

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No. 1214/Kol/2024
(Assessment Year 2012-2013)**

M/s Tedium Commercial Private Limited,
5/1, Clive Row, 2nd Floor, Room No. 54,
Kolkata - 700001
[PAN: AAECT5456E].....**Appellant**
vs.

Income Tax Officer,
Ward 4(1), Kolkata,
P-7, Chowringhee Square,
Ayakar Bhawan,
Kolkata - 700069..... **Respondent**

Appearances by:

Assessee represented by : Ankit Jalan, AR
Department represented by : Subrata Aich, Addl. CIT, Sr. DR

Date of concluding the hearing : 11.11.2025
Date of pronouncing the order : 17.11.2025

ORDER

PER RAJESH KUMAR, ACCOUNTANT MEMBER

1. This appeal arises from order dated 09.04.2024, passed u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”) by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)].

2 The only issue raised by the assessee is against the addition of Rs. 4,71,80,000/- by the CIT(A) as made by the AO on account of share capital and share premium by invoking the provision of section 68 of the Act.

3. The facts of the case are that the assessee filed its return of income for the AY 2012-13 on 25.03.2013 declaring total income at Rs. ‘Nil’. The

case of the assessee was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire were duly served upon the assessee. The assessee furnished the evidences/submissions in response to the questionnaire. The AO noted from the details filed by the assessee that the assessee has issued share capital of Rs. 9,20,000/- and share premium of Rs. 4,62,60,000/-. According to the AO, the assessee company was nothing but bogus company though the assessee filed with the AO the name and address, PAN, Form-18, bank statement, audited balance sheet etc. before the AO. Finally the AO added the amount as unexplained cash credit to the income of the assessee.

4. The CIT(A) also dismissed the appeal of the assessee by confirming the order of the AO by recording a finding fact the assessee received capital/share premium of Rs. 4,71,80,000/- by way of investment in shares in other companies. Finally, the Ld. CIT(A) dismissed the appeal on the ground that the assessee has failed to establish the creditworthiness of the subscriber of shares and accordingly upheld the order of the AO.

5. After hearing the rival submissions and perusing the material available on record, we find that undisputedly the facts culled out from the record are that the assessee issued share capital/ premium amounting to Rs. 4,71,80,000/- to another company in lieu of investments in that company. In other words, there was not movement of funds in the form of share application money to the assessee but in fact the assessee was allotted shares in subscriber company meaning thereby that the share were subscribed on barter basis. The Ld. Counsel even produced before the Bench the balance sheet of the assessee in order corroborating that the assessee was not having a bank account even when the shares were issued. The Ld. AR vehemently submitted that provisions of Section 68 of the Act are not applicable there was no receipt of any money during the year in the hands of the assessee and the consideration was discharged in lieu of shares allotted in the other

company. The Ld. AR relied in defense for his arguments of the decision of Hon'ble Calcutta High Court in the case of PCIT-2, Kolkata Vs. M/s Vishnu Distributors Pvt. Ltd. ITAT/56/2025 IA No. GA/1/2025, GA/2/2025, order dated 05.05.2025. The Hon'ble High Court has held as under:

“We have heard Mr. Aryak Dutta, learned senior standing Counsel assisted by Mr. Prithu Dudheria for the appellant and Mr. Subash Agarwal, learned senior standing Counsel assisted by Mr. R. Chatterjee, learned Advocate for the respondent.

The revenue filed the appeal before the learned Tribunal challenging the correctness of the order passed by the Commissioner of Income Tax (Appeals)-7, Kolkata dated 19.02.2020 which was dismissed affirming the order passed by the first appellate authority. After we have elaborately heard the learned senior standing Counsel for the appellant and the submissions of the learned Advocate for the respondent/assessee, we find that the learned Tribunal was fully justified in dismissing the revenue's appeal. We note that the allotment of shares, conversion of this liability in such share capital and share premium could not be treated as unexplained cash credits under Section 68 of the Act. The court also took note of the fact that the revenue had filed appeal before the Hon'ble Supreme Court against the said decision which was dismissed in the case of ITO Vs. V. R. Global Energy (P) Ltd. (2020)113 taxmum.com 31 (SC). Apart from that two other decisions, one of the Division Bench of this Court in the case of Jatia Investment Co. Vs. CIT (1994) 206 ITR 78 (Cal) and the decision of the High Court of Delhi in CIT Vs. Ritu Anurag Agarwal, 2009(7) TMI 1247 (Delhi) also support the case of the assessee. The Tribunal took note the above decision and the admitted facts in position and dismissed the appeal filed by the revenue thereby affirming the order passed by the CIT(A). Thus, we find no question of law much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal fails and the same is dismissed.”

6. Similarly, the Ld. counsel relied on the decision of Co-ordinate Bench in the case of ITO Vs. Ms/ Vishnu Distributors Pvt. Ltd., ITA No. 50/Kol/2022, dated 20.05.2024, wherein the Co-ordinate Bench has held as under:

“We have duly considered the rival contentions and gone through the record carefully. There is no dispute with regard to the fact that the assessee has not received cash or cheque for sale of its shares. It has transacted the shares through barter system. This aspect has been considered by the Hon'ble Jurisdictional High Court in its recent judgment, i.e. IA No. GA/1/2024, GA/2/2024. It is a very brief order and we deem it appropriate to take note of it, which reads as under:-

"IN THE HIGH COURT AT CALCUTTA SPECIAL JURISDICTION (INCOME TAX)

ORIGINAL SIDE

ITAT/50/2024

IA NO: GA/1/2024, GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA

VS ALISHAN STEELS PVT LTD

BEFORE

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

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date: 19th February, 2024.

Appearance:

Mr. Om Narayan Rai, Adv.

Mr. Amit Sharma, Adv. for appellant

Mr. Ramesh Kr. Patodia, Adv.

Ms. Megha Agarwal, Adv. for respondent

The Court We have heard learned Counsel on either side.

It appears that there is a delay of 1132 days in filing the appeal, though the explanation offered is not fully satisfactory, since this appeal has been filed under Section 260A of the Income Tax Act, we are required to examine as to whether any substantial questions of law arise for consideration. Therefore, we exercise discretion and condone the delay in filing the appeal. The application is allowed.

This appeal filed by the Income Tax Department is directed against the order dated 18.3.2020 passed by the Income Tax Appellate Tribunal B Bench, Kolkata in ITA No. 2244/Kol/2017 for the assessment year 2012-13. The revenue has raised the following substantial question of law for consideration

**i) Whether the Hon'ble Tribunal has substantially erred in law in upholding the decision of the Learned CIT (Appeals)-9, Kolkata thereby deleting the addition of Rs.6,00,00,000/-under Section 68 of the Income Tax Act, 1961 as unexplained cash credit in the form of share capital and share premium only on the ground that no cash or cheque was actually received by the respondent assessee and the purchase of share assets and allotment of share by the assessee was under barter system?*

After we have elaborately heard the learned Advocates for the parties we have no hesitation to hold that substantial question of law raised in this appeal has to be answered against the appellant/revenue in the light of the decision of this Court in ITAT/187/2023 dated 17.11.2023 in the of ITAT/187/2023 PRINCIPAL COMMISSIONER OF INCOME TAX 1, KOLKATA VS. M/S ABHIJEET ENTERPRISE LTD. case

Thus, following the decision the appeal filed by the revenue is dismissed.

(T.S. SIVAGNANAM)

CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

10. Apart from this judgment, there is one more judgment of the Hon'ble Jurisdictional High Court, which is also in the same line. We deem it appropriate to take note of that also, which reads as under:-

"IN THE HIGH COURT AT CALCUTTA

SPECIAL JURISDICTION (INCOME TAX)

ORIGINAL SIDE

ITAT/187/2023

IA NO: GA/1/2023, GA/2/2023

PRINCIPAL COMMISSIONER OF INCOME TAX 1, KOLKATA

VS

M/S ABHIJEET ENTERPRISE LTD

BEFORE

THE HONBLE THE CHIEF JUSTICE T.S. SIVAGNANAM And THE HONBLE JUSTICE HIRANMAY BHATTACHARYYA

Date: 17 November, 2023

Appearance:

Mr. Tilak. Mitra, Adv....for appellant

Mr. Subhas Agarwal, Adv... for respondent

GA/1/2023

The Court: We have heard Mr. Tilak Mitra, learned standing Counsel for the revenue/appellant and Mr. Subhas Agarwal, learned Advocate for the respondent/assessee. There is a delay of 1042 days in filing the appeal. Though the reasons given in the petition are not fully convincing, since the appeal has been filed under Section 260A of the Income Tax Act, (the Act) and they are required to examine as to whether any substantial questions of law arise for consideration, we exercise our discretion in the matter and condone the delay in filing the appeal.

ITAT/187/2023

This appeal by the revenue is directed against the order dated 27th March, 2019 passed by the Income Tax Appellate Tribunal "C" Bench Kolkata (the Tribunal) in ITA No.308/Kol/2017 for the assessment year 2013-14.

The revenue has raised the following substantial questions of law for consideration:-

(i) Whether the Learned Tribunal has erred in law and fact in setting aside the order of the CIT (A) with limited direction to invoke section 68 of the Act only if he is satisfied about actual receipt of sum by the assessee, in acquiring investments and rights?

(ii) Whether the Learned Tribunal has erred in law and fact in treating the transaction through shares as beyond the ambit of section 68 of the Act, ignoring that 'shares' tantamount to money' here as a medium of exchange which is a mode of circumventing the said provisions?

(iii) Whether the Learned Tribunal has erred in law and fact in deleting the addition under section 68 of the Act, without appreciating the fact that section 68 not only includes cash credit but also include a credit representing the value of shares on credit?

After we have elaborately heard the learned Advocate for the appellant we find learned Tribunal was right in allowing the assessee's appeal to the extent indicated by taking note of the various decisions of the High Court on the very same subject. In this regard, we refer to the decision of the High Court At Madras in V.R. Global Energy (P) Ltd. vs. ITO, Corporate Ward 3(4), Chennai 407 ITR 145 (Madras). It was held that when the assessee allotted share to a company in settlement of their existing liability of assessee to the said company, since no cash was involved in the transaction of said allotment of shares, conversion of this liability in which share capital and share premium could not be treated as unexplained cash credits under Section 68 of the Act. The Revenue filed an appeal against the said judgement and the same was dismissed by the Hon'ble Supreme Court in ITO us. V.R. Global Energy (P) Ltd. [2020] 113 taxmann.com 31 (SC). The decision of the Hon'ble Division Bench of the High Court of Delhi in case of CIT vs. Ritu Anurag Agarwal, 2009(7) TMI 1247, Delhi High Court, the same also stands in aid to the case of the respondent/assessee.

The decision of the Hon'ble Division Bench of this Court in Jatia Investment Co. Vs. CIT (1994) 206 ITR 78 (Cal) will also support the case of the respondent/assessee. In the said decision, the Court found that cash did not pass at any stage though entries were made in cash book showing payment and receipts; but since the entries made a complete round, no passing of cash was necessary for the purpose of making entries. Further, it was held that if there was no real cash entry on credit side of the cash book by merely an emotional or fictitious cash entry, as admitted by the Income Tax Officer, there is no real credit to cash, to its cash book the question of inclusion of the amount of the entry as unexplained cash credit cannot arise. In the light of the above decision, the view taken by the learned Tribunal was perfectly in order and sustainable.

Thus, we find there is no ground to interfere with the order passed by the learned Tribunal. Accordingly, the appeal is dismissed and the substantial questions of law are answered in favour of the revenue.

The portion of the order and direction of the learned Tribunal remanding the matter for a limited purpose is affirmed.

Consequently, the applications stand closed.

(T.S. SIVAGNAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)

11. The Id. Counsel for the assessee has demonstrated that no fresh evidence was submitted before the Id. CIT(Appeals). Only books were appraised to the Id. 1st Appellate Authority in order to demonstrate the shares were sold through journal entry. Therefore, respectfully following the decision of the Hon'ble Jurisdictional High Court, we do not find any error in the order of the Id. CIT(Appeals) and first two-folds of grievances summarized by us are rejected.”

Thus, it is abundantly clear from the above that the allotment of share on barter basis is not covered by the provisions of section 68 of the Act. Accordingly, we respectfully following the above decisions, set aside the order of Ld. CIT(A) and directed to AO to delete the addition.

7. In result, appeal of the assessee is allowed.

Order pronounced on 17.11.2025

Sd/-
(Pradip Kumar Choubey)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 17.11.2025
AK,Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches