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

ITAT/74/2025
IA NO: GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS
M/S VISH REALTY SOLUTIONS PRIVATE LIMITED

BEFORE :

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

Appearance :
Mr. Tilak Mitra, Adv.
Mr. Soumen Bhattacharjee, Adv.
Ms. Shradhya Ghosh, Adv.…for appellant.

Mr. Abhratosh Majumder, Sr. Adv.
Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
…for respondent.

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 21.2.2024 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata (the Tribunal) in ITA/250/Kol/2020 for the assessment year 2012-13.

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

a) *Whether the learned ITAT has committed substantial error in law in deleting the addition of Rs.5,86,00,000/- on account of unaccounted cash credit of share capital and premium, ignoring the facts that the assessee failed to prove the identity of the alleged shareholders, their creditworthiness and also the genuineness of the whole transaction?*

b) *Whether the learned ITAT has committed substantial error in law in coming to the conclusion that the assessee had discharged the initial onus which lay upon him in terms of section 68 of the Income Tax Act, 1961?*

c) *Whether the learned ITAT has committed substantial error in law in appreciating the facts in proper prospective while concluding in favour of the assessee?*

d) *Whether the learned ITAT has committed substantial error in law in not following the judicial principles laid down in the matter of Pr. CIT(Central)-2, Kolkata vs. M/s. BST Infratech Ltd. ITAT/67/2024 dated 23.04.2024, which is an earlier decision of Hon'ble High Court having a precedence value?*

We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant/department and Mr. Abhratosh Majumder, learned senior counsel for the respondent/assessee.

The short question which falls for consideration is whether the learned Tribunal was right in allowing the assessee's appeal and setting aside the order passed by the Commissioner of Income Tax (Appeals)-10 [CIT(A)] dated 2.12.2019 in an appeal filed by the assessee challenging the assessment order dated 11.3.2015 passed under Section 143(3) of the Act.

We have carefully perused the findings recorded by the Assessing Officer and the order passed by the CIT(A) and the conclusion arrived at by the learned Tribunal. The only reason assigned by the Assessing Officer for making addition under Section 68 is that the assessee did not prove the creditworthiness of the share subscribers, genuineness of the transaction and the identity. In this regard, the learned Tribunal has carefully examined the documents which were filed by the assessee in the form of a paper book which contained confirmation letters of all the share subscribers stating that they have given the share application money and the source of such share application money has also been brought on record. Therefore, the Tribunal was justified in coming to a conclusion that the source of shares has been explained by the assessee company.

Apart from that, summons under section 131 of the Act was issued to the directors of the assessee company who had appeared before the Assessing Officer and submitted all documents to establish the identity and creditworthiness of the shareholders and the genuineness of the transaction. Apart from that, the Tribunal found that the share applicants have sufficient funds and they have explained the investment and therefore, all the three ingredients stood proved and the onus shifted on the department and the department was not able to dislodge the burden of proof cast upon it. The Tribunal after noting the factual position has referred to the various decisions of the coordinate Bench of the Tribunal and allowed the appeal.

In the light of the above, we are of the view that the matter is entirely factual and no questions of law, much less substantial question of law, arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

The stay application, GA/2/2025, also stands dismissed.

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(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

SN/pkd.
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