

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/146/2025
IA NO:GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA
VS.
MEGAPODE VYAPAR PVT. LTD.

BEFORE:
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR
Date : 8th January, 2026

Appearance:

Mr. Aryak Dutt, Adv.
Mr. Amit Sharma, Adv.
...for Appellant
Mr. Saurabh Bagaria, Adv.
Mr. Rites Goel, Adv.
...for Respondent

The Court: Revenue has raised the following substantial questions
of law:

“i) Whether on the facts and circumstances of the case the Learned Tribunal was justified in law to set aside the order of CIT(A) by allowing the appeal of the assessee without appreciating the vital fact that the assessee entered into such transactions of purchase and sale of penny stocks i.e. Cressando, Nikki Global, Luminai Tech, Uno Industrial, Dhenu Buildcon and Shrsha Tex featuring in the list of 'Bogus Capital Loss Claims' information data provided by the Directorate of Investigation, Kolkata?

- ii) *Whether the Hon'ble ITAT was correct in law in allowing the appeal in favor of the assessee by deleting the disallowance of fictitious loss on trading of penny scrips of Dhenu Buildcon, Nikki Global, Luminai Tech, Uno Industrial and Shrsha Tex cumulatively amounting to Rs. 1,16,89,407/-, where it has been conclusively established in the course of specific investigation conducted by the Department that the prices of such scrips were rigged by the promoters of the companies to avail the accommodation entries of Gain or Loss.*
- iii) *Whether the Hon'ble ITAT was correct in law in allowing the appeal in favor of the assessee by deleting the addition on account of disallowance of capital loss on the sale of penny scrips (Dhenu Buildcon, Nikki Global, Luminai Tech, Uno Industrial and Shrsha Tex), amounting Rs 1,16,89,407/- by ignoring the judgment of the Hon'ble High Court of Calcutta in the case of Swati Bajaj [[2022] 139 taxmann.com 352 (Calcutta)] wherein it has been held that taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probability?*
- iv) *Whether on the facts and circumstances of the case the Learned Tribunal was justified in law to set aside the order of CIT(A) by allowing the appeal of the assessee by ignoring the ratio laid down by the jurisdiction High Court in the case of Swati Bajaj reported in [2022] 139 taxmann.com 352 (Cal) and also ignoring basic/vital aspects of the complete judgment, which upheld the additions on the basis of the inquiry/findings of Investigation Wing?*
- v) *Whether on the facts and circumstances of the case the Learned Tribunal was justified in law to set aside the order of CIT(A) by allowing the appeal of the assessee by merely reproducing the findings of the Learned Tribunal in the case of Namokar Builders Pvt. Ltd. Vs. DCIT [ITA No.762/Kol/2022]*

and relying upon the decision of the case of Nalanda Builders Pvt. Ltd. Vs. DCIT (ITA No.763/Kol/2022) and without appreciating the facts and circumstances of the case of the respondent assessee?

vi) The monetary limit for filing appeal u/s. 260A of the Income Tax Act, 1961 as prescribed under the CBDT Instruction No. 09/2024 dated 17-09-2024 is not applicable in the present case as the case is covered under organized tax evasion by way of wrongful claim of capital loss through penny stocks the exceptional clause. mentioned in para 3.1(h) of the CBDT Instruction No.05/2024 dated 15-03-2024.”

Mr. Aryak Dutt, learned counsel appearing for the appellant/revenue submits that the assessee has dealt with penny stocks while incurring the long term capital loss and the issue is covered against the assessee in view of the judgment of the Hon'ble jurisdictional High Court in case of *Principal Commissioner of Income Tax vs. Swati Bajaj [2022]* 139 taxmann.com 352 (Calcutta).

Per contra, learned counsel for the respondent/assessee submits that the facts of this case are not similar to the case as mentioned by the learned counsel for the revenue and the Tribunal has come to the finding after considering the assessment order and the appellate order and no substantial questions of law arises in this matter.

Heard learned counsel for the parties.

The learned Tribunal has narrated the facts of this case as under :-

“From perusal of the finding of this Tribunal, we find that the same is squarely applicable on the facts of the instant case and the learned Departmental Representative having failed to controvert this

fact that the decision of this Tribunal in case of Nalanda Builders Pvt. Ltd. (supra) and Namokar Builders Pvt. Ltd. (supra) are squarely applicable on the facts of the instant case, we therefore respectfully following the judicial precedence are of the considered view that the alleged loss claimed by the assessee from trading of equity shares of the alleged company is eligible for set off against interest Income earned during the year. Accordingly, finding of the learned CIT(A) is set aside and the effective grounds of appeal raised by assessee for A.Y. 2013-14 are allowed.

As far as A.Y. 2014-15 is concerned, the facts and issues are identical to that for A.Y. 2013-14 except for change of figure. The loss has been incurred to the tune of 1,16,89,407/- from trading of equity shares of Cressanda, Nikki Global, Luminaire Tech, Uno Industries, Dhenu Buildcon & Shree Shaleen Tex and that the loss have been incurred in the regular course of business carried out by the assessee which is an NBFC and that the transactions have been carried out on the recognized stock exchange and under the control of SEBI and at that point of time there was no restriction of trading of equity shares of alleged companies. Since, the facts are identical, we therefore, apply our decision of ITA No. 99/KOL/2023 for A.Y. 2013-14, mutatis mutandis on the grounds of appeal raised for A.Y. 2014-15 in ITA No. 100/KOL/2023 and accordingly, set aside the order of the learned CIT (A), and delete the alleged disallowance of trading loss and direct the Ld AO to grant set off of alleged loss against the

interest / other income for the year under consideration. Thus, effective grounds of appeal raised for A.Y. 2014-15 are allowed.”

We also find that the allegation labelled against the assessee by the appellant/department does not find any direct substantial evidence or proof regarding the logical process which has been inferred through reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and labelled against the assessee and as such, we find no question of law, much less substantial questions of law arising for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

The stay petition (GA/2/2025) is also dismissed.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)