

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

ITAT /123/2025
IA NO: GA/1/2025, GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX, UDAIPUR
VS.
EMOTE WEALTH PRIVATE LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Dated : 1st July, 2025

Appearance:
Mr. Aryak Dutt, Adv.
Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv.
..for Appellant
Mr. Sanjay Dixit, Adv.
Mr. Rajeev Kumar Agarwal, Adv.
..for Respondent

THE COURT: We have heard the learned Advocates for the parties.

There is a delay of 45 days in filing the appeal. As the explanation offered for not preferring the appeal within the period of limitation is acceptable, the delay in filing the appeal is condoned. The application for condonation of delay being IA No: GA/1/2025 is allowed.

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 18.10.2024 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata (the Tribunal) in ITA No.245/Kol/2024 for the assessment year 2011-12.

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

- I. *Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in allowing the appeal of assessee on Legal issue only finding that the re-opening of the assessment in the case was bad in law and could not be sustained, more particularly, when such legal issue which has now been allowed by the Learned Tribunal, Kolkata Bench, was never raised by the appellant assessee before the Learned CIT (A) in their Grounds of Appeal nor during the Appellate Proceedings while filing additional grounds/evidences under prescribed Rules?*
- II. *Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in not appreciating the facts and circumstances of the case in correct perspective with regard to issuance of notice under section 148 of the Act by the Assessing Officer, as had duly been appreciated by the Learned CIT (A) while passing his order?*
- III. *Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law by quashing the very initiation of re-assessment proceedings by stating that the Assessing Officer didn't apply his independent mind to the information received from DDIT (Inv.) Kolkata, whereas, the notice under section 148 of the Income Tax Act, 1961 was duly issued by the Assessing Officer after considering/examining the information so received from the Investigation wing vis-à-vis the material available on his record forming his "reasons to*

believe” for such re-opening of assessment under the purview of Section 147 of the Act and the case was re-opened after obtaining the due approval of competent authority as was required under section 151 of the Income Tax Act, 1961?

We have elaborately heard the learned Advocates appearing for the parties and perused the orders passed by the First Appellate Authority as well as the impugned order passed by the learned Tribunal. The issue which falls for consideration is whether the re-opening of the assessment was valid. The learned Tribunal has taken note of the facts and has pointed out that the Assessing Officer has not applied his independent mind to the information received from the DDIT (Investigation), Kolkata as the information received was extracted in the reasons recorded as they were received even without verifying the same whether those were correct or not and the assessment was re-opened under Section 147 of the Act. Furthermore, the learned Tribunal has pointed out that the Assessing Officer has not verified the facts as there was no unsecured loan raised by the assessee from M/s. Sadabhar Commodities Pvt. Ltd. Further, the learned Tribunal has pointed out that even the name of the assessee has also been wrongly noted by the Assessing Officer. Thus, the learned Tribunal on facts concluded that the re-opening of the assessment was bad in law.

We find no justifiable ground to upset the finding recorded by the learned Tribunal which was rendered upon re-appreciation of the factual position. Apart from that, the learned Tribunal has also found that Section

133C(2) of the Act which was inserted with effect from 1.6.2016 has no application to the assessee's case.

Thus, for all the above reasons, we find no ground to interfere with the order of the learned Tribunal and in particular, we find 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 petition (GA/2/2025) stands dismissed.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

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