approx. forty to fifty times of the amount invested in the assessee company by way of equity shares. The Id AR, therefore, submitted that the subscribers were having sufficient net worth and the identity, creditworthiness of the investors and genuineness of the transactions cannot be doubted. The Ld. A.R, while referring to PB serial no. 8 to 12 which are in respect of documents filed in respect of share subscribers from page 61 to 460, submitted that in case of M/s Deepak Pens and Plastics Pvt. Ltd. at Sl. No. 8, M/s Nidhi Agro Pvt. Ltd. at Sl. No. 10 and M/s Satyatej Vyapaar Pvt. Ltd. at Sl. No. 11, the assessment have been framed u/s 143(3) of the Act and also submitted that these

assessment orders are placed in the PB. The Ld. A.R submitted that the assessee has filed copies of ITRs, audited accounts, certificate of incorporation, memorandum & articles of associations, memorandum & articles of association (amended), annual returns under the Companies Act, 1956, list of share holders, share allotment letters, bank statements, reply to summons issued u/s 131 of the Act, source of source and confirmation certificates etc besides assessment orders (wherever applicable) as stated above in case of all subscribers however the AO has not carried out any investigation. The Id AR submitted that even summon issued to the assessee which was replied by the assessee as stated above. Therefore the addition as confirmed by the Ld. CIT(A) may kindly be deleted.

7. The Ld. D.R on the other hand relied on the order of authorities below and submitted that the AO as well as Ld. CIT(A) has passed a very speaking and reasoned order stating as to how the money received by the assessee from five subscribers do not satisfy the basic three conditions as provided in Section 68 of the Act. The mere fact that subscribers have sufficient funds or net worth would not automatically proved that they have creditworthiness to invest the money and transactions are genuine. The Ld. D.R therefore prayed in view of reasoning by authorities below, the appeal of the assessee may be dismissed.

8. We have heard rival contentions and perused the material on record, we find that during the year the assessee has raised money from five subscribers by issuing equity shares of face value of 10/- each and at a premium of Rs. 990/-.. The net worth or the book value as per share as per books of account of the assessee was 212/- per share whereas the assessee was issued shares at a premium of Rs. 990/-, We also note that the assessee company was incorporated in 2007 and over a period of four years the value of shares was increased by 20 times and it is only based on this growth trajectory and potential of the assessee. The equity shares have been priced at Rs. 1,000/- each inclusive of premium of Rs.990/-. Moreover the provisions of Section 56(2)(viib) of the Act are effective from AY 2013-14 and are not applicable to the year under consideration. We also note that all these facts have been placed by the assessee before the AO as well as Ld. CIT(A).

9. We have also perused the chart placed by the assessee which contains the detail of share holders net worth and amount invested to the assessee and is extracted below for the sake of ready reference:

SL. No.	Name of Shareholder	CIN	Networth	Amount paid (Rs.)

1	Deepak Pens and Plastics Pvt. Ltd.	U70109WB1993OTC060899	65,01,10,633	90,00,000
2	Impression Suppliers Pvt. Ltd.	U51909WB2008PTC130611	18,53,54,639	25,00,000
3	Nidhi Agro Pvt. Ltd.	U92412WB1992PTC054967	73,73,73,766	60,00,000
4	Satyatej Vyapaar Pvt. Ltd.	U51109WB1993PTC061116	74,81,11,997	75,00,000
5	Avon Vanijya Pvt. Ltd.	U51109WB2008PTC25999	11,95,88,722	30,00,000
			Total	2,80,00,000

Heard learned counsel for the appellant/revenue. Tribunal appreciated the factual position and took note of the fact that the notice which was issued by the Assessing Officer under Section 136 of the Act to the lenders was duly acknowledged and all the lenders confirmed the loan transactions by filing the document which was placed before the Tribunal in the form of paper book. Thus, the materials were all available on the file of the Assessing Officer as well as before the CIT and no question can be raised regarding the genuineness, identity and creditworthiness of the creditors. Hence, the Tribunal has rightly dismissed the appeal filed by the revenue.

For the above reasons, we find that no substantial question of law arises for consideration in this appeal and the appeal is dismissed.

No order as to costs.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

Sd/