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ITAT/191/2025
IA NO: GA/1/2025, GA/2/2025
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER INCOME TAX CENTRAL 2 KOLKATA
VS
ALERT CONSULTANTS AND CREDIT PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
-AND-
The Hon'ble JUSTICE UDAY KUMAR
Date: 19th January, 2026.

Appearance:
Mr. Aryak Dutt, Adv.
Mr. Prithu Dudhoria, Adv.
. . .for the appellant.

The Court: Heard learned counsel appearing for the appellant. None has appeared for the respondent.

There is a delay of 105 days in filing the appeal. We are satisfied with the explanation offered for not preferring the appeal within time. Therefore, the delay is condoned. The application being GA/1/2025 is allowed.

Learned counsel appearing for the appellant submits that the tax effect involved in the present case is reported to be Rs.89,53,246/-. It is emphasized that this amount is below the monetary threshold specified for filing an appeal before this Court, as outlined in Circular No. 9/2024 dated 17th September 2024.

The counsel further contends, however, that despite the tax effect being below the prescribed limit, the present matter nonetheless falls within the scope of an exception carved out in Clause 3.1(h) of Circular No.5 of 2024 dated 15th March 2024. This exception, as interpreted in conjunction with Circular No. 9/2024, pertains to cases where the issues involved are of substantial legal importance or involve questions of law that merit consideration irrespective of the monetary threshold.

The learned counsel advances several substantial questions of law for the Court's consideration, which are as follows:

> "(a) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in deciding the matter on merits in a situation where they have not condoned the delay in filing appeal by the Revenue. In Commissioner, Nagar Parishad, Bhilwara Vs. Labour Court, Bhilwara and Another reported in 2009 (3) SCC 525, the Hon'ble Apex Court had taken a view that while deciding an application for condonation of delay the High Court ought not to have gone into the merits of the case?
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> (b) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in not condoning the delay in filing of the appeal by Revenue, when the applicant was able to demonstrate "sufficient cause" for the delay, and that Revenue had nothing to gain by filing appeal in a delayed way. The Hon'ble Apex Court in the case of Improvement Trust vs.

Ujagar Singh & Ors. (2010) 6 SCC 786 (SC) had adjudicated that unless mala fide intention exists in the conduct of the party, generally as a normal rule, delay should be condoned. The applicant would not have gained in any manner whatsoever, by not filing the application within the period of limitation?

(c) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in not condoning the delay, when the Revenue has explained that there was “sufficient cause” for such delay before the Hon'ble ITAT. The Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji (1987) 1987 taxmann.com 1072 (SC)?

(d) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law while adjudicating that the 1st Appellate Authority, the Ld. Commissioner of Income Tax was within its powers to restore the matter of verification of the issue of identity, creditworthiness and genuineness of the Share Capital Applicants, whereas being the Higher Authority, the Ld. CIT(A) ought to have called for a remand Report from the AO, and adjudicated thereafter, rather than directing the AO to verify the same, and leaving the substantial adjudication to the AO, whereas in an earlier situation on the same set of documents, the AO had adjudicated the matter against the assessee?

(e) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in adjudicating that "even if the plea of Revenue is considered that the CIT(A) should have passed the final order himself, after calling upon the remand report from the AO, even then that part of the order of the CIT(A) directing the AO to make necessary enquiries regarding the identity and creditworthiness of the Share subscribers and genuineness of the transaction is legally correct", whereas such matter had already been decided by the AO in the assessment order dated 30.03.2015?

(f) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in referring to and adjudicating upon the appeal effect order of the Assessing Officer passed u/s 251/143(3) dated 10.01.2024, whereas such matter could not have been adjudicated by the Hon'ble ITAT, as the said matter was not raised in appeal before the ITAT by Revenue?

(g) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in referring to and taking support from the order passed by the Assessing Officer u/s 251/143(3) dated 10.01.2024 and in transgressing into the rights of the Department to review or revise such order, wherein very clearly the Assessing Officer while passing orders giving effect, appears not to have applied himself to the jurisdictional facts and circumstances of the case, wherein on a paltry return of Rs.95,510/- with no apparent business, the assessee-company was able to attract and receive Share Capital and Share Premium of Rs.2,75,00,000/- from parties who themselves had very little net worth, and were recipient of Share Capital and share Premium of large unexplained amounts just prior to before investing in the assessee-company. In such circumstances, the Assessing Officer [even while giving effect to the CIT(A) directions] was duty bound to examine the matter of the surrounding circumstances, and the application of human behaviour and probability to such transactions. Such requirement emanates from the decisions rendered by the Hon'ble Jurisdictional High Court of Calcutta in the case of Swati Bajaj (2022) 139 taxmann.com 352 (Calcutta) / [2022] 446 ITR 56 (Calcutta) and in the case of Principal Commissioner of Income-tax (Central)-2 Vs BST Infratech Ltd. [2024] 161 taxmann.com 668 (Calcutta) // [2024] 468 ITR 111 (Calcutta). The said principles were laid down by the Hon'ble high Court of Calcutta in the case of Balgopal Merchants (P) Ltd Vs Principal Commissioner of Income Tax [2024] 162 taxmann.com 465 [Calcutta]?

(h) Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in providing his verdict in favour of the assessee where there is an organized tax evasion in the form of accommodation entry behind the curtain of donation u/s 35(1)(ii) for scientific research organization. It is well known that organized tax evasion in the form of accommodation entry is an exceptional clause as per Para 3.1(h) of CBDT Circular 05/2024 dated 15/03/2024?"

After carefully hearing the submissions made by the appellant and thoroughly perusing the Tribunal's order along with the assessment records, this Court observes that the present appeal does not fall within the scope of the exception clause outlined in Clause 3.1 of Circular No.5 of 2024 dated 15th March, 2024. The Court notes that the issues raised do not pertain to questions of substantial legal importance that would warrant an exception under the circular's provisions.

Consequently, the Court finds that no substantial question of law arises for consideration in this matter. Accordingly, the appeal along with the connected application, is hereby dismissed.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

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