

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

ITAT /53/2025
GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS.
MAGESTIC VYAPAAR PVT. LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Dated : 1st July, 2025

Appearance:
Mr. Vipul Kundalia, Sr. Adv.
Mr. Prithu Dudhoria, Adv.
..for Appellant
Mr. Saurabh Bagaria, Adv.
Mr. Rites Goel, Adv.
Ms. Samrita Das, Adv.
..for 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 22nd August, 2024 passed by the Income Tax Appellate Tribunal, "SMC" Bench, Kolkata (the Tribunal) in ITA No.902/Kol/2024 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 by not considering the settled position of law in respect of provisions of Section 68 of the Act that the onus of proving the*

identity & creditworthiness of the parties from whom the assessee received money and the genuineness of such transaction is on the assessee and the assessee miserably failed to prove so in the instant case?

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 total addition of Rs. 1,39,99,920/ made u/s 68 of the Act ignoring the judicial principles laid down in the matter of Pr. CIT Vs. Swati Bajaj reported in 2022 SCC Online 1572 (Cal) wherein the Honble High Court at Calcutta laid down guidelines on the manner in which the allegation against the assessee has to be considered?

c) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal erred in deleting the addition made by the AO u/s 68 of the Income Tax Act, in a factual matrix wherein the explanation submitted by the shareholder/Directors was not reasonable or acceptable. The said principles were laid down by the Hon'ble High Court of Calcutta in the case of Balgopal Merchants (P) Ltd. Vs CIT [2024162 taxmann.com 465 [Calcutta]?

We have heard the learned Advocates for the parties.

The learned Tribunal had allowed the assessee's appeal and set aside the addition made under Section 68 of the Act. We have perused the order passed by the Assessing Officer dated 23.12.2016 under Section 143 of the Act and the order passed by the CIT(A) dated

28.2.2024. The CIT(A) has affirmed the order passed by the Assessing Officer but has not given any independent reasons.

The question which falls for consideration is whether the power under Section 68 of the Act could have been invoked in the facts and circumstances of the assessee's case for the assessment year under consideration. The learned Tribunal has taken note of the factual position that the assessee has issued equity shares to two group companies and the two group companies have common directors. According to the Assessing Officer, those companies were not having sufficient business activities and were having only loan transactions and non-current investments.

It is not in dispute that the assessee filed all the evidence and submitted explanation as called for by the Assessing Officer, namely by furnishing the names, addresses, Pan Card numbers, audited accounts, bank statements, confirmation letters etc. to establish the genuineness of the transactions apart from identity and creditworthiness. The director of the assessee as well as the share subscribers responded to the summons issued under Section 133(6) of the Act and the director has given a statement that the subscribing companies have substantial resources available to invest in the assessee company and the said statement was also substantiated by other records. The Assessing Officer has not brought on record anything to dispute or doubt the stand taken by the assessee as well as the share subscribers nor commented upon the veracity of the documents and details furnished by the assessee during the course of

the assessment proceedings. In such circumstances, the Tribunal granted relief to the assessee.

We find the matter to be entirely factual which has been re-appreciated by the learned Tribunal and leave has been granted to the assessee.

Thus, we find no question, much less substantial questions of law, for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

Thus, the stay application, GA/2/2025, is also dismissed.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)