

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

ITAT/131/2025
IA NO: GA/1/2025
GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
BALAKA VINIMAY PRIVATE LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE: 21ST JULY, 2025

Appearance:
Mr. Prithu Dudhoria, Adv.
...for Appellant

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 21st June, 2024 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata, in ITA Nos.160 & 161/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 not considering the direct and circumstantial evidence brought on record by the Assessing officer to establish that the assessee had introduced its own unaccounted money in the form of share capital and share

premium and deleting the addition made by the Assessing officer of Rs. 13,94,00,000/- as an unexplained cash credit U/s. 68 of the Income Tax Act, 1961?

- b) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in denying that non-compliance to the Summons U/s. 131 of the Income Act, 1961 by the Directors of the share subscriber companies is a reason for dissatisfaction of the Assessing Officer regarding the genuineness of the source of the Cash Credit ?*
- c) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in observing that the creditworthiness and genuineness of the transaction in the form of share premium and share capital have been established which is contrary to the decision of the jurisdictional High Court in the case of Commissioner of Income Tax Vs. Prevision Finance Pvt. Ltd. (1994) 208 ITR 465 (Cal) and Commissioner of Income Tax Vs. Ruby Traders & Export Ltd. (2003) 263 ITR 300 (Cal) ?”*

We have heard Mr. Prithu Dudhoria, learned standing Counsel appearing for the appellant/revenue.

The notice sent to the respondent/assessee has returned.

There is a delay of 177 days in filing the appeal. As the delay has been properly explained for not preferring the appeal within the period of limitation, the same is condoned. The application for condonation of delay being IA No: GA/1/2025 is allowed.

The assessee has preferred the appeal before the learned Tribunal challenging the order passed by the appellate authority affirming the assessment order passed under Section 143(3) and also assailed the correctness of the penalty order passed under Section 271(1)(c) of the Act. The Assessing Officer made the addition under Section 68 of the Act for unexplained share capital. During the year under consideration, the assessee company floated 6,97,000 equity shares of Rs.10/- each at a premium of Rs.190/- per share. Initially, the assessment was completed by the Assessing Officer accepting the stand taken by the assessee. Subsequently, an order was passed by the Commissioner under Section 263 of the Act and pursuant to the directions issued, the Assessing Officer reopened the assessment and called upon the assessee to explain the nature and source of the alleged sum to his satisfaction. It is not in dispute that the assessee had filed complete details of each of the shares to prove the identity and creditworthiness of the shareholders and the genuineness of the transactions was proved by producing copies of the confirmation letters, bank statements, audited financial statements, identity proofs, source of funds, investments by the share subscribers in the assessee company, replies which were given to the notice issued under Section 133(6) of the Act and various other details to show that most of the share subscribers have also passed through scrutiny proceedings. These details were placed before the learned Tribunal by way of paper books in three volumes. The learned Tribunal has in extenso referred to the details which have been furnished. Furthermore, the shareholders have responded to

the notice under Section 133(6) of the Act directly to the Assessing Officer and their respective assessment orders framed under Sections 147/143(3) of the Act were also placed before the Assessing Officer as well as before the learned Tribunal. Thus, it is evident that the assessee has produced all the documents before the Assessing Officer not once but twice and the authority except indicating a theory of routine entries of paper companies/shell companies, no discrepancies had been pointed out in the financials of the alleged cash creditors. Furthermore, all the share subscribers are private limited companies duly registered with the Ministry of Corporate Affairs and have been furnishing the audited financial statements in the portal of the Ministry. That apart, the share subscribers have also demonstrated that there was immediate source of funds available in the bank accounts which had been applied for making investments in the equity shares of the assessee company. One more particular important factor which was lost sight of is, that the matter pertains to the financial year 2007-08 and the scrutiny assessment was completed on 27.09.2021. After a gap of 13/14 years, after actual transactions had taken place and final assessment orders had been passed, proceedings was initiated. Thus, the predicament faced by the assessee was taken note by the learned Tribunal and it had observed that it is practically difficult that after a gap of 10 to 12 years, the assessee can call for the share subscribers who invested long time before and there is every possibility that the shareholders would have sold their equities and new shareholders would have taken their place. The learned Tribunal referred to the decision of the co-ordinate Bench in the case of *True-*

Man Consultants Pvt. Ltd. vs. ITO in ITA No.1158/Kol/2023, wherein almost identical issue of unexplained share capital from various share subscribers came up for adjudication and after considering the factual aspect and following the judicial pronouncements, the appeal filed by the assessee was allowed by the Tribunal. The revenue preferred an appeal before this Court in ITAT/203/2024 and by order dated 25th April, 2025, the appeal filed by the revenue was dismissed.

Thus, we find that the factual issues have been thoroughly adjudicated by the Tribunal apart from noting that the assessee had been put to multiple levels of scrutiny and the assessee was able to bring on record documents in support of their claim. Therefore, we are of the view that the addition made under Section 68 of the Act was rightly ordered to be deleted.

For the above reasons, we find no ground to interfere with the order passed by the learned Tribunal. Accordingly, the appeal fails and the same is dismissed. The substantial questions of law are answered against the revenue.

Consequently, the stay petition (GA/2/2025) also stands dismissed.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)