

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL JURISDICTION (INCOME TAX)

ORIGINAL SIDE

RESERVED ON: 25.04.2025
DELIVERED ON: 06.05.2025

CORAM:

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

ITAT/238/2024

(IA NO: GA/2/2024)

**THE PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 1,
KOLKATA**

VERSUS

WISE INVESTMENT PRIVATE LIMITED

Appearance:-

Mr. Soumen Bhattacharjee, Adv.

Mr. Ankan Das, Adv.

Ms. Shradhya Ghosh, Adv.

.....For the Appellant.

Mr. Abhratosh Majumdar, Sr. Adv.

Mr. Avra Mazumdar, Adv.

Mr. Kausheyo Roy, Adv.

Ms. Alisha Das, Adv.

Mr. Suman Bhowmik, Adv.

Mr. Samrat Das, Adv.

Ms. Elina Das, Adv.

Mr. Soumendra Nath Banerjee, Adv.

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, C.J.)

1. This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961, (the Act) is directed against the order dated 19.11.2023 passed by the Income Tax Appellate Tribunal “B” Bench, Kolkata (tribunal) in ITA No. 161/Kol/2023 for the assessment year 2012-2013. The revenue has raised the following substantial question of law for consideration:-

- (1) Whether the Learned Tribunal has committed substantial error in law, in upholding the action of the CIT(A) in deleting the addition made u/s 68 of the Act on account of bogus share capital & premium amounting to Rs. 32,50,42,000/- ignoring the Assessing Officer’s remand report dated 20/07/2022 wherein it had been categorically stated that the share applicant companies had no credit worthiness to invest in the assessee company.*
- (2) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in ignoring the fact that the CIT(A) had not taken cognizance of the fact that the investor companies had filed their income tax returns showing negligible taxable income and their reserve and surplus mostly consisted of share capital?*
- (3) Whether the Learned Income Appellate Tribunal has substantially erred in law in ignoring that CIT(A) held that assessee had established the identity and creditworthiness of the share applicants and genuineness of transaction merely based on the fact that transaction were through banking channels, when it been held by the Jurisdictional High Court in the case of CIT vs Precision Finance Pvt Ltd that mere payment by account payee cheque is*

neither sacrosanct nor can it make a non-genuine transaction genuine which view has also been endorsed by the Hon'ble Court again in the case of PCIT vs M/s. BST Infratech Ltd?

(4) Whether the Learned Tribunal has committed substantial error in law in upholding the deletion of the addition u/s 68 of the Act by the CIT(A) while observing that the investing companies were body corporates registered with the Registrar of Companies and individually assessed to income tax ignoring that, is the same was not the litmus test to discharge the burden on the assessee to establish creditworthiness of the investing companies as well as the genuineness of the transaction?

2. We have elaborately heard Mr. Soumen Bhattacharyya, learned senior standing counsel assisted by Mr. Ankan Das and Ms. Shradhya Ghosh, learned advocates appearing for the appellant revenue and Mr. Abhratosh Majumdar, learned Senior Advocate assisted by Mr. Avra Mazumder, learned advocates appearing for the respondent.

3. The revenue is aggrieved by the order passed by the learned tribunal in affirming the order passed by the Commissioner of Income Tax (Appeals), Kolkata (CIT(A)) dated 26.12.2022 setting aside the addition made by the assessing officer under Section 68 of the Act vide assessment order dated 26.03.2020. The assessee filed its return of income for the assessment year under consideration, 2012-2013, declaring a total income of Rs. 42,000/-. The case was selected for scrutiny and notice under Section 143(2) of the Act was issued on 12.08.2013, the assessing officer heard the assessee in person. Subsequently notice under Section 142(1) of the Act was issued with

a questionnaire on 15.01.2015 and the assessee was heard. In the opinion of the assessing officer the share premium as fixed by the assessee was abnormally high and considering the financial strength of the assessee company, the genuineness of the share transaction, identity and creditworthiness has not been established and therefore it justified addition under Section 68 of the Act. As could be seen from the assessment order dated 26.03.2015, the assessee had responded to the notices and had filed documents and the details as called for by the assessing officer. The assessing officer opined that merely dumping papers and document on the table of the assessing officer does not in any way mean compliance of the notice and the burden of proof cannot be shifted on the revenue by cart load of documents as the documents which have been submitted cannot be explained.

4. The assessing officer therefore came to the opinion that the assessee company and the other companies are paper/shell companies and to channelise the black money the assessee company made its increased capital and that the amount of share premium including face value which was found credited in assessee account are unexplained. Accordingly, the assessment was completed. The assessee carried the matter on appeal before CIT(A) raising various grounds. The CIT(A) called for a remand report from the assessing officer upon perusal of the documents and details furnished by the assessee which documents and details were also placed before the assessing officer during the assessment. Upon perusal of the remand report the CIT(A) observed that the assessing officer has examined

the directors of the assessee company and the share subscribing companies by recording their statements under Section 131 of the Act and after examination of the documents filed by the assessee as well as the share subscriber companies before whom the assessing officer did not point out any infirmity in the matter relating to the information sought for in respect of the financial transactions namely identity of shares subscribers, creditworthiness of share subscribers and genuineness of the transactions. Further the CIT(A) noted that the assessing officer after independently examining the directors of the share subscribing companies as well as the document furnished before him had concluded that the share capital issued by the assessee is explained. Further the sum was found credited in the books of the assessee maintained for any previous year. Therefore, the CIT(A) came to the conclusion that the assessee has offered its explanation along with complete documentary evidences and produced the directors of the company for examination and explained the nature and source thereof, the share capital and premium selected.

5. It is seen from the remand report that the assessing officer was satisfied about the nature and source of the investment and admitted that share capital is explained. Therefore, the CIT(A) came to the conclusion that the question of treating the share premium as unexplained or unjustified is contrary to law. The CIT(A) also noted that the assessing officer himself has given a clean chit to the assessee in respect of the share capital collected by it and that the assessing officer after examining the directors of the share subscribing company and after making enquiries in respect of the

documents filed before him has recorded its satisfaction about the nature and source of the credits found in the books of the assessee which was in the form of the share capital as convincing because the assessee was able to discharge the onus of providing the identity, creditworthiness and genuineness of the share capital and therefore the premium received for the same set of share subscribers cannot be treated as unexplained under Section 68. The copy of the remand report was furnished to the assessee on which they submitted their rejoinder on 06.01.2022 as the appellate authority had changed, the matter was once again taken up for consideration and second remand report was called which was received by the CIT(A), copy of which was provided to the assessee.

6. In the second remand report the assessing officer had stated that he conducted independent enquiries and reported that the director of the assessee along with the director of 25 out of the 26 share applicants appeared before him and submitted all evidence. The CIT(A) found that the enquiry done by the assessing officer were in addition to the field enquiry already made by the assessing officer at the time of the first remand proceedings when he had deputed the departmental inspector to conduct field enquiries in order to ascertain the physical existence of the 26th share applicant at the addresses provided.

7. The CIT(A) had pointed out that in the course of remand the enquiry was enlarged to the examination of the principles officers/directors of the share applicant companies in person and that one of the important factors which emerged from the remand report is that not only did the assessing

officer conducted enquiry by issuing notices under Section 131 of the Act but in the first remand stage he went a step further and deputed a departmental inspector to conduct field enquiry. Ultimately, the CIT(A) had allowed the assessee's appeal which was challenged before the learned tribunal by the revenue and affirmed by the learned tribunal.

8. Mr. Soumen Bhattacharjee, learned senior standing counsel for the appellant would strenuously contend that the financials of the company may be looked into for which the learned advocate had elaborately referred to the details of the share applicant companies and its where with all and submitted that they are shell companies and the share premium which was being charged is unduly high and if the test of prudence is applied, it will clearly indicate that no prudent person would invest in such a company paying such high share premium. Furthermore, the assessee company has never declared dividend and it has negligible profit and the most of the investing companies were incorporated during 2010-2011 and the most important aspect of the matter which was not considered by the CIT(A) is with regard to the high share premium. In support of his contention the learned standing counsel referred to the decision in ***Commissioner of Income Tax Versus NR Portfolio Private Limited***¹ and ***Commissioner of Income Tax Versus Navodaya Castles Private Limited***². It is submitted that the decision in the case of ***Navodaya Castles Private Limited*** was affirmed by the Hon'ble Supreme Court as reported in **[2015] 56 taxman.com 18 (SC)**.

¹ [2014] 42 taxmann.com 339 (delhi)

² [2014] 50 taxmann.com 110 (delhi)

9. The learned senior advocate appearing for the respondent submitted that the aspect regarding whether the investor companies were live was never an issue which was raised before the tribunal or before the CIT(A) and such contention cannot be raised by the learned advocate appearing for the department before this court for the first time. Furthermore, with regard to the alleged high share premium, the same was considered by the assessing officer while submitting his remand report and the CIT(A) has also discussed the matter thoroughly on facts and therefore it is incorrect on the part of the revenue to contend that this aspect of the matter was never considered by the CIT(A).

10. The learned senior advocate has drawn our attention to the various paragraphs of the order passed by the CIT(A) dated 26.12.2023. In support of his contention, reliance was placed on the decision in **Principal Commissioner of Income Tax Versus Chain House International Private Limited**³ which decision was affirmed by the Hon'ble Supreme Court as reported in [2019] 103 taxman.com 435 (SC).

11. The short issue which falls for consideration in the instant case is whether three factors which are required to be established by the department at the first instance have been established namely identity of the investors, their creditworthiness and the genuineness of the transaction.

12. After we have elaborately heard the senior standing counsel for the appellant revenue, we find that the CIT(A) while considering the appeal had called for two remand reports, we need not discuss the findings of the

³ [2018] 408 ITR 561 (MP)

assessing officer in both the reports but suffice to observe that the identity and the creditworthiness of the share applicant companies stands established. Therefore, the third factor is with regard to the genuineness of the transaction. The learned senior standing counsel would vehemently contend that the aspect regarding abnormally high share premium was never considered by the CIT(A) and has been brushed set aside. To consider the correctness of this submission, we have carefully perused the order passed by the CIT(A) and we find that this aspect was dealt with by the CIT(A), in our view in an elaborate fashion. At this juncture, it will be beneficial to extract a portion of the finding recorded by the CIT(A) on this aspect namely with regard to the alleged high share premium:-

It has been explained that this premium was paid on account of the anticipated future prospects of the appellant company and the fact that it was felt by the investing companies' Boards that it would be prudent to invest in the appellant company. It has been explained that the appellant company was incorporated on 02.06.1992 with a paid up capital of Rs. 1,13,000/-. This amount was subscribed by the directors of the company as promoters. In the impugned AY, the appellant was engaged in the business of Investment and Finance. The appellant Company was dealing in Equity shares. During this period the appellant was dealing in quoted equity shares and had a turnover of over 12.46 crores. The growth of the appellant company was apparent from the fact that in the immediately preceding AY, the turnover had been Rs. 8.99 crore. This was a phenomenal reported growth of almost 39%. It transpires that the appellant company was also carrying impressive inventories of quoted equity shares for a company in such nascent stages of its operations. It had inventories respectively of Rs. 8.38 crore and Rs. 9.36 crore as on 31.03.2011 and 31.03.2012. The Audited results of the appellant show that its profits

had grown by over 3 times between AY 2011-2012 and AY 2012-2013. In the same period the EPS (Earning Per Share) for the appellant company had grown by two and half times to 16% per share of Rs. 10/-. The appellant company was obvious showing good returns and was showing good prospects for its investors. It was also a fact growing company.

13. After noting the above factual position, the CIT(A) has observed that the assessing officer himself has stated that the investment take place on personal one to one contact and persuasion but did not analyze the meaning and implication of the observation by applying them to the fact and circumstances of the case. Thus, after considering the facts the CIT(A) has come to the conclusion that the assessing officer has not doubted the identity and creditworthiness of the share subscribers but has doubted the payment of high share premium. On this aspect the CIT(A) has noted the growth of the assessee company which was reported to be at 39% and the assessee was also carrying impressive inventories of quoted equity shares for company in such stages of its operation. The assessee had inventories of Rs. 8.38 crores as on 31.03.2011 and 9.36 crores as on 31.03.2012. The audited result of the assessee has shown its profits grown by over three times between assessment years 2011-2012 and the assessment year 2012-2013. Further during the same period, the earning per share of the assessee company had grown from two and half times to 16% per share of Rs. 10 and therefore the CIT(A) on facts held that the assessee company was showing good returns and were showing good profits for its investors and it is a growing company. Therefore, the submission of the revenue that the allegation that unduly high premium was charged was not examined by the

CIT(A) is incorrect. In fact, this aspect was also examined by the assessing officer to certain extent as pointed out by the CIT(A). When the matter travelled on appeal to the learned tribunal at the instance of the revenue, the factual aspects were re-examined. The tribunal notes that the paper book containing 1029 pages were filed and all documents were placed before the learned tribunal and after noting the facts the learned tribunal came to the conclusion that the CIT(A) was well justified in deleting the addition made under Section 68 of the Act.

14. The decision in the case of **NR Portfolio Private Limited** and **Navodaya Castles Private Limited** have to be applied considering the facts and circumstances the case on hand it is not mere production of incorporating details, PAN numbers etc. in the case on hand the CIT(A) had made an elaborate exercise to examine the facts, called for two remand reports after which finding has been recorded in favour of the assessee. Therefore, the above decisions cannot be applied to the facts and circumstances of the case on hand.

15. Thus, for the above reasons we find that there is no question of law much less substantial question of law arising for consideration in this appeal. Accordingly, the appeal fails and is dismissed.

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

I Agree.

[CHAITALI CHATTERJEE (DAS), J.]