

OD 6

ORDER SHEET
ITAT/224/2025
IA NO:GA/1/2025, GA/2/2025
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
VS
TAPAN KANTI ROY

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
AND
The Hon'ble JUSTICE UDAY KUMAR
Date: 11th March, 2026.

Appearance:
Mr. Amit Sharma, Adv.
...for the appellant

The Court: There is a delay of 132 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 of 2025 is allowed.

Learned counsel appearing for the appellant submits that the quantum of tax effect in the above appeal is Rs.60,74,381/- which is below the monetary limit as prescribed by the CBDT's Circular being No.5/2024 F.No.279/Misc. 142/2007-ITJ(Pt.) dated 15th March, 2024 but as the case falls under the exception as per para 3.1(h) of the said circular, the department is pressing the appeal.

Heard the learned counsel for the appellant and perused the order of the Tribunal dated 20.01.2025. Paragraph 4 of the learned Tribunal's order is read as follows:-

“We have carefully considered the rival submissions and also gone through the documents before us. Right at the outset, it deserves to be mentioned that the provisions of section 68 of the Act cast an onus on any assessee to prove a loan transaction from the point of verifiability of the identity, creditworthiness and genuineness of the transaction. The Hon'ble High Court of Calcutta propounded these principles way back in 1978 through the case of Shakar Industries reported in 114 ITR 689 (Cal). On this issue this case law has been relied on in a number of judgments of the Hon'ble Supreme Court also and therefore, this case has the strength of an order passed by the Hon'ble Apex Court. In light of this case law, we need to examine whether the assessee could prove the impugned transaction or not. It is seen that as far as the assessee is concerned all manner of documentation have been presented before the Ld. Assessing Officer to show that the loan was accepted in normal course of business and to lend further strength to this claim, it was shown that regular interest payment was made on the loan amount and TDS was made on such payments also. Subsequently, the said loan was fully repaid between financial years 2011-12 to 2013-14. Regarding the creditworthiness of the loan giver (M/s Lily), the documents before us are the account statements which show that M/s Lily had a share

capital of Rs. 27.72 Lacs (face value of Rs. 10/- each share), on this a share premium of Rs. 240/- per share was shown amounting to Rs. 6.41 Crores. The major portion of assets in the balance sheet indicated loans and advances of Rs. 1,95,92,371/- (including the loan to the assessee). These facts have been recorded in para 6.2 at pages 11 and 12 of the impugned order. It is clear that M/s Lily had substantial funds in the balance sheet on account of share premium. While it can be a matter of some speculation whether a premium of Rs. 240/- for each share could be justified on the basis of business model, the financials, etc. of M/s Lily, it is true that the assessment before us is of the assessee and not of M/s Lily. On this basis of alone the case of BST Infratech Limited (supra) is distinguishable. It is noticed that the AOs dealing with the case of M/s Lily, even though no assessment order has been presented for A.Y. 2011-12, did not find anything suspicious or worthy of adverse treatment regarding either the issue of Rs. 65,00,000/- deposit or the issue of charging of share premium by M/s Lily. Furthermore, it is clear that the assessee would have a limited power to enforce the attendance of the Directors of M/s Lily before the Ld. Assessing Officer. Thus, to content that it was duty of the assessee to ensure the presence of the said Directors before the Ld. Assessing Officer is not correct. There is considerable strength in the contention of the Ld. AR that the Id. Assessing Officer should have followed the proceedings under Section 131 of the Act to their logical conclusion and enforced the

attendance of the directors of M/s Lily. Thus, taking an overall view in the matter, it is seen that the assessee has discharged its onus regarding the three touchstones mentioned in the case of Shankar Industries (supra) and the authorities below have misdirected themselves in laying blame at the assessee's door step for any alleged shortcomings in the documents or presentation on behalf of M/s Lily. With these findings, the additions under Section 68 and 69C of the Act are - hereby directed to be deleted.”

On perusal of the Tribunal's order, it is seen that the assessee has discharged its onus regarding the three touchstones in respect of the addition to be considered under Sections 68 and 69C of the Act and hence, no substantial question of law arises in this appeal. As such, the appeal and the connected application being GA/2/2025 are dismissed.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)