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

CORAM:

THE HON'BLE JUSTICE DEBANGSU BASAK
AND
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI

ITAT/138/2025
IA NO: GA/2/2025
PRINCIPAL COMMISSIONER OF INCOME TAX 1,
KOLKATA
VS
M/S JEALOUS COMMERCIAL PRIVATE LIMITED

Mr. Prithu Dudhoria, Adv.

...for appellant.

Mr. Rajesh Kumar Mishra, Adv.
Mr. Sutirtha Das, Adv.

...for respondent.

HEARD ON : 28.10.2025.

DELIVERED ON : 28.10.2025.

DEBANGSU BASAK, J: Appeal under Section 260A of the Income Tax, 1961 is taken up for final hearing.

Appeal is at the behest of the revenue and directed against order dated September 27, 2024 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA No.424/Kol/2020 relating to the assessment year 2012-2013 in respect of the assessee/respondent herein.

Learned advocate appearing for the appellant submits that, the Assessing Officer [AO] was not satisfied with the explanation given by the assessee with regard to

the issue and allotment of shares at a premium for the particular assessment year, considering the nature and business of the Company, the books of accounts of the Company and other materials. He submits that, the decision of the Assessing Officer in adding the share premium amount to the income of the assessee, was wrongly reversed by the appellate Authority.

Being aggrieved, the appellant approached the Income Tax Appellate Tribunal which resulted in the impugned order. He submits that, the following substantial questions of law arises in the present appeal :

“Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in relying on the observation of the Ld. CIT(A) that in case of the return filed by the investors in the assessee company being scrutinized, the source of cash credit as explained whereas the unexplained cash credit in the hands of the assessee company may not come under the purview of section 68 in the hands of the investor company in the same year as the corresponding liability was raised in the investee company i.e. assessee?”

Learned advocate appearing for the assessee submits that, the identity of the persons, who applied for the shares were established. The quantum of share application money as well as the premium obtained by the assessee was also established. The entire transaction so far as the assessee is concerned was recorded in its books of accounts. The Assessing Officer erred in adding the share premium amount as an income to the assessee on the ground that the identity of the persons were not established. He draws the attention of the Court to the findings recorded by the appellate Authority as also the Income Tax Appellate Tribunal in this regard.

Learned advocate appearing for the assessee relies upon 2023:CHC-OS:3783-D [Principal Commissioner of Income Tax-2, Kolkata vs. M/s. Naina Distributors Pvt. Ltd.] in support of the proposition that, section 68 of the Income Tax Act, 1961 cannot be invoked in the facts and circumstances of the present case.

In the facts and circumstances of the present case, the assessee is a company governed by the Companies Act, 2013. During the relevant assessment year, the assessee, raised share capital of Rs.9,00,00,000/- from seven share applicants by issuing 90,000 shares of a face value of Rs.10/- at a premium of Rs.990/-.

Assessee submitted the details of the issuance of shares at a premium in its assessment proceedings. The assessee submitted the return filing acknowledgement, audited balance-sheet, bank statement, confirmation and source of fund from the subscribers of the shares. Assessee also submitted a copy of return of allotment in Form No.2 with the Ministry of Corporate Affairs, return of filing acknowledgement, audited balance-sheet, bank statement of the assessee, with the Assessing Officer.

The Assessing Officer issued summons under Section 131 of the Act of 1961 to the Directors of the assessee to appear before him in person. In response to such summons, the Directors did not appear in person but submitted the necessary requisitions.

In the assessment order, the Assessing Officer noted that, the Directors did not appear pursuant to the summons issued under Section 131 of the Act of 1961. In view of such absence of attendance by the Directors of the assessee, the Assessing Officer proceeded to doubt the identity and creditworthiness of the shareholders and the genuineness of the transactions. The Assessing Officer proceeded to hold that, the transactions could not be proved by the assessee and, therefore, the Assessing Officer framed the assessment under Section 143(3) determining the total income of Rs.9,00,00,360/- making addition of the entire share capital raised from the seven shareholders including the cash credit in terms of Section 68 of the Act of 1961.

As noted above, the appellate authority set aside the order of the Assessing Officer. The decision of the appellate authority was upheld by the Tribunal.

Section 68 of the Act of 1961 is as follows :

“68. Cash credits.- Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing Officer], satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

[Provided that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless-

(a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that] where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless-

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

[Provided also] that nothing contained in the [first proviso or second proviso] shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]”

Section 68 of the Act of 1961 allows the Assessing Officer on his subjective satisfaction arrived at and on the basis of the appreciation of the materials placed before him, to charge the sum credited in the books of the assessee to income tax of the assessee as income of the assessee. In other words, the Assessing Officer is required to assess the explanation given by the assessee after an opportunity is granted to the assessee to offer explanation about the nature and source of the credit shown in the account and once it arrives at a finding that, there is no explanation with regard to the nature and source of the sum involved, treat the same as income of the assessee and charge income tax for the relevant assessment year.

There are three provisos to Section 68 of the Act of 1961. The first proviso deals with a loan or borrowing. The second proviso deals with share application money and the third proviso speaks about venture capital fund.

In the facts and circumstances of the present case, the assessee issued allotted shares at a premium. Therefore, at the highest, the second proviso to Section 68 will come into operation, assuming though not admitting that the first part of Section 68 of the Act of 1961 stands satisfied. In the facts and circumstances of the present case, the consistent finding of the appellate authority and the income tax appellate tribunal is that, the persons who applied for the shares stand identified and that, the assessee offered sufficient explanation about the nature of the transactions in question.

In course of hearing before us, the appellant is not in a position to produce any additional or new materials to substantiate that, the concurrent finding of fact by the two authorities, namely, the appellate authority and the income tax tribunal with regard to the explanation offered by the assessee is perverse.

In M/s. Naina Distributors Pvt. Ltd. (supra) the co-ordinate Bench, found in the facts and circumstances of that case that, the transaction in share allotment in respect of the assessee concerned, was verified independently and that, independent verification did not render any finding so as to invoke Section 68 of the Act of 1961.

In the facts and circumstances of the present case, the shareholders who applied for the shares in the assessee stands identified. The source of funds stands satisfied. The assessee reflected the entire issue and allotment of shares at a premium in its books of accounts and submitted the same contemporaneously to the statutory authority, namely, Ministry of Corporate Affairs.

Before the Assessing Officer, the assessee produced all such relevant materials with regard to the transaction in question. The absence/non-appearance of the Directors of the assessee before the Assessing Officer would not prompt the Assessing Officer, to render a finding that no explanation within the meaning of Section 68 of the

Act of 1961 was offered by the assessee particularly in the factual matrix of the present case.

In such circumstances, we do not find any substantial question of law involved for the purpose of consideration by this Court as contended on behalf of the appellant.

ITAT/138/2025 along with connected application being IA No.GA/2/2025 stands disposed of accordingly without any order as to costs.

(DEBANGSU BASAK, J.)

I agree.

(MD. SHABBAR RASHIDI, J.)