

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/114/2025
GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS.
GOODVIEW MARKETING PVT. LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

DATE: 3RD SEPTEMBER, 2025

Appearance:

Mr. Tilak Mitra, Adv.

Mr. Prithu Dudhoria, Adv.

...for Appellant

Mr. J.P. Khaitan, Sr. Adv.

Mr. Saumya Kejriwal, Adv.

Ms. Ananya Rath, Adv.

Mr. Navin Mittal, Adv.

Mr. Debarghya Banerjee, Adv.

...for Respondent

The Court : This appeal filed by the appellant/revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated October 16, 2024 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata, in ITA No.986/Kol/2024 for the assessment year 2008-09.

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*

in deleting the addition of Rs.7,97,00,000/- under Section 68 of the Act, made on account of share capital and high share premium?

- (b) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in not considering the judicial principle laid down in the matter of Pr. CIT Vs. Swati Bajaj reported in (2022) 139 taxmann.com 352(Cal)/(2024) 446 ITR 56 (Cal) wherein the Hon'ble High Court at Calcutta laid down guidelines in 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 was not justified in law by not considering the principle which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT (Central)-1, Kolkata Vs. NRA Iron & Steel Pvt. Ltd. (412 ITR 161) (2020) 117 taxmann.com 752 (SC)?*
- (d) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in deleting the addition U/s.68 of the Act in a factual matrix wherein the explanation submitted by the shareholders/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. Pr. CIT (2024) 162 taxmann.com 465 (Calcutta)?”*

We have heard Mr. Tilak Mitra, learned standing Counsel appearing for the appellant/revenue and Mr. J. P. Khaitan, learned Senior Advocate for the respondent/assessee.

The issue which falls for consideration was whether the learned Tribunal was correct in allowing the assessee's appeal challenging the order passed by the Commissioner of Income Tax (Appeals), NFAC, Delhi dated 15.3.2024 arising out of an assessment order framed under Section 144 read with Section 263 of the Act by the Income Tax Office, Ward-6(2), Kolkata dated 19.3.2014. The return of income filed by the assessee was duly processed under Section 143(1) of the Act. Subsequently, the assessment was reopened and completed under Section 143(3) read with Section 147 of the Act by order dated 12.5.2010. The said order enured in favour of the respondent/assessee. The Principal Commissioner of Income Tax (PCIT) exercised his jurisdiction under Section 263 of the Act and an order came to be passed dated 30.3.2013 by setting aside the assessment order and directing the assessing officer to examine the genuineness and source of share capital, not on a test check basis but in respect of each and every shareholder by conducting independent enquiry not through the assessee. The bank account for the entire period was directed to be examined to find out the money trail of the share capital. The assessing officer was directed to examine the directors as well as examine the circumstances which necessitated the change in directorship, if applicable and that he should examine them on oath to verify their creditworthiness as directors and reach a logical conclusion regarding the controlling interest. The assessing officer was further directed to examine the source of realization from the liquidation of assets shown in the balance sheet after the change of directors, if any. Pursuant to that, the assessing officer completed the

assessment by order dated 19.3.2024 under Section 144 read with Section 263 of the Act.

Aggrieved by such order, the assessee preferred appeal before the NFAC, which was dismissed by order dated 15.3.2024. Challenging the said order, the assessee preferred appeal before the learned Tribunal which was allowed and aggrieved by the same, the revenue has filed the present appeal.

We have carefully examined the reasons assigned by the learned Tribunal, more particularly from paragraph 14 of the impugned order. In paragraph 14, the learned Tribunal has noted the submissions made on behalf of the assessee by which they furnished a tabulated statement containing details about the directions issued by the PCIT and the action taken by the assessing officer and the remarks of the assessee. After noting the submissions made by the assessee, the learned Tribunal proceeded to examine in an elaborate fashion the correctness of those submissions and after taking note of the various decisions of the Hon'ble Supreme Court and this Court, held that the assessing officer in the second round did not make any independent enquiry to verify the genuineness of the transactions despite the assessee having furnished all details and documents. That apart, the assessing officer has not pointed out any discrepancy or insufficiency in the evidence and details furnished by the assessee. Therefore, the learned Tribunal came to the conclusion that the assessee having discharged the initial burden cast upon them to prove the identity and creditworthiness of the share-subscribers and the genuineness of the transactions, the burden shifted to the department to

examine the evidence furnished by conducting independent enquiry and they are required to state on what account the assessing officer was not satisfied with the details and evidence furnished by the assessee and the same should be put to the assessee. The learned Tribunal took note of the decision of the Hon'ble Supreme Court in the case of *Commissioner of Income - Tax, Orissa vs. Orissa Corporation P. Ltd.*, (1986) 159 ITR 78, wherein it was held that in the case where the assessee had given the names and addresses of the alleged creditors and it was in the knowledge of the revenue that the said creditors were income tax assesseees, the revenue apart from issuing notices under Section 131 at the instance of the assessee did not pursue the matter. Further, the revenue did not examine the source of income of the alleged creditors to find out whether they were creditworthy and that there was no effort made to pursue the so-called alleged creditors. Therefore, it was held that the assessee could not do anything further and approved the finding of the learned Tribunal that the assessee had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. After taking note of the said decision, the learned Tribunal also took note of the decision of this Court in the case *Principal CIT vs. Shreeleathers*, (2022) 448 ITR 332 (Cal). The learned Tribunal applied the law laid down in the decision and pointed out that the assessee has successfully explained the nature and source of the alleged investments in the share capital and share premium by proving the identity, genuineness and creditworthiness of all the 18 share applicants who are regularly assessed to income, their financial

statements were duly audited and passed through scrutiny proceedings by the Income tax department and they have sufficient net-worth to explain the source of investment in the share capital and the share premium and therefore, held that no addition is warranted under Section 68 of the Act.

Thus, the learned Tribunal has granted relief to the assessee upon thorough examination of the factual position and we find no questions of law, much less substantial question of law, arising for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

The stay application (GA/2/2025) also stands dismissed.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)