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

ITAT/75/2025
IA NO: GA/1/2025

PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
ONE POINT COMMERCIAL PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 3rd July, 2025.

Mr. Tilak Mitra, Adv.
Mr. Prithu Dudhoria, Adv....for appellant.

Ms. Sutapa Roychoudhury, Sr. Adv.
Mr. Narendra Kedia, Adv.
Ms. Aratrika Roy, Adv. ...for respondent.

The Court : This appeal by the Income Tax department has been filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 16.10.2024 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (the Tribunal) in ITA/473/Kol/2019 for the assessment year 2012-13.

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

(a) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was not justified in law in admitting, accepting and relying on the share valuation certificate dated December 16, 2022 to justify the share premium transactions, as the valuation certificate was not produced before AO/CIT(A)/ITAT or Hon'ble High court earlier, and in any case

such valuation on the date of issue is flawed erroneous and unreliable?

(b) *WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was not justified in law in deleting the addition of Rs. 4,78,50,000/- on account of share capital and premium in the course of assessment in absence of the identity of the creditors, genuineness and creditworthiness of the entire transactions?*

(c) *WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was not justified in law in not following the judicial Principles laid down in the matter of Pr. CIT2, Kolkata(C)-2, Kolkata Vs M/s BST Infratech Ltd. in [2024] 161 taxmann.com 688 (Calcutta), dated 23.04.2024, which is an earlier decision of Hon'ble High Court having a Precedence value?*

(d) *WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was not justified in law in not considering the judicial principles laid down in the matter of Pr. CIT Vs. Swati Bajaj reported in [2022] 139 taxmann.com 352 (Cal)/ [2022] 446 ITR 56 (Cal) wherein the Hon'ble High Court at Calcutta laid down guidelines on the manner in which the allegation against the assessee has to be considered?*

We have heard Mr. Tilak Mitra, learned senior standing counsel assisted by Mr. Prithu Dudhoria, learned advocdate for the appellant/department and Ms. Sutapa Roychoudhury, learned senior counsel for the respondent/assessee.

The revenue is aggrieved by the impugned order passed by the learned Tribunal by which the appeal filed by the assessee challenging the order passed by the Commissioner of Income Tax (Appeals)-9 Kolkata [CIT(A)] dated 21.1.2019 was allowed. Earlier the appeal was taken up for hearing by the learned Tribunal and it was disposed of by an order dated 23.2.2023. This order was put to challenge by the revenue before this court in ITAT/36/2024 and the said appeal was allowed by judgment date 10.4.2024 and the matter was remanded back to the Tribunal for fresh consideration. Upon such remand, the Tribunal has heard the matter and has allowed the assessee's appeal. Aggrieved by such order, the revenue has preferred this present appeal. The assessing officer has made addition under section 68 of the Act for alleged unexplained share capital and share premium received from five share applicants. This order was affirmed by the CIT(A). The learned Tribunal has undertaken a thorough fact finding exercise after noting the principles which was laid down by the Hon'ble Supreme Court in the decision in *Kale Khan Mohammad Hanif vs. CIT (1963) 50 ITR 1 (SC) and Roshan-Di-Hatti vs. CIT (1977) 107 ITR 938.*

After noting the principles which was laid down by the Hon'ble Supreme Court in the aforementioned two decisions, the learned Tribunal examined the facts and the details which were furnished by the assessee in respect of the each of the five share applicants companies. The details and documents which were furnished have been noted in paragraph 11 of the impugned order. After considering the documents and details the learned Tribunal has recorded a factual finding that the identity of the share applicant companies cannot be disputed. The next aspect which was examined was the creditworthiness of the share applicant companies for which the learned Tribunal perused the financial statement of all the five companies and found that all the five companies had sufficient funds and the amount which was invested in the purchase of shares was negligible compared to their creditworthiness. Therefore, the Tribunal was satisfied about creditworthiness of all the share applicant companies. While doing so, the Tribunal also found that the identity of the share applicant companies and the genuineness of the transaction also cannot be disputed. Furthermore, in respect of the assessment made on the five share applicant companies were of scrutiny assessment under section 143(3) of the Act and those remained intact. Furthermore, source of share application money which has been received by the assessee has already been taxed in the hands of the share applicants and, therefore, it was held taxing the same amount in the hands of the assessee would tantamount to double addition. In this regard reference was made to the decision of the Hon'ble Supreme Court in Mahaveer Kumar Jain vs. CIT, AIR OnLine 2018 SC 1461. That apart, the learned Tribunal also took note of the decision of this court in the case of PCIT vs. Sreeleathers, (2022) 448 ITR 332.

Thus, we find upon thorough examination of the factual position, the appeal filed by the assessee was rightly allowed by the learned Tribunal. We find no question of law much less substantial question of law arises for consideration involved in this appeal. For the above reason, the appeal fails and the same is dismissed.

Consequently, the application, GA/1/2025 stands dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

SM/pkd.
AR[CR]