IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL JURISDICTION (INCOME TAX)

ORIGINAL SIDE

RESERVED ON: 28.07.2025
DELIVERED ON:01.08.2025

CORAM:

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

ITAT/4/2025

(IA NO: GA/2/2025)

PRINCIPAL COMMISSIONER OF INCOME TAX - 2, KOLKATA

VERSUS

MINTO PARK ESTATES PRIVATE LIMITED

Appearance:-
Mr. Aryak Dutta, Sr. Standing Counsel.
Mr. Amit Sharma, Adv.

.....For the Appellant.

Mr. Abhratosh Majumder, Sr. Adv.
Mr. Avra Mazumder, Adv.
Ms. Alisha Das, Adv.
Mr. Soumen Bhowmik, Adv.
Mr. Samrat Das, Adv.
Ms. Elina Dey, Adv.

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated April 10, 2024 passed by the Income Tax Appellate Tribunal "A" bench, Kolkata (tribunal) in ITA No. 1276/Kol/2023 for the assessment year 2012-2013. The revenue has raised the following substantial questions of law for consideration:-

> *1) Whether the Learned Tribunal has committed substantial error in law in deleting the addition of Rs. 1,10,00,000/- made by the Assessing Officer under Section 68 of the Income Tax Act, 1961 on account of share capital/premium as unexplained cash credit despite the respondent assesse failing to establish the genuineness of the transactions as well as identity and creditworthiness of the share subscribers?*
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> *2) Whether the Learned Tribunal has committed substantial error in law in deleting the addition made under Section 68 of the Income Tax Act, 1961 by ignoring the judicial precedents that the onus is on the assessee to explain and establish the source of funds which in the instant case, the assessee has failed to do?*
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> *3) Whether the Learned Tribunal has committed substantial error in law in deleting the addition made under Section 68 of the Income Tax Act, 1961 without giving due weightage to the unjustified receipt of high premium from seemingly unprospectively entities and ignoring the ration laid down in the case of Principal Commissioner of Income Tax (Central) – I Kolkata Vs. NRA Iron and Steel (P)*

Ltd.reported in (2019) 103 taxmann.com 48 and in the case of PCIT (Central) – 2, Kolkata Vs. BST Infratech Ltd. In ITAT No. 67 of 2024 by the Jurisdictional High Court?

4) *Whether in the facts and circumstances of the case, the Learned Tribunal has committed substantial error in law in deleting the addition made by the Assessing Officer in as much as the Learned Tribunal has ignored the facts that the creditwothiness of subscribing company and source of funds for investment were not established though the onus of proving the genuineness of transactions and the identity of the share subscribing company and its creditworthiness is on the assessee company?*

2. We have heard Mr. Aryak Dutt, Learned Senior Standing Counsel along with Mr. Amit Sharma, Learned Standing Counsel for the appellant department and Mr. Abhratosh Majumder, learned Senior Advocate assisted by Mr. Avra Mazumder, Ms. Alisha Das, Mr. Soumen Bhowmik, Mr. Samrat Das, and Mr. Elina Dey learned advocates appearing for the respondent assessee

3. The assessee filed their return of income on 25.09.2012 showing income of Rs. 770/- which was processed under Section 143(1) of the Act. The case was selected for scrutiny and notice under Section 143(2) and Section 142(1) were issued on 26.08.2013. In compliance with those notices, the assessee made certain submissions on 19.02.2014. Again, two notices were issued under Section 142(1) dated 06.05.2014 and 30.06.2014 to

which the assessee through their authorised representative appeared before the assessing officer and explained them their stand. The assessing officer while completing the assessment under Section 143(3) by order dated 27.03.2015 noted that the assessee was incorporated on 22.03.2012 and during the financial year 2011-2012 relevant to the assessment year 2012-2013 it raised share capital by Rs. 16,40,000/- against issue of 1,64,000 equity shares of face value of Rs. 10/- each. The assessing officer noted that 24000 shares were allotted with premium of Rs. 1,17,60,000/- at the rate of Rs. 419 per share to 9 subscribers. The total share capital including premium that was raised was Rs. 1,34,00,000/-. The assessing officer examined the financial stability of the share subscriber companies and noted that all of them reported the source of investment from sale of shares. Further the assessing officer noted that all the seven investing companies reported NIL income from its operations. Therefore, the assessing officer held that this would clearly lead to the inference that the share subscriber companies which were incorporated have no visible business activity and creditworthiness to make the investment. In order to verify the genuineness of the transactions, summons were issued under Section 131 of the Act to Shashi Mehta, the director for personal appearance and to produce the investors/investor directors along with the documents which were requisitioned. In response to the summons, Kunal Mehta and other directors of the assessee company appeared and due to the ill health of Shashi Mehta she was unable to attend. Statement was recorded from Kunal Mehta. None of the directors of the subscriber companies appeared nor any proper reason was assigned for their non-appearance. Therefore, the

assessing officer came to the conclusion that in the absence of personal appearance of the directors of the subscriber companies, the genuineness and creditworthiness remained unexplained. More so when the onus is on the assessee to prove the genuineness, creditworthiness and the identity of the investors. Thus, on analysis of all these facts the assessing officer opined that the assessee company has raised share capital and/or premium in order to route its undisclosed money to the desired end of the beneficiaries taking recourse of the corporate veil. It was further observed that the assessee company rotated its undisclosed money layering through different body corporates in different structure to obfuscate enquiry. Further the assessing officer found that the assessee is a private limited company and share application money was received through private placement, as the assessee failed to bring on record any evidence, the assessing officer held that the so called share applicant were mere paper entities and did not have the requisite capacity to advance the amounts shown to have paid for purchase of the shares.

4. Further it was observed that merely because the share subscriber companies are incorporated under the Companies Act, 1956 that would not add any credibility or evidentiary value and does not prove the transaction to be genuine. That apart, merely because transactions were entered into by way of account payee cheque is also not conclusive and cannot be held to be sacrosanct. In support of his conclusion, the assessing officer referred to decision in ***Commissioner of Income Tax Versus Precision Finance***

Private Limited [1] and the decision of the Hon'ble Supreme Court in ***Commissioner of Income Tax Versus P. Mohanakala*** [2]**.** Furthermore, the assessing officer examined the returns of the subscriber companies and found that all of them are basically investment companies, their return show a nominal income/loss and the investor companies received share capital with huge premium was in turn invested in the assessee company and similar other companies as well. Therefore, the assessing officer came to the conclusion that the share applicants did not have their own profit making apparatus to make the investment and merely because the transactions were routed through banking channel, it can be easily seen that it is a case for rotating money or in other words the transactions are not commensurate with the income of those companies. It was held that where the assessee fails to prove satisfactorily, the source and nature of the amount of credit during the accounting year, the income tax officer is entitled to draw the inference that the receipts are often assessable nature. In this regard, reliance was placed on the decision in ***A. Govindaraju Mudaliar Versus Commissioner of Income Tax*** [3]; ***Commissioner of Income Tax Versus Devi Prasad Vishwanath Prasad*** [4] and the ***Commissioner of Income Tax Versus Independent Media Private Limited*** [5]. Thus, it was pointed out that the existence of the material showing that the share subscriptions were collected as part of the pre-meditated plan, a "smoke screen" conceived and executed with the connivance or involvement of the assessee company has

[1] [1994] 208 ITR 465
[2] [2007] 291 ITR 278 (SC)
[3] [1958] 34 ITR 807
[4] [1969] 72 ITR 194 (SC)
[5] [2012] 25 Taxmann.com 276 (Delhi)

been satisfactorily proved. In such factual circumstances, the assessing officer came to the conclusion that the identity, creditworthiness of the subscriber companies and the genuineness of the transaction has not been established and the sum of Rs. 1,10,00,000/- received from 8 subscribers out of 9 subscriber companies in the books of the assessee companies is cash credit under Section 68 of the Act and accordingly added the amount and completed the assessment.

5. The assessee filed appeal before the National Faceless Appeal Centre (NFAC) contending that the observations/findings made in the assessment order were perverse, the addition of Rs. 1,10,00,000/- is not called for and the same is required to be deleted and that the assessing officer failed to appreciate the evidence filed before him and the addition was made merely on conjectures. The appellate authority had heard the assessee in person and also took on record, the information/documents which were filed by the assessee, apart from the written submissions which were filed by the assessee. The assessee relied on several decisions which were taken note of by the appellate authority.

6. Nextly, the appellate authority noted the findings recorded by the assessing officer while completing the assessment by order dated 27.03.2015. The appellate authority held that the assessee has not submitted any new details/documents and merely argued that they had conclusively proved the identity and creditworthiness of the share subscribers and the genuineness of the transactions and did not disprove the details/supporting documentary evidence submitted in this regard.

Further the appellate authority noted that summon were issued under Section 131 of the Act to the shareholders of the assessee company for personal attendance for their justification for the investment made by them which the shareholders failed to appear before the assessing officer and submitted any details or documents or explanation to the satisfaction of the assessing officer. Furthermore, it was noted that out of the 7 share subscriber companies, the addition was made by the assessing officer, 4 companies had on its first year of its incorporation and had NIL income for the year under consideration and the source of their income was mostly income from other sources. Therefore, observed that this would clearly leads to the inference that the companies had no visible business activities and any income from business operation and thus no creditworthiness to make such share capital with huge premium was proved. Further since the assessee failed to produce the shareholders to justify the transactions of receipts of share applications money and the details/documentary evidence which was produced do not prove the creditworthiness of the share subscribers and the burden which was cast on the assessee was not discharged. The appellate authority took note of the decision in ***Principal Commissioner of Income Tax Versus Youth Construction Private Limited*** [6]; ***Commissioner of Income Tax Versus United Commercial and Industrial Company Private Limited*** [7] and ***Commissioner of Income Tax Versus Precision Finance Private Limited*** [8]. Therefore, it was held that the onus is on the assessee to explain the nature and source of credit and it

[6] [2013] 357 ITR (Del)
[7] [1991] 187 ITR 596 (Cal)
[8] [1994] 208 ITR 465 (Cal)

does not get discharged merely by filing confirmative details or demonstrating that the transactions are done through banking channels or even by filing income tax assessment particulars. That the genuineness of the transaction as a whole is a very important and critical factor in the examination of the explanation of the assessee as required under Section 68 of the Act. Further the appellate authority noted that the assessee had submitted details and documentary evidence from which the identity of the shareholders was proved but the same is not sufficient to prove the nature and genuineness of the transactions and creditworthiness of the share subscriber companies, which can be considered to examine or verify the nature and genuineness of the transactions and source of investment by shareholders particularly when the investments were made with huge premium.

7. Further the appellate authority noted that no requisite details were submitted by the assessee during the course of the assessment proceedings or during the appellate proceedings in respect of the share subscriber companies. Further the appellate authority noted that the promoters of the assessee company Shashi Mehta, Amit Mehta and Kunal Mehta were issued shares at par without any premium while investors companies were issued shares with huge premium of Rs. 490/- per share having a face value of Rs. 10/-. The details of the shares issued at par and at huge premium to other subscriber companies were reproduced in a tabulated format. Therefore, the appellate authority opined that there is no logic to issue shares to the owners at par and to other at huge premium and this would show that the

share capital is introduced for bringing back the assessee's own black money through the shell companies. Further the assessee did not submit computation of share premium and the justification for not issuing the shares at premium to its owners and also the share subscriber companies did not appear in response to summon issued under Section 131 of the Act for their justification/explanation to the satisfaction of the assessing officer and therefore concluded that the investor companies are mere paper entities. Further the share subscriber companies investments are in private companies that is the assessee company with huge premium which by any standard, most unusual in real life business situation more so when there was no details produced to show any connection with the assessee company. The appellate authority placed reliance on the decision of the Hon'ble Supreme Court in ***Commissioner of Income Tax Versus P. Mohanakala*** [9]**,** ***Vijay Kumar Talwar Versus Commissioner of Income Tax*** [10] ***N. Tarika Property Invest. Private Limited Versus Commissioner of Income Tax*** [11] and various other decision of the High Courts and came to the conclusion that the assessee has miserably failed to prove the genuineness of the transactions to the satisfaction of the assessing officer. With the above reasoning, the appeal was dismissed.

8. The assessee carried the matter on appeal to the learned tribunal. The learned tribunal noted the submissions of the assessee which appears to be reiteration of the submissions made before the appellate authority and also heard the departmental representative and held that the assessing officer

[9] [2007] 161 Taxman 169 (SC)
[10] [2011] 1961 Taxman 136 (SC)
[11] [2014] 51 Taxmann.com 387 (SC)

without even going through and discussing the details submitted by the subscriber companies, insisted for personal appearance to prove the identity, creditworthiness of the subscribers and the genuineness of the transactions. The tribunal faulted the assessing officer for having taken an adverse view as he could have taken an adverse view only if he could point out the discrepancies or insufficiency in the evidence and details furnished and also to get further investigation to be done by him by way of recording statements of the directors of the assessee and subscriber company. In support of such conclusion, reference was made to the decision in ***Principal Commissioner of Income Tax Versus Paradise Inland Shipping Private Limited*** [12] and ***Crystal Networks Private Limited Versus Commissioner of Income Tax*** [13]. Further the learned tribunal held that the assessing officer has not bothered to discuss or point out any defect or deficiency in the document furnished by the assessee of the share subscribing companies and these evidences have not been controverted by the assessing officer nor anything substantive was brought on record to justify the addition.

9. The learned tribunal further held that going by the documents placed by the assessee of all the share subscribing companies, it can be safely held that the assessee had discharged its initial burden and the burden shifted on the assessing officer to enquire further into the matter which he failed to do. Furthermore, it observed that the investing companies have sufficient own funds available with them to make the investment. Further the learned tribunal faulted the order passed by the appellate authority by observing

[12] [2017] 84 Taxmann.com 58 (Bom)
[13] 353 ITR 171 (Cal)

that the appellate authority has not discussed anything about the material facts of the case nor pointed out any defect or discrepancy in the evidence and details furnished by the assessee but merely referred to certain case laws without discussing the case of the assessee. With the above finding, the learned tribunal allowed the assessee's appeal and deleted the addition. Aggrieved by such order, the revenue is on appeal before us.

10. The learned Senior Advocate appearing for the respondent assessee raised a preliminary objection by stating that the tax effect in the instant case is Rs. 48,54,112/- which is below the threshold monetary limit for filing the appeal as per the circular issued by CBDT in Circular No. 5 of 2024 dated 15.03.2024 and therefore the appeal is not maintainable.

11. We have heard the learned Senior Standing Counsels appearing for the revenue on the above submissions.

12. The Central Board initially issued a circular in Circular No. 5 of 2024 dated 15.03.2024 prescribing monetary limit to file the appeals before the tribunal, the High Courts and the Hon'ble Supreme Court. Another circular was issued in Circular No. 9 of 2024 dated 17.09.2024 carving out certain exceptions to the threshold monetary limit for filing the appeal. One such exception is when the matter involves the organised tax evasion the monetary limit will not be applicable and the revenue would be entitled to file appeals before the tribunals, High Courts or the Hon'ble Supreme Court. In the preceding paragraphs, we have set out the reasons assigned by the assessing officer and his conclusion to hold that the entire transaction is a part of pre-mediated plan, a "smoke-screen" conceived and executed with

the connivance or involvement of the assessee company and the share capital was introduced for bringing back the assessee's own black money through shell companies. If these are the facts as recorded by the assessing officer as well as the appellate authority, the case on hand is required to be examined on merits and therefore the revenue is entitled to maintain this appeal before this Court. Accordingly, the preliminary objection raised on behalf of the respondent assessee is rejected.

13. The expression "the assessee offers no explanation" occurring in Section 68 of the Act was explained by Hon'ble Supreme Court in ***P. Mohanakala*** to mean where the assessee offers no proper reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee and that the opinion of the assessing officer is required to be formed objectively with reference to the materials available on record and application of mind is the sine qua non for forming the opinion. Further it was held that Section 68 itself provides where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income tax as the income of the assessee of the previous year, if the explanation offered by the assessee about the nature and source of such sums found credited in the books of the assessee is in the opinion of the assessing officer not satisfactory, such opinion found itself constitutes a prima facie evidence against the assessee namely the receipt of money, and if the assessee fail to rebut the said evidence, the same can be used against the assessee by holding that it was a receipt of an income nature. We note that in the instant case, the assessing officer as well as the appellate

authority concurrently held that the explanation offered by the assessee was unacceptable.

14. In ***Vijay Kumar Talwar*** (supra) it was held that when the assessee did not produce any evidence to rebut the presumption drawn against him under Section 68, by producing the parties in whose name the amounts in question had been credited by the assessee in his books of accounts, the addition was justified.

15. Thus, the legal position is very clear, that the existence of creditworthiness of the investing companies is one of the most important factors, as could be seen from the assessment order of the investment company had NIL income and the source of investment was from sale of shares and 4 of such investment companies were in the first year of operation. When the assessee had produced certain documents regarding the investing companies the assessing officer in order to investigate the matter further issued summon to the directors of the investing companies but those directors did not respond to the summons. Therefore, on facts in the case on hand, the assessing officer was well justified in drawing an adverse inference against the assessee. The learned tribunal committed an serious error in observing that the assessing officer did not bother to discuss or point out any defect or deficiency in the documents furnished by the assessee of the share subscribing companies. The learned tribunal failed to note that the documents and details produced by the assessee regarding the share subscribing companies was perused and summon were issued to the directors of the subscribing companies so as to enable the assessing officer

to enquire into and investigate into the creditworthiness of the investing companies, the genuineness of the transactions and the identity of the parties. Therefore, the learned tribunal fell in error in making such an observation and faulting the assessing officer.

16. On the contrary, we find on perusal of the assessment order, the assessing officer has examined the supporting documents submitted by the assessee during the course of hearing and has dealt with each of the subscribing companies and has noted the amount of investment made and also the common feature that all the investing companies reported NIL income.

17. The learned tribunal also faulted the appellate authority stating that none of the points have been discussed. This is factually incorrect as could be seen from the findings recorded by the appellate authority from paragraph 8.2 of the order dated 20.10.2023. The appellate authority has noted several decisions of the Hon'ble Supreme Court and the High Court and in paragraph 8.7 has discussed the factual position in the assessee's case bearing in mind, the legal principle laid down in all those decisions and then proceeded to assign its own reasons to concur with the decision of the assessing officer. Therefore, we find that the learned tribunal erred in faulting the appellate authority on the ground that the appellate authority has not discussed about the material facts of the case of the assessee, this being the factually incorrect finding, the same requires interference.

18. The learned Senior Advocate appearing for the respondent assessee placed reliance on the decision in ***Principal Commissioner of Income Tax***

-2, Kolkata Versus M/s. Naina Distributors Private Limited [14] to support his submission that non-appearance of the directors cannot be made a ground for addition in the hands of the assessee under Section 68 of the Act. For the same proposition, reliance was placed on the decision in ***Principal Commissioner of Income Tax Central – 1, Kolkata Versus Wise Investment Private Limited*** in ***ITAT No. 238 of 2024*** dated 06.05.2025 and ***Principal Commissioner of Income Tax – 2, Kolkata Versus M/s. Vish Reality Solutions Private Limited ITAT No. 74 of 2025*** dated 10.07.2025.

19. In ***Naina Distributors***, the order passed by the tribunal was affirmed noting that the assessee had produced all documents disclosed the names and addresses and PAN numbers of the investors, copies of the share allotment device, copies of the share application form, bank statements, statements giving details of share application, money receipt during the year, copy of form 2 evidencing return of allotment and copy of Form No. 5 for increase in various capital. Apart from that, the assessing officer issued notice to the investors under Section 133(6) for carrying out the independent verification of the transactions and those investors duly responded to the notice and filed requisite details such as number of share subscribed, ledger account, bank statements, explanation for the source of funds, income tax returns and audited financial statements and also assessment orders framed under Section 143(3) in all cases. In such factual circumstances, the tribunal in the said case found that the only reason for making the addition is that the directors of the assessee company did not respond to the

[14] 2023 (6) TMI 1362 (Cal HC)

summons. The case on hand is factually different which has been elaborately set out in the preceding paragraphs and therefore the decision in ***Naina Distributors*** will not be of assistance to the assessee.

20. In ***Wise Investment Private Limited***, the revenue's appeal was dismissed after noting that the CIT(A) had elaborately considered all the factual issues and that the assessee company was showing good returns and was showing good prospects for his investors and it was growing company. The factual details were taken note of and the revenue's appeal was dismissed. We hold that the decision in ***Wise Investment Private Limited*** is clearly distinguishable on facts. Equally the decision in ***Vish Reality Solutions Private Limited*** (supra) also involved consideration of the factual circumstances where the directors responded to the summons, submitted documents to establish the identity and creditworthiness of the shareholders and genuineness of the transactions. This not being the case before us, the decision in ***Vish Reality Solutions Limited*** cannot be of any assistance to the respondent assessee.

21. The Hon'ble Supreme Court in ***Principal Commissioner of Income Tax (Central) -1 Versus NRA Iron and Steel Private Limited*** [15] pointed out that use of words "any sum found credited in the books" in Section 68 indicates that the section is widely worded and includes investments made by the introduction of share capital or share premium. Further it is settled law, the initial onus is on the assessee to establish by cogent evidence the genuineness of the transaction and creditworthiness of the investors under

[15] [2019] 103 Taxmann.com 48 (SC)

Section 68. The assessee is expected to establish to the satisfaction of the assessing officer (i) prove of identity of the creditors (ii) capacity of creditors to advance money and genuineness of transaction. The Hon'ble Supreme Court noted the decision in ***Kale Khan Mohammad Hanif Versus Commissioner of Income Tax*** [16] and ***Roshan Di Hatti Versus Commissioner of Income Tax*** [17] wherein it had been laid down that the onus of proving the source of sum of money found to have been received by an assessee is on the assessee. Further it was held with respect to establish the genuineness of the transaction, it is for the assessee to prove by cogent and credible evidence that the investments made in the share capital are genuine borrowings since the facts are exclusively within the assessee's knowledge and merely proving the identity of the investors does not discharge the onus of the assessee, if the capacity or the creditworthiness has not been established. The principles which emerge were summed up in the following terms:-

> *(i) The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the Assessing Officer, so as to discharge the primary onus.*
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> *(ii) The Assessing Officer is duty bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether*

[16] [1963] 50 ITR 1 (SC)
[17] [1977] 107 ITR 938 (SC)

the transaction is genuine, or these are bogus entries of name- lenders.

(iii) If the inquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by section 68. [Para 11].

22. Further the Hon'ble Supreme Court held that the practice of the conversion of unaccounted money through the number of share capital/premium must be subjected to careful scrutiny and this would be particularly show in the case of private placement of shares (as in the case on hand), where a higher onus is required to be placed on the assessee, since the information is within the personal knowledge of the assessee. The assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the assessing officer, failure of which would justify addition of the said amount to the income of the assessee.

23. If the above legal principle is applied to the case on hand, the irrestible conclusion that can be arrived is that the assessee did not discharge the legal obligation to the satisfaction of the assessing officer. Admittedly, in the instant case the share were by way of a private placement. Though the investing companies might have been incorporated under the provisions of the Company's Act that by itself will not validate the transaction. The assessee thwarted the enquiry/investigation that was to be done by the assessing officer by issuing summons to the directors of the

investing company which were not responded. In such circumstances, the assessing officer proceeded to analyse the financial stability of the investing company and has clearly recorded the findings that those investing companies though might have been incorporated under the Company Act have no visible business activity and creditworthiness to make their investment. The assessing officer rightly observed that non compliance of the summons issued under Section 131 shows the evasive tactics adopted and riggle out of the difficult situation they may be put to if they had responded to the summons.

24. In ***Principal Commissioner of Income Tax (Central) 2 Versus BST Infratech Limited*** [18] the case of the revenue was accepted by this court noting that the investing companies therein had NIL or negligible revenue from its operations their returns were either of loss or insignificant income below the taxable limit and they have been issued shares at a high premium without having earned any revenue from business operation and they have invested on shares at very high premium in companies who also have not earned anything from business operations and the money which was invested was obtained from the root of shares premium in re-rooted for supplying sources of receipt of money to other companies. Further it was held that the fixing of rate of premium was arbitrary and devoid of any financial or accounting rational; the investors are not bothered to ensure protection of their investment; the investor company did not have any business operation worth noticing yet they have raised huge capital through issue of shares at a premium and also made investment in shares of other

[18] [2024] 161 Taxmann.com 668 (Calcutta)

companies at a premium even though the other companies like them did not have any promising business activities. Further it was held that it is not required to show that the money which came to the assessee is ill gotten and what is required to be seen is whether the transactions was genuine. It may be true that the identity of the investors companies has been established as they are registered to the Registrar of Companies and they are regularly assessed to income tax and in such factual situation the doctrine of "source of source" or "origin of origin" should be made applicable. Thus applying the above principles if the doctrine of "origin of origin" or "source of source" is applied to the case on hand, it will be manifestly clear that the share capital raised with huge premium was a devise adopted to route undisclosed funds to the desired end of the beneficiary taking recourse to the corporate veil. Thus, on facts the appellate authority as well as the assessing officer was right in holding that the assessee did not discharge the creditworthiness and the genuineness of the transactions. Though it can be said that the identity of the investors were partly established as they are shown to have been registered under the Company's Act and returns have been filed but what is important is on analysing the financials, the assessing officer found that all investment companies had NIL income. Thus, the assessing officer was right in not accepting the explanation offered by the assessee as being not satisfactory upon proper appreciation of the materials placed before him by the assessee and the other attending circumstances available on record.

25. In the light of the above discussion, we hold that the learned tribunal committed a serious error in reversing the findings recorded by the appellate authority while affirming the order passed by the assessing officer.

26. In the result, the appeal is allowed and the order passed by the learned tribunal is set aside and the assessment order dated 27.03.2015 as affirmed by the appellate authority by order dated 20.10.2023 are stand restored.

27. The substantial questions of law raised are answered in favour of the appellant revenue.

(T.S. SIVAGNANAM, CJ.)

I Agree.

[CHAITALI CHATTERJEE (DAS), J.]

(P.A.- SACHIN)

High Court
सत्यमेव जयते
Calcutta