

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

ITAT 147/2025
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. BLUE CIRCLE & CCL INTERNATIONAL featuring in the list of 'Bogus Capital Loss Claims' information data provided by the Directorate of Investigation, Kolkata?

- ii. *Whether, on the facts and circumstances of the case, the Learned Tribunal was justified in law in allowing the appeal of the assessee and deleting the disallowance of a fictitious loss on trading of penny scrips of BLUE CIRCLE & CCL INTERNATIONAL aggregating to Rs. 40,96,229/- when 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 accommodation entries of Gain or Loss?*
- iii. *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?*
- 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 merely reproducing the findings of the Learned Tribunal in the case of Namokar Builders Pvt. Ltd. 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?

- v. *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 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 [2002] 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 question 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 CIT9A), 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”.

The Tribunal has succinctly summarised the facts as follows: “Upon careful review, the Tribunal finds that its previous decisions—which have been upheld in similar contexts—are directly applicable to the present case. It notes that the Department has failed to produce concrete, substantive evidence that directly contradicts these precedents or convincingly demonstrates that the losses claimed were fabricated or manipulated. While the investigation revealed suspicious activity, it did not conclusively establish that the losses were fictitious or that the transactions were part of a deliberate scheme to evade tax. The Tribunal emphasises that the transactions were carried out on recognised stock exchanges under regulatory oversight, and the trading was conducted as part of the ordinary course of business by the assessee, who operates as a Non-Banking Financial Company (NBFC). These facts support the conclusion that the claimed losses are genuine and allowable. Specifically, for the assessment year 2013-14, the Tribunal sets aside the order of the CIT(A) and allows the

appeal, permitting the loss to be offset against other income, such as interest income. Similarly, for the subsequent year, 2014-15, where the facts are essentially similar—albeit with a higher claimed loss—the Tribunal applies the same reasoning. It notes that the trades were executed on recognised stock exchanges, under the supervision of SEBI, with no restrictions during the relevant period, and that such trading was consistent with the normal business activities of the assessee. The Tribunal concludes that the departmental disallowance lacks sufficient basis and that the losses claimed should be allowed”.

Furthermore, the Tribunal observes that the allegations made by the Department rest on circumstantial or speculative evidence rather than direct proof. The inference drawn by the Department appears to be based on assumptions rather than concrete, substantive facts. No substantial questions of law arises for consideration.

As a result, the appeal is dismissed, and the stay petition (GA/2/2025) is also rejected.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J)