

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

ITAT /162/2025
IA NO: GA/1/2025, GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
-VS-
M/S. BRIGHT COMMODEAL PRIVATE LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

Dated: August 28, 2025.

Appearance:

Mr. Tilak Mitra, Adv.
Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv.
...for the Appellant

Ms. Nilanjan Bhattacharya, Adv.
..for the Respondent

THE COURT: Leave granted to the learned advocate for the respondent/assessee to file Vakalatanama in the department.

There is a delay of 232 days in filing the appeal. As the explanation offered is found to be satisfactory, the delay in filing the appeal is condoned. The application for condonation of delay being IA No: GA/1/2025 is allowed.

This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order passed by the Learned Income Tax Appellate Tribunal, "A" - Bench, Kolkata (the Tribunal) in ITA No.96/Kol/2024 dated 24.06.2024 for the assessment year 2012-13.

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

- “1. Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in deleting the addition made by the Assessing Officer under section 68 of the Income Tax Act, 1961 in respect of share capital and share premium?”*
- 2. Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in allowing the appeal of the assessee ignoring the basic issue which entails share capital treating the addition as unexplained cash credit in terms of identity, creditworthiness and genuineness?”*
- 3. Whether the share capital raised by the assessee company is nothing but the involvement of organized tax evasion and falls under exceptional clause 3.1h of the CBDT Circular No. 5 of 2024?”*
- 4. Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law by not considering the principles laid down in the Doctrine of “source of source” and Doctrine of “origin of origin” while passing the impugned order?”*

We have heard the learned counsel for the parties.

The short issue which falls for consideration is whether the Learned Tribunal was justified in setting aside the order passed by the Commissioner of Income Tax (Appeal) (CIT[A]) and deleting the addition made under Section 68 of the Act.

We have perused the reasons assigned by the learned Tribunal for allowing the assessee’s appeal. It is seen that the assessing officer issued notice under Section 133 (6) of the Act to the investing companies and both the parties have complied with the said notice and furnished the requisite details.

Summons under Section 131 of the Act was issued to the Director of the assessee company to be personally present and also to produce the Directors of the investing company for examination of genuineness of the transaction, identity and creditworthiness of the lenders. The Tribunal noted that the Directors appeared pursuant to the summons but the assessing officer wrongly recorded that the Directors of the assessee company failed to appear in response to the summons issued under 131 of the Act. Furthermore, the Tribunal examined the factual position and noted that the assessee has filed evidences as called for by the assessing officer in respect of the assessee as well as the investing companies. The evidences filed comprised of income tax returns, audited balance sheet, profit and loss account, audited report, bank statement and master data in respect of each of the subscribers. Furthermore, both the parties have submitted their reply pursuant to the notice issued under Section 133(6) of the Act. After noting these facts, the Learned Tribunal held that the assessing officer as well as the CIT(A) did not cause any verification or conduct any enquiry into the evidences which were filed by the assessee and merely harped on non-compliance of the summons issued under Section 131 of the Act, which is factually incorrect.

Learned Tribunal placed reliance on the decision of the Hon'ble Supreme Court in *CIT -Vs- Orissa Corporation Ltd. (1986) 159 ITR 78 (SC)* as well as the decision of this Court in *Crystal Networks Pvt. Ltd. -Vs- CIT, (353) ITR 171 (Cal)*. The Tribunal also noted the decision of the Co-ordinate Bench in the case of *ITO -Vs- M/S Cygnus Developers India Pvt. Ltd. (ITA/282/Kol/2012)* wherein the factual position was also similar to that of the case of the assessee.

Thus, we find that the facts have been examined by the Tribunal and the conclusion has been arrived at and therefore, no question of law, much less substantial questions of law, arises for consideration in this appeal.

Accordingly, the appeal is dismissed.

Accordingly, the stay application (GA/2/2025) also stands dismissed.

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

(CHAITALI CHATTERJEE (DAS), J.)