Principal Commissioner of Income Tax, Central-2, Kolkata v. M/s. Zulu Merchandise Private Limited

ITAT/88/2025 (IA No: GA/2/2025)

ITAT/88/2025 (IA No: GA/2/2025) (High Court at Calcutta, 2025-08-01) | 2025-08-01

The Revenue appeal was allowed, the Tribunal order set aside, and the AO's disallowance as affirmed by CIT(A) restored.

Income-tax Act, 1961: 68

High Court at Calcutta | Division Bench | T. S. Sivagnanam | Chaitali Chatterjee (Das)

Assessment years: 2014-15

Scope of this source order

Preserve the transaction-specific evidence and hearing findings. The judgment's occasional long-term-loss wording should not obscure that the disputed item was share-trading loss; neither exchange records nor a penny-stock label alone replaces factual analysis.

01 FACTS OF THE CASE

Zulu, an NBFC trading in shares and lending money, claimed Rs.51,33,870 loss in Radford Global and Shreenath Commercial shares and set it against interest income of Rs.32,43,618 for AY2014–15. The AO disallowed the loss on 26 December 2016; NFAC affirmed on 23 January 2024. The Tribunal on 23 September 2024 followed Namokar Builders and allowed set-off. Revenue appealed; the assessee objected that tax effect was only Rs.16,27,963.

Source: Paras1,3–9, PDF pp.2–10

02 DISCUSSION BY THE HON'BLE COURT

The Court held the organised-evasion exception in paragraph 3.1(h) of Circular 5/2024 applicable, allowing Revenue's appeal despite tax effect. It found that the Tribunal had not compared the facts or answered the detailed findings below. Material included circular trading, company financials, price movements and the Radford counterparty's SEBI/SAT findings. The Court rejected natural-justice objections because investigation particulars had been disclosed before show-cause notices and replies, and no cross-examination request was shown. It applied Swati Bajaj and distinguished the assessee's authorities on their facts.

Source: Paras9–21, PDF pp.10–24

03 JUDICIAL DECISION

Revenue's appeal was allowed. The Tribunal order was set aside and the 26 December 2016 assessment, as affirmed by NFAC on 23 January 2024, restored. All substantial questions were answered for Revenue.

Source: Paras22–23, PDF p.24

04 OUTCOME / IN WHOSE FAVOUR

Revenue-favourable substantive result restoring disallowance of the share-trading loss. This was not a low-tax-effect dismissal, a remand, or a general prohibition on all genuine securities-trading losses.

Source: Paras12,22–23, PDF pp.13,24

05 EXPERT COMMENTS

The monetary exception rests on the case findings — The Court connected the alleged loss to the organised penny-stock operation before applying paragraph 3.1(h). Low tax effect therefore did not end this appeal. Its distinction of Brightstar turns on the exception not having been invoked there; do not translate that procedural difference into a rule that monetary limits never matter in share cases.

Formal trading records must answer the contrary evidence — Demat movement, brokers and bank payments were weighed against price patterns, weak fundamentals, connected trading and specific counterparties. Namokar Builders could not replace a factual comparison, particularly when its High Court appeal ended through the settlement-scheme route. A defence needs to engage with the actual adverse material rather than simply repeat the trading formalities.

Natural justice remains tied to disclosure and prejudice — The result rests on disclosure of material particulars, opportunities to respond and no demonstrated cross-examination request. The lengthy Swati Bajaj quotation should not be used to abolish fair hearing in every case. Identify the evidence withheld, any person whose statement matters, the request made and the resulting prejudice when distinguishing this record.

Source: Editorial analysis; source references in the structured comments

SOURCE & VERIFICATION

High Court at Calcutta source judgment/order

Complete 24-page source PDF; corrected note based on this document.

All 24 original pages read and visually inspected; source hash verified. AI-assisted substantive correction.

Open cited source rendition

Source bytes and identity checked; see panel-specific references and disclosed source anomalies.

STATUTORY SCOPE

Source-era statutory provisions only; no Income-tax Act, 2025 equivalence asserted.

LATER TREATMENT

Source checked 2026-10-21. Subsequent treatment not independently verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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