

OD-16

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

ITAT/126/2025
IA NO: GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX 1, KOLKATA
VS
M/S KRISHNA NIRMAN PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 31st July, 2025.

Appearance :
Mr. Tilak Mitra, Adv.
Mr. Amit Sharka, Adv. ...for appellant.

Mr. Saurabh Bagaria, Adv.
Mr. Rites Goel, Adv. ...for respondent.

The Court : - This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated August 27, 2024 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA/155/Kol/2023 for the assessment year 2008-09.

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

- "1. Whether in the facts and circumstances of the case the Learned Tribunal has substantially erred in law in quashing the reopening proceeding under Section 147 of the Income Tax Act, 1961 on the ground that the reopening was based on borrowed satisfaction and lacked application of mind by the Assessing Officer ?*
- 2. Whether on the facts and circumstances of the case, the Learned Tribunal was justified in law to delete the addition of Rs.93,50,000/- made by the Assessing Officer under Section 68 of the Income Tax Act, 1961 on*

account of accommodation entries in the form of share application and share premium as unexplained cash despite the respondent assessee failing to establish the creditworthiness of the investors as well as genuineness of the transactions ?”

We have heard Mr. Tilak Mitra, learned senior standing counsel assisted by Mr. Amit Sharma, learned advocate for the appellant/department and Mr. Saurabh Bagaria, learned advocate for the respondent/assessee.

The short issue which falls for consideration is whether the reopening of the assessment was bad in law on account of the fact that the Assessing Officer did not independently apply his mind to the information provided by the Investigation Wing. As could be seen from the assessment order this objection appears to have not been raised by the assessee but nonetheless the Assessing Officer though referred to the information received from the Investigation department, while completing the assessment under section 147 read with section 143(3) has clearly abandoned those reasons and proceeded on a different footing. Before the first appellate Authority, the assessee specifically raised the issue that the notice which was issued for reopening is merely based on information from the Investigation Wing and there is no incriminating evidence against the assessee company so as to assume jurisdiction to re-assess the income of the assessee. Though such a ground canvassed, the appellate Authority did not agree with the assessee and dismissed the appeal. Before the learned Tribunal the same ground was urged by the assessee. The learned Tribunal carefully examined the factual position and found that the Assessing Officer recorded the reasons without application of mind on the information received from the Investigation Wing. Apart from that the learned Tribunal also found that the reasons recorded by the Assessing Officer are vague, non-specific and non-essential to form the belief that income was

escaped assessment. The learned Tribunal took note of the decision of the High Court in the case of *PCIT vs. G & G Pharma, ITA/545/2015* as well as the decision in the case of *PCIT vs. Shodiman Investments [P] Ltd., [2018] 93 taxmann.com 153[Bombay]* and allowed the assessee's appeal on the ground that the reopening of the assessment was clearly in breach of the settled position of law.

Thus, the learned Tribunal has arrived at such a finding upon re-appreciation of the factual finding and we find no question of law much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal fails and the same is dismissed.

Consequently, the application, IA NO: GA/2/2025 also stands dismissed.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)