

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

ITAT /231/2024
IA NO: GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL - 1, KOLKATA
VS.
RABINDRA ENTERPRISES PVT. LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Dated : 16th June, 2025

Appearance:
Mr. Aryak Dutt, Adv.
Mr. Amit Sharma, Adv.
..for Appellant
Mr. Subash Agarwal, Adv.
Mr. Rajarshi Chatterjee, Adv.
Mr. Amit Shaw, Adv.
Ms. Suman Sahani, Adv.
...respondent

THE COURT: This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 21.12.2023 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata (the Tribunal) in ITA/1508/Kol/2019 for the assessment year 2012-13.

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 upholding the order of the Commissioner of Income Tax (Appeals) deleting the disallowance made under Section 68 of the Income Tax Act, 1961 on account of bogus share

application/allotment money amounting to Rs.27,22,00,000/-?

- ii) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in upholding the order of the Commissioner of Income Tax (Appeals) deleting the addition made under Section 68 of the Income Tax Act, 1961 on account of unexplained cash credit by holding that the Assessing Officer did not make any independent inquiry whereas the Assessing Officer had made independent enquiry?
- iii) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in upholding the order of the Commissioner of Income Tax (Appeals) deleting the disallowance made under Section 68 of the Income Tax Act, 1961 by holding that assessee had discharged its onus to prove identity and creditworthiness of the share subscriber without considering that identity, creditworthiness or genuineness of the transaction is not established by merely showing that the transaction was through banking channels or by account payee instrument as held by the Jurisdictional High Court in the case of Principal Commissioner of Income Tax Vs. BST

Infratech Ltd. reported in [2024] 161 taxmann.com 668 (Calcutta)?

- iv) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law by failing to appreciate that neither the identity and creditworthiness of the share subscribing company nor the genuineness of the transaction has been established and being so addition made by the Assessing Officer was perfectly justified?

We have heard Mr. Aryak Dutta, learned standing counsel appearing with Mr. Amit Sharma, learned advocate for the appellant/department and Mr. Subash Agarwal, learned counsel appearing for the respondent/assessee.

The Income Tax department filed the appeal before the learned Tribunal challenging the order passed by the Commissioner of Income Tax (Appeals), Kolkata-17 [CIT(A)] dated 29th March, 2009 by which the Appellate Authority allowed the assessee's appeal and set aside the addition made by the Assessing Officer by the assessment order dated 30.3.2015 under Section 143(3) of the Act.

We have elaborately heard the learned counsel for the appellant/department and carefully perused the materials placed under consideration.

At the outset, it needs to be pointed out that CIT(A), while allowing the assessee's appeal, has elaborately discussed the factual position apart from noting the various decisions in support of conclusion arrived at by the CIT(A). The Tribunal on its part re-examined the factual position and concurred the CIT(A). In several paragraphs the Tribunal has examined the factual position and held that it is not a case of an accommodation entry provider where the cash credits received are immediately transferred to other private limited companies by way of making investment in their equity or giving loans and advances. Furthermore, the Tribunal on facts found that the alleged sum received during the year is from a group concern of the assessee and it also noted the names of the directors of both the companies and with regard to the source of funds, the Tribunal found that they were received mainly from premature withdrawal of fixed deposits during the financial year 2011-12. That apart, there was an opening balance of unsecured loans from Bhillai Holdings Pvt. Ltd. received by the assessee in the earlier years at Rs.6.54 crores and this balance was transferred to share application money. Therefore, it was held that the sum of Rs.6.54 crores which has been credited on account of share application money during the year has actually been received in the preceding year as unsecured loans. There are other discussions on the factual issues. Apart from that, the learned Tribunal has also noted the various decisions of the co-ordinate Bench of the Tribunal which has examined more or less similar facts and circumstances. The decision of the High Court Bombay in the case of *Commissioner of Income-tax-1 vs. Gangadeep Infrastructure (P) Ltd.* [2017] 80

taxmann.com 272 (*Bombay*) was also noted where the facts were identical. Furthermore, the learned Tribunal also took note of the decision of this Court in the case of *Principal CIT vs. Sreeleathers*, reported in [2022] 448 ITR 332 (Cal).

Thus, we are of the considered view that no question of law, much less substantial questions of law, arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

Consequently, the application, IA NO: GA/2/2024, stands dismissed.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

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