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

ITAT/56/2025
IA NO: GA/1/2025, GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
M/S VISHNU DISTRIBUTORS PVT LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 5th May, 2025.

Mr. Aryak Dutta, Adv.
Mr. Prithu Dudheria, Adv. …for appellant.

Mr. Subash Agarwal, Adv.
Mr. R. Chatterjee, Adv
. … for respondent.

The Court : There is a delay of 98 days in filing the appeal. As the delay has been properly explained the same is condoned. The application is allowed.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 20.5.2024 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (the Tribunal) in ITA/50/Kol/2022 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 justified in law in deleting the addition of Rs.3,98,44,628/- on account of unexplained share capital and share premium, completely without considering the fact that before the Ld. Assessing Officer, the assessee-company had not discharged the basic onus of establishing the identity, genuineness and capacity of the Share Holders who had infused capital into the Company?

b. 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 ground of appeal taken by the Assessing Officer that the Ld. CIT (Appeals) has violated the provisions of Rule 46-A and adjudicated the matter on the basis of documents provided by the appellant assessee, and taken a legal approach on such documents, without remanding the matter to the Ld. Assessing Officer to examine the said new documents?"

We have heard Mr. Aryak Dutta, learned senior standing Counsel assisted by Mr. Prithu Dudheria for the appellant and Mr. Subash Agarwal, learned senior standing Counsel assisted by Mr. R. Chatterjee, learned Advocate for the respondent.

The revenue filed the appeal before the learned Tribunal challenging the correctness of the order passed by the Commissioner of Income Tax (Appeals)-7, Kolkata dated 19.02.2020 which was dismissed affirming the order passed by the first appellate authority. After we have elaborately heard the learned senior standing Counsel for the appellant and the submissions of the learned Advocate for the respondent/assessee, we find that the learned Tribunal was fully justified in dismissing the revenue's appeal. We note that the Tribunal has referred to the two decisions of this Court in the case of Pr. CIT Vs. Alishan Steels Pvt. Ltd. in ITA No.50 of 2024 dated 19.2.2024 as well as the decision in the case of Pr. CIT Vs. M/s. Abhijeet Enterprise Ltd. dated 17.11.2023. In the second decision, the Division Bench of this Court took into consideration the decision in the case of V. R. Global Energy (P) Ltd. Vs. ITO, Corporate Ward 3(4), Chennai 407 ITR 145(Madras), wherein it was held that the assessee allotted share to a company in settlement of their existing liability of assessee to the said company since no cash was involved in the transaction of the said allotment of shares, conversion of this liability in such share capital and share premium could not be treated as unexplained cash credits under Section 68 of the Act. The court also took note of the fact that the revenue had filed appeal before the Hon'ble Supreme Court against the said decision which was dismissed in the case of ITO Vs. V. R. Global Energy (P) Ltd. (2020)113 taxmann.com 31 (SC). Apart from that two other decisions, one of the Division Bench of this Court in the case of Jatia Investment Co. Vs. CIT (1994) 206 ITR 78 (Cal) and the decision of the High Court of Delhi in CIT Vs. Ritu Anurag Agarwal, 2009(7) TMI 1247 (Delhi) also support the case of the assessee. The Tribunal took note the above decision and the admitted facts in position and dismissed the appeal filed by the revenue thereby affirming the order passed by the CIT(A). Thus, we find no question of law much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal fails and the same is dismissed.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

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