

OD-5

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

ITAT/57/2025
IA NO: GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-18, KOLKATA
VS
PRASANT DESAI

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 10th June, 2025.

*Mr. Prithu Dudheria, Adv.
...for appellant.*

*Mr. Subhash Agarwal, Adv.
Mr. Rajarshi Chatterjee, Adv.
Mr. Amit Shaw, Adv.
Mrs. Suman Sahani, Adv.
...for respondent.*

The Court : This appeal filed by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated September 25, 2024 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (Tribunal) in ITA/735/Kol/2024, for the assessment year 2013-14.

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

"i) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law by deleting the addition of Rs.75,00,000/- made U/s. 68 of the Income Tax Act, 1961

despite the fact that neither creditworthiness of lender and/or genuineness of transaction was proved by Assessee?

(ii) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law by not restoring the matter to the file of Assessing Officer with a direction to afford opportunity to the assessee for cross examination, though the addition as made on the basis of cash train prepared by Investigation Wing not merely on the basis of third party statement alone?

(iii) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in quashing the reopening of assessment stating that reopening is not permissible on the basis of borrowed satisfaction of the Assessing Officer, whereas the Assessing Officer has reopened the assessment on the basis of specific information provided by the investigation wing. This information was verified by the Assessing Officer from the e-filing date base and found to be correct?

(iv) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in the issue of cross-examination by deleting the addition of Rs.75,00,000/- made U/s. 68, whereas the order should have been set aside in view of the decision of the Apex Court in Pirai Choodi 334 ITR 262 (SC)?”

We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant/revenue and Mr. Subhash Agarwal, learned counsel for the respondent/assessee.

The short issue which falls for consideration is whether the learned Tribunal was right in allowing the assessee's appeal and setting aside the reopening of the assessment made by the Assessing Officer by the assessment order dated 28th March, 2022. In the said assessment order, the reasons for reopening have been set out which

shows that such proceedings was conducted in the case of M/s. D.P. Trading, a proprietorship concern of one Mahesh Sharma and that he was in the business of providing accommodation entries to various persons, such as, cheque in lieu of cash and vice-versa and cash loans. The reasons are also referred in the investigation report in which it appears to have been stated that Mahesh Sharma provided accommodation entries to persons and helped them route their money without paying taxes on the same. Further, it is stated that the assessee is one of such beneficiaries and there is information in insight module of the department database that the assessee has transacted Rs.75,00,000/- through the concerns of the said individual. The above is the reason for reopening the assessment for which a notice was issued to the assessee. On receipt of the said notice the assessee by reply dated 17th January, 2022 stated that on perusal of the reasons it is not clear as to which transaction relating to the loan have been questioned. Furthermore, the copy of the statements or extracts or any material available on record acting against the assessee has not been supplied to the assessee for cross-verification or examination. Therefore, the assessee requested to furnish complete details as to the transaction, such as, name of the party in whose favour cheque was drawn, the details of the bank, the date of the transaction etc., so that the assessee can verify their books of accounts and respond to the show-cause notice. Admittedly, the Assessing Officer did not furnish the copy of the statement or any details which were requested by the assessee and proceeded to hold that furnishing of the statement of Mahesh Sharma is not required to be complied with as the said statement is only a collateral piece of evidence. It is not in dispute that Mahesh Sharma in his statement given to the Department/Investigation Wing has not named the assessee that the assessee was a beneficiary of an accommodation entry. While completing the assessment, in paragraph 4 of the order, the Assessing

Officer has set out the information which is in possession of the Department. The details have been furnished in a tabular format which shows that five layers of transaction which have been done. The name of the assessee figures in layer 5 and the type of transaction is by bank transfer whereas the type of transaction in layers 1 and 2 is by cash. The name of D.P. Trading, the proprietorship concern of Mahesh Sharma, figures in layer 2. Therefore, the Department to reopen the assessment has to have sufficient material to link the assessee with Mahesh Sharma/D.P. Trading and trace the money trailed so as to justify the monies have flown into the hands of the assessee by way of an accommodation entry. This aspect is completely missing in the assessment order. Therefore, the learned Tribunal took note of this fact and also Sections 147 and 148 of the Act and what are the conditions precedent to be followed by the Assessing Officer before reopening an assessment.

In this regard, it would be beneficial to refer to the decision of the Hon'ble Supreme Court in the case of *Income-tax Officer vs. Lakhmani Mewal Das*, reported in (1976) 103 ITR 437 (SC). In the said decision the Hon'ble Supreme Court held that reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It was further pointed out that the Court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. However, at the same time it has to be borne in mind that it is not any and every material, howsoever vague and indefinite or distant,

remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. Referring to Section 34 of the 1922 Act it was held that the words “definite information” which was found in the said provision is not there in section 147 of the 1961 and this would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, farfetched and remote. It was held that the reason for formation of the belief must be held in good faith and should not be a mere pretence. The decision of the Supreme Court would squarely apply to the assessee’s case.

The Department has taken a stand that it did not act on the statement of Mahesh Sharma and that it was only one of the circumstantial evidence and citing such reason the Assessing Officer declined to provide the statement of Mahesh Sharma nor to provide an opportunity to the assessee to cross-examine Mahesh Sharma. Thus, in the absence of any tangible material or a live link between Mahesh Sharma and the assessee, the reopening of assessment of the assessee has to be held bad in law.

The decision in the case of *Principal Commissioner of Income Tax-2, Kolkata Vs. M/s. Coal Sale Co. Ltd.*, reported in 2022(7) TMI 1503 – Calcutta High Court will also come to the aid of the assessee wherein it was held that the assessee therein was found to have transacted with a company through banking channel and faulted Assessing Officer for reopening the assessment what is based on a statement of a third party which was a general statement and the Assessing Officer assumed that the assessee is a beneficiary of the account. It was held that without any other material the conclusion drawn by the Assessing Officer merely on receipt of the information does not muster the requirement of law to validly form the reason to believe

escapement of income. With the said reasoning, the appeal filed by the revenue was dismissed.

In the instant case, the Tribunal has analyzed the factual position and has pointed out the errors committed by the Assessing Officer while reopening the assessment.

Thus, we find 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, IA No.GA/2/2025 stands dismissed.

(T.S. SIVAGNANAM, CJ)

(CHAITALI CHATTERJEE (DAS), J.)