

**IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE**

ITAT 95 OF 2025

IA NO: GA 2 OF 2025

**PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS
M/S EXPRESS TRADELINK PVT. LTD.**

BEFORE:

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR**

For the Appellant : Mr. Soumen Bhattacharjee, Ld. Adv.
Mr. Ankan Das, Ld. Adv.
Mr. Raunak Seal, Ld. Adv.
Ms. Shradhya Ghosh, Ld. Adv.

For the Respondent : Mr. Subhas Agarwal, Ld. Adv.
Mr. Rajarshi Chatterjee, Ld. Adv.
Mr. Amit Shaw, Ld. Adv.

Hearing concluded on : 05.01.2026

Judgment on : 04.02.2026

Uday Kumar, J:-

1. This appeal, preferred by the Revenue under Section 260A of the Income Tax Act, 1961 ("the Act"), is directed against the order passed by the Income Tax Appellate Tribunal (ITAT), "B" Bench, Kolkata, dated 8th February, 2024, in ITA No. 43/Kol/2021 for the Assessment Year 2009-10. The Revenue has primarily challenge the deletion of an addition of Rs.

7,26,50,000/- made by the Assessing Officer (AO) under Section 68 of the Act on account of unexplained share capital and share premium.

2. The revenue has proposed the following substantial questions of law for consideration:

- i. Whether the Learned ITAT has committed substantial error in law in deleting the addition of Rs 7,26,50,000/- on account of unaccounted cash credit of share capital and premium, ignoring the facts that the assessee failed to prove the identity of the alleged shareholders, their creditworthiness and also the genuineness of the whole transaction?
- ii. Whether the Learned ITAT has committed substantial error in law in coming to the conclusion that the assessee had discharged the initial onus which lay upon him in terms of section 68 of the Income Tax Act, 1961?
- iii. Whether the Learned ITAT has committed substantial error in law in appreciating the facts in proper prospective while concluding in favor of the assessee?
- iv. Whether the Learned ITAT has committed substantial error in law in not following the judicial Principles laid down in the matter of *Pr. CIT (Central)-2, Kolkata Vs M/s BST Infratech Ltd. I.T.A.T./67/2024* dated 23.04.2024 which is an earlier decision of Hon'ble High Court having a Precedence value.
- v. Whether the Learned ITAT has committed substantial error in law in giving the verdict in favor of the assessee where the matter of

unaccounted cash credit of share capital and premium under section 68 of the Act is involved which attracts the Exceptional Clause as stated in para 3.1h of Board's Circular dated 5/2024 dated 15/03/2024?

vi. Whether the Learned 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?

3. We have heard Mr. Soumen Bhattacharjee, the learned Advocate for the Revenue and Mr. Subash Agarwal, the learned Advocate for the respondent-assessee.

4. The focal point of the Revenue's grievance is that the learned Tribunal failed to appreciate the "Test of Human Probability." It is contended that the nine subscriber companies, while being income-tax assesseees, declared meagre income which bore no rational proportion to the high share premium paid. Further, the Revenue places heavy reliance on the non-appearance of the directors of these companies in response to summons issued under Section 131 of the Act.

5. We have carefully perused the records and the findings of the learned Tribunal. It is observed that the respondent-assessee had placed a voluminous "Paper Book" before the authorities, which included PAN details, share application forms, allotment advices, bank statements, ITR

acknowledgments, and audited financial statements of all nine corporate subscribers.

6. The law on Section 68 is no longer *res integra*. Once the assessee offers a reasonable explanation supported by "Cast Iron" documentary evidence of identity and banking flow, the initial statutory onus stands discharged. The burden then shifts squarely to the Revenue. The AO cannot merely brush aside audited balance sheets and PAN details as "paper compliance" without bringing on record contrary evidence to impeach the veracity of such documents.
7. A significant portion of the Revenue's argument rests on the non-appearance of the subscribers' directors. We reiterate our settled view that personal appearance is not a statutory substitute for documented financial traceability. The AO is vested with co-terminus powers under Section 131. If the AO fails to utilize these powers to compel attendance or to seek verification from the creditors' respective Assessing Officers, the Revenue cannot visit the consequences of such investigative failure upon the assessee. Suspicion, however strong, cannot replace evidence.
8. Regarding the Revenue's reliance on the decision of the Hon'ble Supreme Court in *PCIT vs. NRA Iron & Steel (P) Ltd.*, we find the same to be fundamentally misplaced. That case dealt with "phantom" entities where

notices were returned unserved. In the present case, the investors are traceable taxpayers who confirmed the transactions through Section 133(6) responses. To equate "traceable investors" with "phantom entities" is a leap in logic that this Court cannot countenance.

9. Furthermore, for the Assessment Year 2009-10, the "Source of Source" doctrine remains inapplicable as the proviso to Section 68, introduced by the Finance Act, 2012, is prospective. The Tribunal noted that the subscribers possessed substantial Net Worth (Reserves and Surplus) far exceeding the investment amounts, thereby satisfying the creditworthiness test.
10. In a corporate assessment, documented traceability through legitimate banking channels carries greater evidentiary weight than the subjective suspicion of an officer. Terms like "money laundering" or "round-tripping" should not be used casually without specific, corroborative evidence showing a "live link" that the funds originated from the assessee's own coffers. No such evidence has been brought on record by the Revenue.
11. In the result, we find no perversity in the findings of the learned Tribunal. The findings are based on a sound appreciation of facts and settled legal principles. Consequently, no substantial question of law arises for consideration.

- 12.** The appeal being ITAT 95 of 2025, filed by the Revenue stands dismissed, and the connected stay application, IA NO: GA/2/2025, also stands dismissed.
- 13.** There shall be no order as to costs.
- 14.** Urgent certified copy of this judgment, if applied for, be issued to the parties on usual terms.

I AGREE

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)