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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/155/2025
IA NO: GA/1/2025, GA/2/2025
PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
M/S DANIEL COMMODITIES PRIVATE LIMITED

BEFORE :
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
And
THE HON'BLE JUSTICE UDAY KUMAR
Date : 14th January, 2026

Appearance :
Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv.
…for appellant.

Mr. Pranit Bag, Adv.
Mr.Anuj Kumar Mishra, Adv.
Mr. Anousko Das, Adv.
…for respondent.

The Court : Learned counsel appearing for the appellant suggests the following substantial questions of law for consideration :

I. *Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in quashing the order under section 263 of the Income Tax Act, 1961 passed by the Learned Commissioner of Income Tax?*

II. *Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law by upholding the order of CIT(A) wherein the addition of Rs. 10,61,00,000/- under section 68 of the Act generated from share capital and premium has been deleted by the Ld. CIT(A)?*

III. Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law by deleting the addition of Rs. 10,60,00,000/- made by the Assessing Officer as unexplained cash credit under section 68 of the Act?

IV. Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in not taking the cognizance of the judicial principles laid down in the matter of Vedanta Ltd vs CIT reported in [2021] 124 taxmann.com 435(Bombay) wherein the Hon'ble High court discussed regarding the invocation of section 263 by the Principal Commissioner of Income Tax?

V. Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in not taking the cognizance of the judicial principles laid down in PCIT (Cen-1) vs NRA Iron and Steel Private Limited?

VI. Whether the Learned Tribunal has committed substantial error in law by not appreciating the principle which has been laid down by the Division Bench of the Hon'ble High Court in the case of PCIT-2, Kolkata vs M/s Mundhra Construction Pvt. Ltd.?

VII. Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in not taking the cognizance of the judicial principles laid down in PCIT (Cen)-2 vs M/s BST Infratech Ltd vide ITAT/67/2024 dated 23/04/2024?

VIII. Whether the Learned Income Tax Appellate 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?"

On perusal of the documents and mainly the Tribunal's order it is seen that '*the Id. counsel has further referred to the application moved by the assessee dated 21.11.2022 to the Income Tax department for getting copy of the approval from the competent authority obtained by the Assessing Officer u/s 151 of the Act. The reply dated 28.11.2022 to the said letter given by the Assessing Officer has been placed at page 283 of the paper-book, wherein, the concerned Assessing Officer/ITO-6(1), Kolkata has replied "Approval from competent authority obtained* *u/s 151 of the Income Tax Act: Not readily available from the record". The Id. counsel referring to the aforesaid facts on the file has submitted that reopening of the assessment in this case was done without taking approval of the competent authority u/s 151 of the Act. He, therefore, has submitted that the reassessment order passed by the Assessing Officer u/s 147 of the Act was without jurisdiction and, therefore, the same was non-est. He has submitted that the subsequent revision order passed by the ld. PCIT u/s 263 of the Act and the consequent order passed by the Assessing Officer u/s 143(3) r.w.s sec. 263 of the Act were, therefore, bad in law and, therefore, the addition made in the subsequent orders which were non-est in the eyes of law has no legal sanctity.'*

As the order passed under Section 151 of the Income Tax Act is not available on record, question arises regarding the reopening of assessment without taking approval of the competent authority under Section 151 of the Act. In such a situation, the assessment order under Section 147 of the Act, revisional order passed by the learned PCIT under Section 263 of the Act and consequent order passed by the Assessing Officer under Section 143(3) r.w.s sec. 263 of the Act all becomes void abinitio. Thus, we find no question of law arises for consideration in the matter and the appeal is dismissed. Consequently, the connected applications stand dismissed.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

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