

OD 3

ITAT/301/2024
IA NO: GA/1/2024
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

WINWOOD MARKETING PVT LTD
VS
INCOME TAX OFFICER WARD 6(4)

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
-AND-
The Hon'ble JUSTICE UDAY KUMAR
Date: 17th November, 2025.

Appearance:
Mr. Anirban Banerjee, Adv.
Mr. Deep Agarwal, Adv.
. . .for the appellant.

Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv.
. . .for the respondents.

The Court: Learned counsel challenges the order dated 24th September, 2024, by which the Tribunal came to a conclusion that, “in the light of above, we have examined the facts and circumstances. One of the share applicants is M/s. Kushal Commodities Pvt. Limited. A copy of the assessment order of this company is available at page no. 22. Apart from this copy of the assessment order, no other document has been placed on record by the assessee except the computation of income. In this case, the ld. Assessing Officer has treated this company as a paper company, which is not doing any real business. There is no

evidence placed on record that the assessee has sold its shares by swapping the shares of some other company. A perusal of this assessment reveals that this assessee has also raised huge share capital and the ld. Assessing Officer has made an addition of Rs.5,60,36,170/-. Though the ld. Counsel for the assessee has tried to draw a parity from the order of ITAT in the case of M/s. Vishnu Distributors Pvt. Limited, on facts, there is no reconciliation demonstrating that this contribution of Rs.64,90,000/- is by way of certain shares whose ownership has been transferred in favour of the assessee. The next applicant is M/s. Swarnalaxmi Dealcom Pvt. Limited, whose assessment order is available at page no. 27. This assessee has also raised huge share premium. An addition has been made in its hand. Nothing is available on the record to show that there is any exchange of ownership of shares between this entity and the assessee. The finding of the ld. Assessing Officer in the scrutiny assessment of assessee's case is that it is a paper company not doing any business. It has also declared a taxable income of Rs.22,430/- only, but has given a huge share premium to the assessee. The value of the shares is only Rs.13,000/- and on each share, it paid a premium of Rs.589/- and thus purchased the shares of the assessee at Rs.76,70,000/-. We are unable to understand what the source of this premium is and for what purpose, it has been given. Why is investment being made in a company which has no business plan. We have minutely examined each and every assessment order placed before us, including the details of the assessee and we have arrived at the conclusion that these are merely make-believe stories supported by some documents of questionable reliability. The assessee has not produced the Directors of any of the share applicant companies before the ld. Assessing Officer. It has not been demonstrated as to how this company can

command a huge share premium of Rs.589/- per share having a face value of Rs.1/- each. Therefore, we do not have any hesitation in holding that it is bogus share application money received by the assessee for an ulterior motive to defeat the system. The case law relied upon by the assessee, namely judgment of the Hon'ble Supreme Court dated 5th November, 2019 in the case of ITO vs. V.R. Global Energy (P.) Ltd. [2020] 113 taxmann.com 31 (SC), judgment of the Hon'ble Calcutta High Court dated 17th November, 2023 in the case of PCIT -vs.- M/s. Abhijeet Enterprise Limited (ITAT/187 of 2023 (IA No. GA/1/2023, GA/2/2023)] and the decision of ITAT dated May 20, 2024 in the case of ITO vs. M/s. Vishnu Distributors Pvt. Limited, has no bearing on the facts of the present case. The decision of the Hon'ble Calcutta High Court in the case of M/s. Abhijeet Enterprise Limited and of ITAT in the case of M/s. Vishnu Distributors Pvt. Limited were cited to buttress the contention that these are the shares which have been sold by the assessee in lieu of certain other shares of other companies, but factually, this has not been demonstrated before us. No exchange notes have been placed on the record. It has not been discernable which company's shares are being owned by the assessee as an investor. Therefore, no parity can be claimed with the facts of these decisions. In view of the above, we do not find any merit in this appeal. It is accordingly dismissed.”

Learned counsel further submits that the learned Tribunal has failed to reverse the order of the Appellate Commissioner affirming the illegal assessment made by the Assessing Officer under Section 143(3) of the Income Tax Act 1961, by ignoring the caseless transaction involved in the exchange of shares under share-swap arrangement, authorized by a special resolution required under Section 62(1)(c) of The Companies Act, 2013 and by adding Rs.4,79,44,500/- to

the total income of the assessee company by invoking Section 68 of the Income Tax Act, 1961. However, the assessee failed to prove before us as well as before the Tribunal, whether it had any share in hand for application under share-swap arrangement in terms of Section 62(1)(c) of The Companies Act.

As no substantial question of law arises from the order of the Tribunal dated September 24, 2024, we dismiss the appeal preferred by the assessee under Section 26A of the Income Tax Act without formulating any substantial question of law. By declining to formulate any substantial question of law, the appeal and the connected application being GA 1 of 2024 are accordingly disposed of.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

SP/